EXECUTIVE SESSION

NOMINATION OF HELENE N. WHITE, OF MICHIGAN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Helene N. White, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

Mr. ISAKSON. Madam President, I ask unanimous consent that the time during the quorum be equally divided between the parties, and I suggest the absence of a quorum.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is presently in executive session.

Mr. LEAHY. Am I correct that we are now on a judicial nomination?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. Is there a time agreement?

The PRESIDING OFFICER. There is 4 hours equally divided. But the Senate has used some of that time in the quorum call.

Mr. LEAHY. I yield myself such time as I may need in the time allotted to the Senator from Vermont.

Today, the Senate is turning to a package of three nominations for lifetime appointments to the Federal bench in Michigan, including President Bush's nominations of Judge Helene White and Raymond Kethledge to fill the final two vacancies of the Sixth Circuit Court of Appeals.

These nominations are the result of the hard work of Senators LEVIN and STABENOW, who consulted with President Bush to end a decade-long impasse in filling vacancies on the Sixth Circuit. During that time, Senate Republicans had blocked President Clinton's nominees to that circuit, leaving open four vacancies.

I am worried that some on the other side seem intent on preventing us from making this progress. Judge White's nomination should be a consensus nomination. Judge White was nominated by a Democratic President and by a Republican President. When the most partisan President in modern history, one responsible for sending us so many divisive nominations, renominates a Clinton judicial nominee, it actually should send a signal.

Nevertheless, her nomination drew criticism from the Republican leader and opposition from Republicans on our committee. After I expedited a hearing on the Michigan nominees, figuring that 10 years of waiting might have been enough, Republicans objected that we were moving too fast. They peppered her with more questions than any nominee of President Bush that I can recall. At our committee markup, Republicans made the wildly dumbfounding claims that she is not experienced. But after more than 25 years as a Michigan State court judge, including 15 as a State appellate court judge, she is a more experienced judicial nominee than many of those they previously supported.

It is interesting that Republicans did not raise this concern when they were supporting far less experienced nominees such as Jennifer Elrod and Catharina Haynes of Texas to fill circuit court vacancies. In fact, Judge White has been on the appellate bench longer than Mr. Kethledge, the other Sixth Circuit nominee, has been out of law school.

It is ironic that last week several Republican Senators held a press conference with representatives from right wing groups organized by a group calling itself Concerned Women for America. It is Republican opposition to a woman nominee that has been holding up the progress of filling judicial vacancies. Now this woman nominee they seemed concerned about is described on President Bush's White House Web site as ''an experienced and highly qualified judge, who is known for her intellect, work ethic, and demeanor.'' She has been given the highest rating for the position by the ABA. Yet her extensive experience, which is far more than the experience of many supported by my friends on the other side of the aisle, does not seem to meet the sudden last-minute standards set by Republican members of the committee.

As a state judge, she has not been called upon to consider and apply certain Federal statutes. That would be the same with thousands of state judges all over the country. It is understandable. But if you characterize her because of that as unqualified, that would turn back the clock to before the confirmation of Justice Sandra Day O'Connor, who had been a State legislator and a State judge. Justice O'Connor was not experienced in deciding Federal law issues before confirmation as the first woman on the U.S. Supreme Court. I think we should all agree she nonetheless served the Nation well in that capacity. And I agreed with her chief sponsor in this body, my friend and former colleague, Barry Goldwater of Arizona, and I was proud to join with him in voting for Sandra Day O'Connor.

It is also ironic that week after week, as the Senate continues to make progress in filling judicial vacancies, we hear a steady stream of grumbling from Republicans whose main priorities now seem to be to prevent the Senate and the Judiciary Committee from addressing the priorities of ordinary Americans. You would almost think that gasoline has not skyrocketed as the dollar has collapsed in value worldwide because of the huge debt caused by the Iraq war. They do not seem to realize that some of the typical Americans in my State of Vermont and, I suspect, the Presiding Officer's State of New Jersey, are finding it very hard to buy gas to go to work or pick up their children after school or do their grocery shopping or visit an ailing parent. You would not think these were important matters when you hear of the priorities on the other side. You would not be aware there is a huge crisis in the housing industry, where people are losing houses all over this country, hard-working Americans who finally had the American dream of owning their own home and are now losing it. You would think that was not happening by what we hear from the other side.

Republicans are now regularly objecting to hearings before the Judiciary Committee. They seem disappointed when we conclude hearings within the first 2 hours of the Senate's day and they cannot disrupt them.

They objected to Senator FEINSTEIN completing an important hearing on interrogation techniques used against detainees. It is almost as if, if we can block that hearing from happening, these terrible things never would have happened because Republicans foreclosed the ability of Americans to hear what went on in those hearings.

They objected to a hearing highlighting the impact of Supreme Court decisions on the daily lives of all Americans even though that meant cutting short the testimony of two brave women victimized by such a decision, Pennsylvanians who came to Washington to tell how badly they had been hurt by these decisions. The Republicans effectively silenced them to make sure they could not speak and could not testify because they said we should not have these Judiciary Committee meetings. So these two Pennsylvanians had to go back home unable to finish telling their story.

And a few days ago, the Republican minority objected to a hearing that had been requested by Judiciary Committee Republicans to examine the need for additional Federal judgeships throughout the country. This now all too familiar pattern is childish and serves no good purpose.

We will see later this week whether they allow Senator BIDEN to proceed to chair a hearing before the Subcommittee on Crime and Drugs concerning fugitives from justice.

Regrettably, these obstructionist tactics from the other side of the aisle are likely to continue without regard to the real priorities of the struggling Americans I spoke about, the voters who have elected every Senator to serve. Their priorities are being pushed aside.

We read last week another story about the dissatisfaction of right wing

activists and their pressuring of the Republican leadership in the Senate. We witnessed their response this month as they forced a reading of a substitute amendment to critical climate change legislation. They did this for hours and hours, thereby shutting down the work of the Senate.

Two weeks ago, we saw a story in Roll Call that included the headline ''Divided GOP Settles on a Fight Over Judges.'' That headline reminded me of the famous Wolfowitz quote about why the Bush administration settled on supposed weapons of mass destruction as the justification for attacking Iraq even though they knew there were no weapons of mass destruction—it was the rationale they could agree on. They all knew they wanted to attack Iraq, they knew they did not have the facts to attack Iraq, so they found a cover story they could use. And thousands of lives and $1 trillion later they say: Oops, sorry, no weapons of mass destruction, but, boy, we all agreed on the rationale.

The report in Roll Call included discussion by Republican Senators of the politics that fuels their efforts to appeal to ''conservative activists'' and ''ignite base voters'' and find an issue that ''serves as a rare unifier for Senate Republicans'' and their Presidential nominee. That piece mirrored an earlier article in the Washington Times, reporting how this is all part of an effort to bolster Senator MCCAIN's standing among conservatives.

This political song-and-dance would not be so bad if it were not impacting the integrity and the independence of the Federal judiciary, something that in the past both Republicans and Democrats tried to protect.

I had suspected that much of this complaining was because Republican partisans were looking for an issue to energize their political base during an election year. The reports from the media outlets have confirmed my suspicions. I wonder if they realize that liberals, conservatives, Republicans, and Democrats are suffering from having to pay these outrageous gas prices. Wouldn't it be better if they worked on that?

Americans, Republicans and Democrats, in all parts of this country, are seeing their houses disappear and the value they had hoped for their retirement gone. Wouldn't addressing that be something better on which to unite America?

On this date in the 1996 session, another Presidential election year but one in which a Republican Senate majority was considering judicial nominees of a Democratic President, do you know how many judicial nominees had been confirmed? The answer is easy: None, not a single one. That was a session that ended without a single circuit court judge being confirmed.

By contrast, if Republicans will allow the confirmation of Judge White to the Sixth Circuit, we will have today completed the confirmations for 12 judges, including 4 circuit court judges, so far this Presidential election year, compared to 1996, when none had been confirmed at this point.

In addition to today's three nominees, two more judicial nominees already reported by the Senate Judiciary Committee are pending on the Senate's executive calendar. I have placed four more on the Judiciary Committee business agenda for later this week.

It is perhaps the ultimate irony that here, as the Democratic leadership of the Senate takes the extraordinary step of proceeding to two more of President Bush's circuit court nominees in June of a Presidential election year, I am being criticized by Republicans for, of all things, moving too quickly. I had hoped, in light of the discussion between the majority leader and the Republican leader earlier this spring, to have concluded Senate action on this package of Michigan nominees more quickly. I tried to have these votes in May before the Memorial Day recess, but we were thwarted in that effort by Republican concerns about expediting consideration of these Bush nominees. So what we might have done in May, we are now having to do in June.

It reminds me a little bit of the Republican antics and shenanigans earlier this year that cost us progress in February. Rather than making progress, Republicans refused to make a quorum in the Judiciary Committee that entire month so no judicial nominees would come out in March, and then in March, they could give speeches.

So let there be no mistake. If Judge White is confirmed, we will have broken a 10-year impasse on the Sixth Circuit. By contrast, the Republican Senate majority during the Clinton years refused to consider President Clinton's Sixth Circuit nominees for 3 years and left four vacancies on that court.

When, as chairman, I scheduled a hearing and vote for Judge Julia Smith Gibbons of Tennessee and Judge John Marshall Rogers of Kentucky, we were able to confirm the first new judges to the Sixth Circuit in 5 years. The others had been pocket-filibustered by Republicans. I said we would not do the same thing to them, and we did not. We moved quickly on President Bush's nominees to that circuit. The confirmations of Judge White and Mr. Kethledge of Michigan would complete the process by filling the two remaining vacancies on the Sixth Circuit.

Judge White was first nominated by President Clinton to a vacancy on the Sixth Circuit more than 11 years ago, but the Republican-led Senate refused to act on her nomination. She waited in vain for 1,454 days for a hearing before President Bush withdrew her nomination in March 2001. Hers was 1 of more than 60 qualified judicial nominees pocket-filibustered by Republicans. This year, President Bush reconsidered and renominated her, and I applaud President Bush for doing so. He deserves credit for trying to close the door on a sorry chapter. I commend the President for doing it and for what he has said on his White House Web site about Judge White's nomination. I hope the Senate will follow the example of President Bush and confirm Judge White to one of the last two vacancies on the Sixth Circuit.

The Michigan vacancies on the Sixth Circuit have proven a great challenge. I commend the senior Senator from Michigan, chairman of the Senate Armed Services Committee, Senator LEVIN, and his outstanding colleague, Senator STABENOW, for working to end years of impasse. I had urged the President to work with the Michigan Senators. After 7 years, he now has.

We have come a long way since I became chairman in 2001 when the Sixth Circuit was in turmoil because Republicans had blocked nominations for many years. Today we complete that progress by confirming Judge White and Raymond Kethledge.

I yield the floor and retain the remainder of my time. How much time remains to the Senator from Vermont?

The PRESIDING OFFICER. There is 1 hour 32 minutes.

Mr. LEAHY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, we are moving forward today on the votes for confirmation of three Federal judges. Among the many very heavy responsibilities of the Senate, the confirmation process ranks very high. Under our system of government, we give to the judicial branch the responsibility of interpreting the Constitution and establishing the rule of law. That has broad implications. It means the courts render decisions where one citizen has a claim against another, which goes to court. It means a claim when the government and a citizen have a controversy which is to be settled by an impartial judicial arbitrator. It also involves some of the historic constitutional confrontations, one of which we will have later this week on the Foreign Intelligence Surveillance Act. Where does the Article II power of the President end as Commander in Chief, and where does the Article I power of the Congress of the United States establish itself under Article I?

It is a very, very high calling. When the framers adopted the Constitution, Article I was given to the Congress. Article II to the executive branch and Article III to the judicial branch. Later, Chief Justice Marshall, in effect, rewrote the order of priority. I think if the Constitution were to be rewritten today, the judicial branch would be No. 1, because the judicial branch has taken over the responsibility, for a variety of reasons, for deciding all of the cutting edge questions.

We have had a great deal of focus of attention on the confirmation process. This attention usually happens when Supreme Court nominations are involved. Then, in the major committee hearing rooms, Senators are all at

their desks. There are not too many Senators at their desks here today. In fact, I don't see anybody at their desk here today, except for the Presiding Officer, which is not exactly his desk. It is the vice president's desk. But, Senator LAUTENBERG from New Jersey looks comfortable in the position. We have had, during the confirmation process of Chief Justice Roberts and Associate Justice Alito, seen the Senate at its best—avoiding the controversy, avoiding the partisanship, and moving forward in dignified hearings.

As I have said before—and it is worth repeating—I compliment the distinguished chairman of the Judiciary Committee for his courageous stand in voting for Chief Justice Roberts. Chief Justice Roberts was confirmed by a vote of 78 to 22. Counting the Independent vote with the Democrats, a majority of the Democrats voted in favor of Chief Justice Roberts, and it was a good, unifying symbol. We moved through that process where there had been some doubt as to how the Senate would perform, a doubt which was occasioned by the very bitter infighting, which characterized the Senate in 2003, 2004, and 2005, when we had the controversy with the filibuster by one side and the threat to invoke a new rule of cloture with the so-called constitutional or nuclear option.

I have the pleasure of having my 14-year-old granddaughter with me this week. She just graduated from the eighth grade and is spending a week as an intern in the Senate. It may be a little early for the job. Her father spent 6 weeks with Senator Hugh Scott many years ago when he was 17. But, in going over the day's itinerary, I sought to explain to my granddaughter, Silvia Specter, what a confirmation is. She is watching, with more interest, the activities of the Senate today because she is onboard. It is my hope, with agreements which have been reached here today to move ahead with the confirmation of three Federal judges today and two more on Thursday, that perhaps we will see a return to at least some basic level of comity in the Senate. We have moved a considerable distance from the tradition of confirmation of Federal judges where, in times gone by, there was merely a review of academic standing, professional standing, and trial practice; now, we go into much more detail of the ideology and philosophy of the nominees. That change has led to some deep concerns over the so-called cultural wars which have, candidly, muddied the waters. However, it is my hope that in the time that remains in the 110th Congress, we will move ahead with the confirmation of judges on up-and-down votes.

The three nominees we are considering today have come to the floor as a result of an arrangement worked out by the leadership on both sides. Originally, there had been a commitment to have these confirmations occur before Memorial Day. When I say ''commitment,'' let me modify that slightly to ''best efforts.'' When the nominees were selected, there was concern on the part of the Republican side of the aisle that there was insufficient time to take up the nomination of appellate court Judge Helene White to be a judge of the Sixth Circuit.

I will ask unanimous consent that the full text of my statement on Judge White's nomination be printed in the RECORD at the conclusion of my remarks.

By including my statement, I can abbreviate my comments now. In my statement, I note that there were only 22 days between Judge White's nomination and hearing, and there was not an opportunity to get into the details of her record, which is a matter not just of procedure, not just of form, but of real substance in terms of the committee's ability to evaluate Judge White. I shall talk about that specifically, in terms of her qualifications and in terms of specific cases which she has decided. The context of the mere 22 days to evaluate her nomination is further illuminated by the fact that there were so many other nominees who had been on the agenda for much longer. A very distinguished lawyer, Peter Keisler, a man who has been praised on the editorial pages, had been waiting for 726 days for a committee vote on his nomination to Circuit Court for the District of Columbia. It is not too often that judicial nominees are praised on the editorial pages, but Peter Keisler has been. A judge in North Carolina, District Court Judge Robert Conrad, who is up for a seat on the Fourth Circuit, has been waiting for a hearing for 343 days. A man named Steve Matthews, also for a seat on the Fourth Circuit, has been waiting for a hearing for 292 days.

It seemed to my Republican colleagues and me that where you had a commitment for confirmations by Memorial Day, and you had people who had been waiting around for this length of time and we were in a position to evaluate them, that they should have been the ones to be considered. But, the majority leader chose otherwise, and now we have before us the nomination of Judge White for a position on the Sixth Circuit.

The status of a circuit judge is extremely important in our judicial hierarchy because the circuit court—for those who are not familiar with the details of Federal procedure—is the appellate court right above the U.S. District Court, which is the federal trial court. When appeals are taken, or, more specifically, a petition for a writ of certiorari is applied for to the Supreme Court of the United States, it is a discretionary matter whether the Supreme Court takes the case. Most of those applications are not heard—the U.S. Supreme Court takes very few cases from the court of appeals. So, when a three-judge panel sits in a circuit court, that is it. Now, sometimes there will be a decision by the circuit court en banc, when the full circuit court will decide, but customarily the decision is only rendered by the three-judge panel, and many decisions are two to one.

One case which illustrates the importance of the circuit court, and especially the Court of Appeals for the Sixth Circuit, was the decision on the constitutionality of the Terrorist Surveillance Program, the program put into effect by the President on warrantless wiretaps. These wiretaps went on for a long time before they were disclosed—a violation of the National Security Act of 1947, which requires the President to inform the Intelligence Committees of such proceedings, and a violation of the Foreign Intelligence Surveillance Act of 1978.

The President has responded to the law that Article II powers are not affected by statute, but that is a matter for judicial decision. A Federal court in Detroit declared the Terrorist Surveillance Program unconstitutional. The case was appealed to the Sixth Circuit, and on a two-to-one decision, the Sixth Circuit decided the plaintiffs did not have standing. That is a complicated legal procedure, which I will not take time to discuss today, but, in short, they do not have a right to challenge it because they are not sufficiently affected by it.

There was a dissent in that Sixth Circuit decision. Then, the Supreme Court of the United States denied certiorari—a decision which I thought was unfortunate. When you have a major constitutional confrontation between the Congress and the President—the most dominant confrontation of this era—it seems to me the Supreme Court of the United States ought to decide the issue and, candidly, not look for a way to duck it.

The doctrine of standing has sufficient flexibility, as illustrated by the dissent in the Sixth Circuit, that the Court could have taken the case. There is a lot of flexibility when the court deals with issues such as standing. Coming back to the point, one judge of the Sixth Circuit made the difference. So, when you have a nominee to the Sixth Circuit Court of Appeals, or any court of appeals, it is an important decision.

Going back to the topic at hand, we had the hearing on Judge Helene White, and we had it in a very hurried fashion. We did not have the rating of the American Bar Association, and, regrettably, we did not have all the materials that should have been available to the committee. When judges write opinions, a good many of them are what are called unpublished. For those who do not know the legal procedures, there are published opinions, which are bound in volumes that are used for precedents. But, the courts make a distinction on what is published and what is unpublished, and a good many of Judge White's opinions were unpublished and reversed, and we never were able to get them.

I asked Judge White at the hearing about a number of her cases because my own sense is to get involved in the specifics. In evaluating judges and evaluating lawyers on their legal skills, it is very revealing to see what they have decided. Perhaps even more revealing than what they have decided is the way they have reasoned through the decision. My questions about her cases were not designed to be so-called ''gotcha'' questions. All the cases I used for questioning were specifically listed on Judge White's Senate questionnaire that she provided to the committee on April 25, just 12 days prior to her hearing. I thought she would at least be familiar with these cases.

One of the cases I questioned Judge White on was captioned People v. Santiago. In that case, Judge White dissented from her colleagues' opinion, where her colleagues—two other judges—upheld a jury conviction of a defendant for first-degree felony murder and armed robbery. Judge White would have reversed the sentence.

In this case, the defendant had driven the other two defendants to the house where the robbery and murder were committed, knowing that the defendants intended to rob and likely kill the victim—a classic example of aiding and abetting. It is a basic, fundamental rule of criminal law that an accomplice in a getaway car is a part of the conspiracy to rob and is responsible for the consequences of a felony murder which follows—very basic fundamental law.

I asked Judge White why she did not agree with her colleagues that the defendant was guilty of aiding and abetting. She could not explain why her decision deviated from the legal standards. I asked her specifically if it was ''standard, clear-cut law that when somebody drives a codefendant to a place where there is a robbery and a murder, that kind of assistance constitutes guilt on the part of the coconspirator, accessory before the fact?'' She commented, unresponsively, that she ''went to law school in Pennsylvania,'' but then continued that ''in Michigan, to be responsible for the principal offense, one has to either share the intent to commit the principal offense or provide aid and support with knowledge that the principal offense was going to be committed.''

Given that acknowledgment, I again asked her why she came to a contrary conclusion. I asked her if she stood by her decision, even though her two colleagues who participated in the case with her on the Michigan Court of Appeals disagreed and the Supreme Court had denied appeal, and she responded that she stood by her original judgment, without providing any legal reasoning to justify that conclusion.

I asked Judge White about another case, captioned People v. Ryan. She participated in the decision affirming the dismissal of a drug dealer's conviction. The conviction had been reversed. The circumstances were that the defendant was arrested by Federal agents but was charged and convicted in a state court. The defendant argued that the decision to pursue a state prosecution rather than a federal prosecution was vindictive. The panel on which Judge White sat found that the trial court's determination that there was vindictive conduct was not clearly erroneous. The Supreme Court reversed stating:

> The mere threat to refer the case for State prosecution does not amount to objective evidence of hostile motive.

The Supreme Court reversed the decision to which Judge White had been a party.

I am sorry for the interruption. Anyone watching this debate on C–SPAN just saw a congenial exchange between the distinguished chairman and the ranking member of the Judiciary Committee. As a matter of fact, we have quite a few such exchanges. The evening is getting late and a lot of colleagues have a lot of commitments, and there has been a request by the majority that I abbreviate my comments. I think I can do that sensibly and will be delighted to do so.

Mr. LEAHY. Mr. President, if the Senator will yield without losing the floor?

Mr. SPECTER. No, Mr. President, I already have yielded.

Mr. LEAHY. Mr. President, I appreciate what the Senator said. I hope people understand who are listening. I know the two Senators from Michigan are going to speak very briefly. But if we wrapped up the comments in, say, the next 15, 20 minutes, we could then go to a rollcall vote on Helene White. I would agree, then, to a voice vote on the other two judges, provided the ranking member had no objection to that, which would probably bring about a huge sigh of relief from Senators on both sides of the aisle that we would not be stuck here with three votes.

Mr. SPECTER. Mr. President, I thank the distinguished chairman for his suggestion. It is almost 6 o'clock—a few minutes before—and I know people have a lot of engagements. I think the course he outlines is a solid one. I think we can handle the Senate's business in that way. As I said earlier, I will expedite my presentation and rely more on what I have in my statement for the RECORD. I do not think I am going to change a whole lot of votes in what I say, but I do think it is important for the Senate to understand that voting against Judge Helene White is not a matter that is done lightly or without cause. There ought to be a statement as to why.

Well, back to the case of People v. Ryan. Quite frequently there is a Federal investigation and a State prosecution. It happens all the time. It was very commonplace when I was district attorney of Philadelphia. That scenario is certainly not the basis for saying it is vindictive or out of order. For one reason or another, it is better suited to pursue the State court. If a State law is violated, you can do it that way. Judge White was wrong, as determined by the appellate court.

There is one other case on which I wish to comment. There is a case called People v. Thomas, which is in the RECORD and which I will incorporate by reference to save some time; however, I do want to specify the case of People v. Hansford, which was an opinion reversed on appeal by the Michigan Supreme Court and was a third case she had summarized in her questionnaire prior to her hearing.

After reading to Judge White in the hearing the defendant's extensive criminal record, which included several counts of larceny and attempted larceny, receiving and concealing stolen property, fleeing and alluding, and violations of probation, I noted that habitual offender statutes are designed to take habitual offenders off the streets. I asked what her reasoning was for determining that a man with an extensive criminal record such as the defendant did not deserve to be off the streets for life.

Once again, her response to my question was that she was not familiar with the case. She further stated that she ''accept[ed] the Supreme Court's decision . . . and accept[ed] that the sentence was appropriate . . . because the Supreme Court has said it is appropriate.''

I again asked her whether she thought her decision was correct in light of the Michigan Supreme Court's reversal, and she said:

> I have to have been wrong . . . The Supreme Court reversed. I was wrong. The Supreme Court reversed.

Well, that is, in my legal opinion, totally insufficient for a nominee to respond in that way to a very important question such as that. You have habitual offender statutes which are designed to take career criminals off the streets. When you have three or more convictions for violent offenses, it has been determined that the criminals ought to have life sentences. Based on the experience I had as district attorney dealing with these cases, I authored the Armed Career Criminal bill, which created a federal life sentence for serious repeat offenders convicted of three or more major felonies. The fundamental part of the criminal law is to protect society. Recidivists commit 70 percent of the crimes so if there is a habitual offender who commits repeat crimes, they ought to be taken off the streets. Here there was one, and the Supreme Court of Michigan said the treatment should have been for a habitual offender. Judge White didn't treat it that way, and she didn't have any justification for why she didn't treat it that way, and she didn't explain the logic of her reasoning.

As delineated in the very extensive floor statement, which I have already had printed in the RECORD, we were not given a great many of Judge White's opinions. It was very difficult—really impossible—to calculate her reversal rate when we didn't have those opinions. Based on the opinions we have,

her reversal rate was in excess of 6 percent, much higher than Judge Robert Conrad's reversal rate—2 cases out of 175, or about 1 percent. The national average is at 8.6 percent; however, Judge Boyle from North Carolina, who was rejected by the Democrats based on his high reversal rate, had a reversal rate which was lower than Judge White's. And I repeat, we still don't know what her reversal rate is. We don't know what her reversal rate is because we had a great many unpublished opinions that were reversed on appeal that we did not have an opportunity to examine because they were not provided to us.

Just a couple of comments in conclusion. It is my hope that we will yet return to some basic comity and have a respectable number of confirmations of Federal judges this year. The statistics show that President Clinton had a significantly larger number of circuit judges and district court judges confirmed than President Bush has had in the last 2 years. Further, President Clinton's overall confirmation numbers are higher than President Bush's. President Clinton had 65 circuit judges and 305 district court judges confirmed, while President Bush has had only 59 circuit judges and 244 district judges confirmed. We have heard several discussions about the so-called ''Thurmond rule''—that is a rule which has been commented upon which, when analyzed, has no real substance. During President Clinton's Administration, Chairman LEAHY commented that the so-called ''Thurmond rule'' was a ''myth,'' and then he proceeded to specify a great many judges who had been confirmed late in past Presidents' terms.

Upon examination, we find that the facts are that in the last 2 years of Presidents' terms, there have been many judicial confirmations. In 1988, President Reagan's last year in office, the Senate confirmed 7 circuit nominees and 33 district court nominees. In 1992, President George H.W. Bush's last year, the Senate confirmed 11 circuit nominees and 53 district court nominees. In 2000, President Clinton's last year in office, the Senate confirmed 8 circuit nominees and 31 district court nominees.

The Thurmond rule allegedly arose when the issue about the confirmation of judicial nominees came up near the end of President Carter's term in office. But, an examination of the facts shows that nominations were not being blocked. In fact, by today's standards, the end of President Carter's term was a rather remarkable situation. President Carter nominated Steven Breyer to be a court of appeals judge for the First Circuit on November 13, 1980, after President Carter had lost the election to President Reagan. We talk about the fights over circuit judges now. The election was gone. We had a new President. But, the Senate confirmed Steven Breyer to the First Circuit, and history shows that he later became a U.S. Supreme Court Justice.

We have had some very troubled times on this Senate floor, and that kind of infighting and partisanship is something which does not add to the luster of the Senate as the world's greatest deliberative body. We have seen very bitter disputes on this Senate floor. The Republican majority, in my opinion, did not act properly on President Clinton's nominees when the Republicans controlled the Senate and the President was a Democrat. I said so on the floor at that time and voted for President Clinton's qualified nominees.

When we had the battle over filibuster versus the so-called nuclear constitutional option, the tradition of this body was strained to the utmost, and we dodged that bullet or cannon or nuclear bomb. So, it is my hope that Senator LEAHY and I can take the lead, as we have in the past. He is the chairman; I am the ranking member. The roles have been reversed. We have a lot of role reversals around here. When PAT LEAHY and ARLEN SPECTER passed the gavel, it was a seamless passing of the gavel. We are not going to filibuster Judge White. I am going to vote against her for the reasons I have given here, and more detailed in my statement. I have not campaigned against her. I think the matter is up for every individual Senator to judge. My expectation is that she will be confirmed. I think there may well be a fair number of votes against her, but I haven't counted the votes. But, I think the important thing is that we have an up-and-down vote, and that we not have a filibuster. We have waiting in the wings the judge from North Carolina, Judge Conrad, and the man from South Carolina, also nominated to the Fourth Circuit. I hope we move on these nominees.

I also have written to my colleagues who are not returning blue slips on nominees from New Jersey and from Maryland and from Rhode Island. I have talked to them and urged them to return their blue slips, urging that we not maintain vacancies in anticipation of the election results. But, essentially, it is my hope that we can move ahead in a way that is in the tradition of the Senate and to discharge our constitutional responsibilities with up-or-down votes.

Mr. President, I now ask unanimous consent that my full statement be printed in the RECORD.

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

SENATOR ARLEN SPECTER, FLOOR STATEMENT, NOMINATION OF JUDGE HELENE WHITE TO THE SIXTH CIRCUIT COURT OF APPEALS

I have sought recognition to discuss the nomination of Judge Helene White to the United States Court of Appeals for the Sixth Circuit, but before I discuss the merits of her nomination, I'd like to remind the members of this Committee of the history behind this nomination.

On April 15, 2008, Majority Leader Reid and Chairman Leahy committed to confirming at least three more circuit court nominees by the Memorial Day recess. Senator Reid said: ''Senator Leahy and I are going to do everything we can to approve three circuit court judges by Memorial Day. . . . Who knows, we may even get lucky and get more than that. We have a number of people from whom to choose.''

The same day as the Majority's commitment, the White House reached an agreement with the Senators from Michigan on nominations to the Sixth Circuit, which broke a decade-long impasse. The impasse began in 1997, when President Clinton first nominated Judge Helene White to a seat on the Sixth Circuit. The Senate did not act on Judge White's nomination prior the end of the Clinton Administration, and as a result, there has been an ongoing feud between the Michigan Senators and the White House, which led to numerous filibusters of Sixth Circuit nominees in 2003 and 2004, and left the Sixth Circuit with an understaffed court for over ten years. The April 15th agreement between the White House and the Michigan Senators specified that the White House would withdraw the nomination of Mr. Stephen Murphy to the Sixth Circuit and would instead nominate Judge White to that seat. In return, the Michigan Senators would return their blue slips on Mr. Raymond Kethledge, another Sixth Circuit nominee who has been blocked for over 700 days, and Judge White. Mr. Murphy was nominated to a Michigan district court seat instead, and the Michigan Senators agreed to return blue slips on his nomination.

On April 29th, when it became clear that the Majority intended to include the recent nomination of Judge White in the promised ''three circuit court nominees confirmed by Memorial Day deal,'' Senator McConnell and I sent a letter to Senators Reid and Leahy advising them of the logistical impossibility of confirming Judge White by Memorial Day. In the letter, we noted the numerous ''time-consuming steps in the judicial confirmation process'' and expressed our concern that ''[g]iven 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.'' We further observed the ABA rating for Judge White was not likely to be completed in time, given the ABA's standard timeframe for completing ratings, and noted that the ''Democratic Majority has placed particular importance [on the ABA rating] over the years.'' In fact, the Judiciary Committee has never held a hearing for a circuit court nominee prior to receiving his or her ABA rating.

On May 7th, a mere 22 days after her nomination, the Committee held a hearing on Judge White. Twenty-two days is a very short period of time to evaluate any circuit court nominee's record, but this expedited confirmation process was even more troubling in the case of Judge White. Judge White has been a state court judge her entire career and has participated in over 4500 cases on the Michigan Court of Appeals alone. It has been eight years since her last nomination was pending, and in that time period, she likely participated in over 2000 cases in addition to the 2500 she participated in before 1997. That is quite a record to go through in just 22 days.

As is standard Committee procedure, questions were submitted to both Judge White and Mr. Kethledge after their hearing. Republicans were criticized for submitting these initial questions even though they submitted a total of only 73 questions to Judge White, which is no more than other circuit court nominees have received from Democrats. In fact, several recent Bush appellate nominees and a Department of Justice nominee have received more questions from Democrats than Judge White received from

Republicans. Democrats submitted 108 questions for Judge Jennifer Elrod, a 5th Circuit nominee, 80 questions for Judge Leslie Southwick, another 5th Circuit nominee, and 250 questions for Grace Becker, a nominee to the Civil Rights Division of the Department of Justice. In addition, the Committee had more time to evaluate these other nominees' records prior to their hearings. Contrasted with the mere 22 days the Committee had to evaluate Judge White's record, the Committee had 112 days to evaluate Judge Elrod's record between her nomination and her hearing, 121 days for Judge Southwick, and 117 days for Ms. Becker. I believe these questions for Judge White were particularly warranted given the expedited hearing schedule for her nomination. Both nominees' returned their answers by Wednesday, May 21st, three days before the end of the session, negating the proposition that Republicans' questions slowed these nominations.

As Senator McConnell and I predicted, the ABA did not issue its rating for Judge White prior to the Memorial Day recess, and the Committee was unable to complete its work on her nomination prior to the recess.

The Majority did not fulfill its commitment to confirm three more circuit court nominees by Memorial Day because they chose to expedite the confirmation of a recently submitted circuit court nominee rather than acting on any of the other outstanding circuit court nominees currently pending in Committee whose paperwork has been complete for months or even years longer than Judge White's.

The failed Memorial Day commitment is not the first time the Majority has not fulfilled expectations. At the beginning of this Congress in February 2007, Senator Reid stated: ''[W]e are going to do our very best to make sure this is not our last circuit court judge [confirmation] but the first of a significant number who can at least meet the standards of Congresses similarly situated as ours.'' During the last 20 years, on average, the Senate has confirmed 17 circuit court nominees in the final two years of a president's term, and in President Clinton's final two years in office, the Senate confirmed 15 circuit court nominees. Since Senator Reid made that statement in February of last year, this Senate has confirmed only 8 circuit court nominees, less than half of the historical average, and the Majority has intimated that they may not process any more circuit court nominees this year. Hence, Senator Reid's February statement was the first of many unfulfilled commitments.

Second, in his announcement of the deal, Senator Reid acknowledged the fundamental unfairness of discriminating against circuit court nominees from states with two Republican Senators in favor of nominees from states with Democratic delegations or mixed delegations. He stated: ''[W]e have a number of places from which the Judiciary Committee can move matters to the floor. We have North Carolina, South Carolina, Rhode Island, Maryland . . . Pennsylvania. . . . Virginia. . . . Maryland. We have a wide range to choose from. . . . [N]o, it should not be because you have two from the same party from one State and they are not our party; that should not cause them not to have their nominee approved. . . . I think if you have two Senators from the same party, they should not be discriminated against. I mentioned their names. Their names are Matthews and Conrad.'' Notwithstanding this acknowledgment, the Majority insisted on proceeding with Judge White and Mr. Kethledge rather than moving to other exceptional circuit court nominees from states with Republican Senators such as Steve Matthews of South Carolina and Robert Conrad of North Carolina who had been ready and waiting for Senate action for months longer than Judge White. Once again Senator Reid disregarded his prior commitment not to discriminate against states with Republican delegations, breaking yet another commitment.

Now, I'd like to turn to Judge White's qualifications. Providing advice and consent on judicial nominees is one of the most important duties of a United States Senator. I take my role in the confirmation process very seriously, and I have serious concerns about Judge White's qualifications to be a judge on the Sixth Circuit Court of Appeals. Except for the two years she spent clerking for a Michigan State Supreme Court judge, Judge White has been a state court judge her entire career. She has never litigated a case, she has never handled clients, and she has had extremely limited experience with federal law as a state court judge.

While this lack of certain legal experience by a circuit court nominee certainly would not immediately disqualify the candidate from holding a federal appellate position, given the short time frame the Senate has had to consider Judge White's record, these factors are significant in her case. She had a very limited opportunity to demonstrate her ability to handle her docket and the complicated legal issues that face a federal appellate court judge.

Given her lack of experience with federal law, Judge White was questioned about the types of federal issues that she has handled and was asked to articulate her understanding of some common federal legal principles. She repeatedly responded that she had not dealt with these issues and was unable even to discuss some common federal legal issues and the cases addressing them.

At her hearing, I also asked Judge White several questions about decisions that she had participated in on the Michigan Court of Appeals that were reversed by the Michigan Supreme Court. She repeatedly stated that she was unfamiliar with the cases and did not recall the factual scenarios or her legal reasoning. Even after I had given her the relevant facts of the cases, she was unable even to articulate her legal analysis or reasoning process. My questions about her cases were not designed to be ''gotcha'' questions; the cases I mentioned were all specifically listed in Judge White's Senate questionnaire that she provided the Committee on April 25, just 12 days prior to her hearing. Further, for three of the cases, she had provided the Committee with short summaries of the facts and holdings in her questionnaire. At the very least, I thought she would be familiar with the cases she apparently had reviewed recently in order to provide the Committee with those summaries.

In one case upon which I questioned Judge White, People v. Santiago, she dissented from her colleagues' opinion upholding a jury conviction of a defendant for first degree felony murder and armed robbery. In this case, the defendant had driven the two other defendants to the house where the robbery and murder were committed, knowing that the defendants intended to rob and likely kill the victim—a classic example of aiding and abetting. When I asked her about her dissent which held that the defendant was not guilty of aiding and abetting, she could not explain why her decision deviated from the legal standards for aiding and abetting, as enunciated by the majority opinion and as affirmed by the Michigan Supreme Court when they denied appeal. I specifically asked her if it was ''standard, clear-cut law that when somebody drives a co-defendant to a place where there is a robbery and a murder, that kind of assistance constitutes guilt on the part of the co-conspirator, accessory before the fact?'' She responded first that she ''went to law school in Pennsylvania,'' but then continued that ''in Michigan, to be responsible for the principle offense, one has to either share the intent to commit the principal offense or provide aid and support with knowledge that the principal offense was going to be committed.'' Given that acknowledgement, I again asked her why she came to the conclusion that the defendant was not guilty of aiding and abetting. Again, she could not explain her legal reasoning in the case. I asked her if she stood by her decision even though her two colleagues who participated in the case and heard the same set of facts disagreed with her and the Supreme Court had denied appeal, and she responded that she did.

In another case, People v. Ryan, Judge White participated in a decision affirming the dismissal of a drug dealer's conviction, and the Supreme Court reversed that decision and reinstated the conviction. In this case, the defendant was arrested by federal agents, but was charged and convicted in State court. The defendant argued that the decision to pursue a State prosecution rather than a federal prosecution was vindictive. The panel on which Judge White sat found that the trial court's determination that there was vindictive conduct was not clearly erroneous. The Supreme Court reversed stating: ''The mere threat to refer the case for State prosecution does not amount to objective evidence of hostile motive.'' After reciting these facts to her, I asked Judge White if she stood by her opinion given that the only evidence of vindictiveness was that Federal DEA authorities turned the matter over to State prosecutors, which is a very common practice. In response Judge White cited her unfamiliarity with the case and deferred to the Supreme Court's holding rather than answering my question. She stated that ''because the Supreme Court reversed, it meant that I among others, got it wrong. . . . I stand by the Supreme Court.'' I was concerned by her stated unfamiliarity with the case because this was a case Judge White had cited in her questionnaire for which she had provided a summary. I was equally concerned that she deflected my question about whether she stood by her opinion.

I next turned to another case Judge White had summarized in her questionnaire captioned People v. Thomas. I detailed the facts of the case to Judge White, which included the conviction of a drug dealer who was charged with second-degree murder and was found guilty by a jury of voluntary manslaughter, carrying a concealed weapon, and felony firearm. I asked her whether she stood by her decision to reverse the conviction of this gang member when the Michigan Supreme Court had subsequently overturned her panel's opinion. Once again she deferred to the opinion of the Supreme Court and stated ''I stand by the judgment of the Supreme Court.'' I told her I knew the Supreme Court had the final word, but I wanted to know whether she thought the Supreme Court's decision was right. She again stated that she ''accept[ed] the conclusion of the Supreme Court.'' She did not answer my question. I wanted to evaluate her judgment, but she would not answer whether she thought her opinion was right or wrong.

I also asked her about a Court of Appeals' opinion in which she participated that reversed a sentence for a defendant who was a habitual criminal offender, People v. Hansford. Again, this was an opinion that was reversed on appeal by the Michigan Supreme Court and was a third case she had summarized in her questionnaire. After reading her the defendant's extensive criminal record, which included several counts of larceny and attempted larceny, receiving and concealing stolen property, fleeing and alluding, and violations of probation, I noted

that habitual offender statutes are designed to take habitual offenders off the streets, and I asked her what her reasoning was for determining that a man with an extensive criminal record such as the defendant did not deserve to be off the streets for life. Once again, she claimed not to be familiar with the case. She further stated that she ''accept[ed] the Supreme Court's decision . . .'' and ''accept[ed] that the sentence was appropriate . . . because the Supreme Court has said it is appropriate.'' I again asked her whether or not she thought her decision was correct in light of the Michigan Supreme Court's reversal, and she said ''I have to have been wrong . . . The Supreme Court reversed. I was wrong. The Supreme Court reversed.''

In her answer to my question about the habitual offender, Judge White also noted that the vast majority of her court's opinions are unpublished. At her hearing, I expressed concern about how many of her opinions were unpublished. I am also concerned that copies of a number of her opinions that were reversed on appeal were not provided to the Committee prior to her hearing as required. Question 15(d) of the Committee Questionnaire specifically asks for ''a list of and copies of any of [the nominee's] unpublished opinions that were reversed on appeal or where [the nominee's] judgment was affirmed with significant criticism of [the] substantive or procedural rulings;'' however, Judge White only provided the Committee with copies of 23 cases that were unpublished and reversed on appeal. Three of the cases about which I questioned her were listed elsewhere in her questionnaire, but were not included in those 23 cases that she provided to the Committee and clearly fit into the category of cases she should have provided. The Committee and the full Senate cannot properly evaluate a nominee's record if it does not have key elements of that record. I would have liked to have had access to all of Judge White's opinions that were reversed prior to her hearing so that they could have been analyzed and used as the basis for questioning.

In follow up questions after her hearing, I asked Judge White to provide those missing cases and to explain why she did not provide them initially. She responded to my question by saying it was an ''oversight'' that she did not include them initially and further stated that she can only provide the Committee with a ''partial list of cases in which [she] participated . . . which were reversed'' because the method the Michigan Court of Appeals employs to catalogue cases makes it difficult to locate those cases. She only provided the Committee with an additional 11 cases that were reversed on appeal. I find this response deeply troubling for a number of reasons. First, appellate judges should be held to the highest standards of competence. ''Oversights'' by a judge can lead to defendants being wrongly convicted, criminals being set free, or wronged litigants not receiving justice. Attention to detail and thoroughness are critical qualities in an appellate judge. Second, nominees to the federal courts who have served as judges should provide all of the opinions they participated in that were reversed on appeal or, at least, demonstrate a reasonably robust effort to do so. Democrats have required prior appellate court nominees to provide substantial numbers of their unpublished opinions in addition to the ones that were reversed on appeal. I recall one judge being asked to go to a depository in another state to retrieve copies of unpublished opinions. Judges should make every reasonable effort to provide all of their opinions that were reversed on appeal, not merely the ones that are easily accessible. I am also troubled by Judge White's relatively high reversal rate. A review of Judge White's opinions that are available publicly reveals that 6.7% of her cases have been reversed by the Michigan Supreme Court. That is a pretty high percentage of cases. Further, Judge White's reversal rate may be much higher, but we cannot determine her actual reversal rate because Judge White still has not provided the Committee with all of her unpublished opinions that were reversed on appeal. As comparison, Democrats objected to the nomination of Judge Terrence Boyle to the Fourth Circuit when his reversal rate was 6.2%.

I am troubled by some of Judge White's decisions that were reversed on appeal, but I am more concerned about her inability to articulate her legal analysis and reasoning process in these cases and her lack of experience with complex federal issues. I am also concerned that Judge White has not provided the Committee with a complete record of her judicial opinions upon which we could evaluate her qualifications for this prestigious position.

Given the brief period of time I had to review Judge White's opinions, her apparent unfamiliarity with her own opinions, her inability to articulate her legal reasoning and analysis in those opinions, and her failure to provide the Committee with important elements of her judicial record prior to her hearing, I plan to vote against her confirmation to the Sixth Circuit.

NEEDLESS RUSH TO JUDGMENT ON JUDGE WHITE

A Republican Senate confirmed 15 circuit court judges and 57 district court judges in President Clinton's final two years. Thus far in this Congress, the Senate has confirmed only 8 of President Bush's circuit court nominees and 38 district court nominees.

President Bush is also far behind President Clinton in total confirmations when contrasting their entire terms. President Clinton had 65 circuit court and 305 district court judges confirmed, while President Bush has so far had only 59 circuit and 241 district court judges confirmed.

There are a total of 32 judicial nominees currently pending in the Judiciary Committee: 11 Circuit Court vacancies with 10 nominees; 36 District Court vacancies with 22 nominees.

Judge Helene White was nominated on April 15. Her Judiciary Committee questionnaire was received on April 25, and the Minority did not receive her FBI report until April 29. Her hearing was held on May 7. Responses to Judge White's questions for the record following her hearing were received yesterday.

The mere 22 days that elapsed between nomination date and hearing is a far shorter period of time than is typical for the Committee to perform its standard review of a circuit court nominee's record. The average for Bush's circuit court nominees has been 162 days between nomination and hearing.

The American Bar Association has still not completed its rating of Judge White. The Committee has never held a hearing for a circuit court nominee prior to receiving their ABA rating.

Democrats have accused Republicans of stalling the two sixth circuit nominees. Senator Reid: ''Senators on the Republican side on the Judiciary Committee have delayed consideration of Judge White. . . . following the hearing, [they] asked a total of 73 separate written questions''

In fact, Judge White did not receive more questions than other recent circuit court nominees: Republicans submitted 73 questions for Judge Helene White, 6th Circuit; Democrats submitted 108 questions for Judge Jennifer Elrod, 5th Circuit; and Democrats submitted 80 questions for Judge Leslie Southwick, 5th Circuit.

And, the Committee had more time to evaluate these other nominees' records prior to their hearings. Days from nomination to hearing: White: 22 days; Elrod: 112 days; and Southwick: 121 days.

Judge White has already submitted her answers to the Committee, proving that no delay by Republicans occurred. The delay is due to the importance Democrats' have placed on the ABA rating. In 2001, Senator Leahy stated: ''Here is the bottom line. There will be an ABA background check before there is a vote.'' Senator Leahy reiterated this pledge at Judge White's hearing.

Judge White's nomination has only been pending for 37 days. Meanwhile, Mr. Peter Keisler, D.C. Circuit, has waited 693 days for a Committee vote, Judge Robert Conrad, 4th Circuit, has waited 310 days for a hearing, and Mr. Steve Matthews, 4th Circuit, has waited 259 days for a hearing.

Mr. SPECTER. My final comment, if I may make it while the chairman is on the floor, is that we do have some other Senators who wish to speak. Well, I have just been advised that we don't have Senators who wish to speak. Apparently, Senator LEAHY, your comments about an early conclusion were much more persuasive than mine.

Mr. LEAHY. Mr. President, if the Senator will yield for a moment, when the Senator from Pennsylvania is finished, I know Senator LEVIN and Senator STABENOW wished to speak very briefly. If that was the case, I hope that maybe within the next 10 minutes or so, or that by 6:30, or at 6:30, that perhaps what we can do is this: Let's say at 6:30, if the Senator from Pennsylvania would agree that we might vote at 6:30, then under the previous unanimous consent, if Judge White is confirmed, assuming she is, but if she is under the unanimous consent, then the regular order would be to go to the other two nominees from Michigan. It would be my intent—unless somebody objected—it would be my intent to do those by voice vote. That, of course, is contingent upon her being confirmed under the unanimous consent agreement that I have been shown. Would that be acceptable?

Mr. SPECTER. Mr. President, that is acceptable to this side of the aisle. I think it is an illustration of how the Senate can conduct its business in an expeditious way. We started on a 4-hour time agreement at 5:15. We are 54 minutes into the 4 hours, and we will conclude with a 2-hour-and-45-minute savings. Let this be an example for the balance of the confirmation process and other Senate work.

I yield the floor.

Mr. HATCH. Mr. President, I will vote for all of the Judicial nominees before us today. I want to offer a few comments about one of them and also about the current state of the judicial confirmation process.

The Constitution gives authority to nominate and appoint judges to the President, not to the Senate.

The Senate's role is to check the President's power, to ensure that his nominees are not crooks, cronies, or corrupt.

Too often in relent years, however, Senators have tried to push our role beyond merely checking the President's power to actually highjacking the President's power.

That goes too far and undermines the separation of powers which is so critical to limit government power and to keep our system of government in balance.

For this reason, my perspective on the judicial confirmation process begins with substantial deference to the President, no matter which party occupies the While House or has the Senate majority.

For this reason, I have voted against and worked to eliminate filibusters used to defeat majority-supported judicial nominees.

And for this reason, I have voted against very few nominees during my 32 years in this body and on the Judiciary Committee.

From that perspective of deference, I then look at a nominee's judicial philosophy and qualifications.

Applying these criteria, my decision to support two of the nominees before us today, Raymond Kethledge to the Sixth Circuit and Stephen Murphy to the Eastern District of Michigan, was easy.

My decision to support Judge Helene White's nomination to the Sixth Circuit, however, was a much closer call.

Frankly, I have always believed that a President has the right to appoint judges who reflect his or her judicial philosophy.

I asked Judge White detailed questions designed to explore her judicial philosophy, her understanding of the proper role of Federal appellate judges in our system of government.

I want to share a few of her responses with my colleagues.

I asked Judge White to comment on the notion that judges must make decisions based on the law as enacted by the people and their elected representatives, even if they personally disagree with it.

Judge White agreed with this wholeheartedly, staying that judges ''should be prepared to have no constituency except the law.''

I realize this is straight out of civics 101, but there are many today who believe judges may twist and shape the Constitution and statutes into any form they please in order to achieve results they desire.

In fact, some ray colleagues on the other side of the aisle have said judges must take sides, that they must favor certain ideological interests and serve certain political constituencies.

I also asked Judge White whether judges may decide cases based on their personal views, sense of justice, empathy, or experience.

It would be difficult to come up with a more misguided and even dangerous role for unelected judges in our system of government, but some of my friends on the other side of the aisle have endorsed that approach.

To her credit, Judge White flatly rejected that activist view of a judge's role.

I wanted to share these thoughts with my colleagues because some have questioned whether Judge White is the kind of judge President Bush has said he would appoint.

She was, after all, first nominated to the Sixth Circuit by President Clinton whose nominees generally embraced a more activist judicial philosophy.

President Bush is the first, at least during my Senate tenure, to resubmit an appeals court nominee first offered by a President of the other party.

President Clinton certainly did not do that.

But the Constitution gives each President the authority to make that judgment and I have always believed that there is a high bar for the Senate to withhold its consent on the basis of judicial philosophy.

That perspective of deference and her answers to questions like the ones I described satisfy me on this point.

Let me turn to the question of qualifications.

The American Bar Associations rating of judicial nominees is more important for some than for others.

My friends on the other side have consistently said the ABA rating is the gold standard for evaluating judicial nominees.

I take that back.

They have called the ABA rating the gold standard until they want to obstruct nominees who have received even the highest rating.

Judge White's ABA rating in 2008 is higher than it is in 1997, when she was first nominated to the Sixth Circuit.

At that time, some members of the ABA evaluation committee thought she was not qualified at all.

This time, a majority of the evaluation committee found her well qualified and no one thought her unqualified.

It is a little surprising, however, that after 26 years as a State court judge, 15 of them on the appellate bench, Judge White still has not garnered a unanimous well qualified rating from the ABA.

In fact, Raymond Kethledge, the other Sixth Circuit nominee before us today, received a *higher* ABA rating than Judge White and he has no judicial experience at all.

Judge White has never litigated a case. She has never handled clients. She has virtually no experience with Federal law issues of any kind.

There have been serious concerns about her ability to manage her current docket, let alone the far busier and more complex docket she would face on the Federal bench.

Perhaps these dare some of the issues that kept the ABA evaluators from giving her the highest rating.

Unfortunately, Judge White did not distinguish herself in her hearing and offered the committee little to offset these and other concerns about her qualifications. The distinguished ranking member, Senator SPECTER, and others are detailing some of those concerns on the floor today.

Some of my friends on the other side have responded that this nomination has really been pending for 11 years and that we should somehow already know enough to fill in the blanks and resolve the doubts.

That is ridiculous.

I have served in this body and on the Judiciary Committee for 32 years. I know of no Senator who keeps tabs on the careers, accomplishments, and record of unconfirmed nominees from previous administrations on the off chance that they might some day be renominated.

We must evaluate each nominee on the current record developed through the current process.

And on the question of qualifications, that record satisfies but certainly does not excite me.

I respect the judgment of colleagues, especially on this side of the aisle, who look at these and other issues and conclude that they cannot support Judge White. Voting against a nominee of your own party is a significant step.

There are Senators on the other side who have served here even longer than I have who have never voted against a nominee of their party.

Each of us might make that judgment for ourselves and, though it is indeed a closer call than I would like, I will vote to confirm Judge White.

Before I conclude, I want to make a few observations about the judicial confirmation profess with regard to Judge White's nomination in particular and judicial nominations in general.

When I chaired the Judiciary Committee during the previous administration, Judge White's nomination did not receive a hearing because she lacked support from her home State Senator who served on the Judiciary Committee at the time.

Similarly, Sixth Circuit nominees of the current President, including Mr. Kethledge who is before us today, did not receive a hearing because they too lacked home State Senator support.

I am certainly glad that this issue has been resolve with our distinguished colleagues from Michigan so that these nominees can move forward.

But I remain baffled why my following that longstanding policy is today attacked as a so-called pocket filibuster while the current chairman following that policy is praised for an exercise in senatorial courtesy.

That is one of number of baffling and frustrating futures of the current judicial confirmation process.

There have been seven previous Congresses during my service here that included a presidential election year.

During an average of 313 days in session, 25 appeals court nominees received a hearing and 20 appeals court nominees were confirmed.

Using that as our benchmark, in the current 110th Congress, we are nearly

90 percent finished with our days in session but so far less than one-third as many appeals court nominees have received a hearing and only half as any have been confirmed.

It does not have to be this way, it has not been this way in the past.

I hope that when the nominees before us today ire confirmed, we will turn our attention to the others who are pending some for many months and even for years, and continue doing what the American people sent us here to do.

I yield the floor.

Mr. LEAHY. Mr. President, I yield 5 minutes to the senior Senator from Michigan.

The PRESIDING OFFICER (Mr. MENENDEZ). The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, we are nearing the end, I hope, of what is surely one of the longest judicial nomination sagas in U.S. history. Judge White was previously nominated by President Clinton for a vacancy on the Sixth Circuit of the Court of Appeals starting in 1997. Her nomination was returned to the President without a hearing. Another nominee of President Clinton was also returned without a hearing. That was the nomination of Kathleen McCree Lewis in 1999.

Judge White has been serving as a judge on the Court of Appeals of Michigan since 1993, and I believe she has participated in more than 4,000 decisions. Before that, she served as a judge on the Wayne County Circuit Court from 1983 to 1993, and that is Michigan's top trial court. Judge White, as have our other nominees, has been given a ''well-qualified'' rating by the American Bar Association's standing committee, and President Bush has called Judge White ''an experienced and highly qualified judge who is known for her intellect, work ethic, and demeanor.''

The second nominee for the Sixth Circuit is Raymond Kethledge, currently a partner at the Bush, Seyferth firm in Detroit, MI. Before joining that firm, Mr. Kethledge was a law clerk to Justice Anthony Kennedy on the U.S. Supreme Court and earlier clerked for a judge well known to those of us in Michigan, beloved Judge Ralph Guy of the U.S. Court of Appeals for the Sixth Circuit. Mr. Kethledge also served as judiciary counsel for Senator Spencer Abraham from 1995 to 1997, and he graduated magna cum laude from the University of Michigan Law School in 1993.

Steven Murphy, who is the nominee for the Eastern District position, currently serves as U.S. attorney for the Eastern District of Michigan. Prior to his service as U.S. attorney, Mr. MURPHY was an attorney with the General Motors legal staff in Detroit. He worked for the U.S. Department of Justice for more than 12 years.

I wish to take this opportunity to recognize the life and the work of Kathleen McCree Lewis who, as I mentioned, was nominated by President Clinton in 1999 for a seat on the Sixth Circuit Court of Appeals. Kathy McCree Lewis passed away last year. She never had her hearing and opportunity to be voted on by the Senate. She was dedicated to her profession and to her family. While she is no longer with us, we remember her today.

The seat that Judge White is being nominated for on the Sixth Circuit is the same seat that was held by a wonderful woman, Judge Susan Bieke Neilson. She held that seat for a tragically short period of 2 months. This vote is also a vote to Judge Neilson. Her husband, Jeffrey Neilson, wrote Chairman LEAHY back in April that he believed that Helene White ''will reflect the best qualities of both Susan and Kathleen in the performance of her duties, so that although death has precluded their presence on the Sixth Circuit, they will be there in spirit.

Finally, I thank Chairman LEAHY and our Democratic leader, HARRY REID, for all they have done to make it possible that we can finally, hopefully, resolve this Michigan issue that has been stymied in the Sixth Circuit and Eastern District for far too long, with a bipartisan resolution the President has sent us on these three nominees with his full support in the Senate.

I hope the Senate will give an overwhelming vote to Judge White but also then adopt a voice vote for the other two nominees.

Mr. LEAHY. Mr. President, I had hoped that before the Senate we not would hear unfair criticism leveled at Judge White. Last month, Senator BROWNBACK publicly apologized for his actions at her confirmation hearing, and I commended him for doing so. After Judge White answered the scores of time-consuming questions Republicans sent to her and the committee had received the updated ABA ratings emphasized so much by Republicans in connection with these nominations, I hoped we could move forward with this in a consensus fashion. It is disappointing that some still seem bent on grasping at straws to criticize Judge White, applying a different standard from that which they used to evaluate other Bush judicial nominees.

Judge Helene White has served on the Michigan Court of Appeals for the past 15 years, having been elected by the people of Michigan in 1992. Before that she served for a dozen years on the Wayne County Circuit Court, the Common Pleas Court for the city of Detroit, and the 36th District Court of Michigan. She is described on the Bush White House Web site as ''an experienced and highly qualified judge, who is known for her intellect, work ethic, and demeanor.''

Judge White has been now been nominated by Presidents from both parties, by a Democratic President and by a Republic President. She has served as a Michigan State court judge for more than 25 years. In addition, she has been active as a member of the legal community and of community organizations including COTS, Coalition on Temporary Shelter; JVS, Jewish Vocational Services; and the Metropolitan Detroit Young Women's Christian Association. She should be a consensus confirmation.

Oddly, Republican attacks on Judge White have focused on what they term a lack of experience. Somehow, someone who has been a respected appellate judge for 15 years, who has served as a judge for well over 25 years, and who the ABA rates as well qualified for the Federal circuit court , is in their view not ''experienced'' enough to be a Federal appellate court judge.

Some Senators suggested that her lack of experience with specific Federal issues that never come before even the most experienced State judge was a problem. They ignore the fact that judges always have to learn new areas of the law as new cases come before them, and no one is better prepared to do that than an experienced jurist like Judge White.

Indeed, Mr. Kethledge, President Bush's youthful nominee to the other vacancy on the Sixth Circuit, was gracious enough to concede at the hearing that he, too, lacked experience in the same specific areas of Federal law. Yet his qualifications have not been in called into question by Republican Senators. Judge White has served as a Michigan State appellate court judge longer than Mr. Kethledge has been out of law school, but some are questioning her experience while embracing his relatively lack of experience.

With these criticisms, Republicans risk turning back the clock to before the confirmation of Justice Sandra Day O'Connor, who herself had been a State legislator and State judge. Justice O'Connor was not experienced in deciding Federal law issues before her confirmation as the first female justice of the U.S. Supreme Court. I think we can agree that she nonetheless served the Nation well in that capacity.

Should we conclude from the Republic attacks that no State court judge can be confirmed to sit on a Federal court? Certainly Jennifer Elrod, a State court judge with far less experience than Judge White, who the Senate confirmed to the Fifth Circuit late last year, was not held to that standard by the Republicans. Indeed, recall what Senator CORNYN said about her nomination: ''I would point out that when it comes to experience, most of us, when we apply for a new job, or a nominee, have rarely done that job before. So the question is not whether you have actually done that job before, it's whether you are likely to do a good job, if confirmed.''

Others have pointed to a handful cases in which Judge White was on a panel decision that was reversed. This handful of cases comes from 4,300 cases she heard on the bench. These were cases in which Judge White joined a unanimous panel of her court or in one

instance where she agreed with the rest of the court on the law and differed only on the facts. More to the point, they were cases of such limited precedential value that the decisions were not even published. When asked about each case, Judge White testified that she accepted the Michigan Supreme Court's decision as correct. I hope that in a long career spanning thousands of decisions, she will not be judged by a few unremarkable cases. Republicans have certainly asked us not to focus on a small handful of cases decided by other Bush nominees, even when the cases in question were far more noteworthy.

Republicans have simply not been able to point to anything in Judge White's long and distinguished career that should disqualify her or even justify a negative vote. It is unfortunate that some Republicans seem to be trying so hard to find reasons not to support this particular nominee.

I hope that Republican and Democratic Senators will join together to support her nomination and the entire package of Michigan nominations that President Bush has sent to us after consultation with Senators LEVIN and STABENOW.

I yield the floor.

The PRESIDING OFFICER. The junior Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I rise today to join my friend and distinguished colleague in supporting the nominations of Judge Helene White, Mr. Raymond Kethledge to the Sixth Circuit Court of Appeals, and Mr. Stephen Murphy III to the District Court for the Eastern District of Michigan. I also want to remember those whom Senator LEVIN spoke of as well.

I thank, particularly, Chairman LEAHY for working with us in a very diligent manner, for his patience, and for his commitment and his willingness to work with us to move the President's nominations forward. It has been a very long process—one that started more than 11 years ago for Judge Helene White. In fact, I have been here for 8 years, and she has been waiting more than 11 years for this vote—4½ years, originally, to have the hearing. I find that because of the length of time she has been waiting, it is difficult to say that somehow this was a short-circuited process or a process that happened too quickly. It has, in fact, been more than 11 years. I hope this serves as an example of how we can come together when both sides, with the administration, are willing to work together in a bipartisan manner. I am very pleased we have been able to come to this agreement together. That is what we have done here.

Senator LEVIN and I have worked with the Bush administration, and as a result, we have the three nominees for the Federal bench who are in front of us. In fact, all three of them were rated ''well-qualified'' by the American Bar Association. I urge my colleagues to support them.

First, let me say a few words about Judge Helene White, who brings 30 years of legal experience to the Sixth Circuit Court of Appeals. She is a graduate of the University of Pennsylvania Law School and the Barnard College at Columbia University. Judge White has been a State judge since 1981. She has served on both the 36th District Court for the city of Detroit and the Wayne County Circuit Court. Since 1992, she has served, with distinguished service, on the Michigan Court of Appeals. She has participated in more than 4,400 cases in her time as a judge on the Michigan Court of Appeals. All told, Judge White will bring more than 25 years of bench experience to the Sixth Circuit. While I support all of our nominees, Judge White is the only person who brings that judicial experience, having served on the bench with distinguished service, someone who is respected by all sides for her intellect, her fairness, and her balance. I am so very pleased that we are finally at this point to be able to vote on this important nomination.

Secondly, Mr. Raymond Kethledge, who is also nominated for the Sixth Circuit Court of Appeals, graduated magna cum laude from the University of Michigan and the University of Michigan Law School. I told him that even though I went to a rival school—Michigan State University—I will support his nomination. In fact, my son is a graduate of U of M. I was pleased to see another Wolverine being nominated for this distinguished position. Following law school, he served as Senator Spence Abraham's judiciary counsel. He then went on to clerk for both Judge Ralph Guy, on the Sixth Circuit Court of Appeals, and Justice Kennedy, on the Supreme Court, before eventually becoming a partner at Bush Seyferth Kethledge & Paige in Troy, MI. I am certainly pleased to support his nomination to this position.

Finally, Mr. Stephen Murphy has been nominated for a seat on the District Court for the Eastern District of Michigan. He will bring both academic and Federal law experience to the bench. He has taught at the University of Detroit Mercy School of Law and the Ave Maria School of Law in Ann Arbor. He has practiced as both a Federal prosecutor and a defense counsel. He also practiced business litigation as an attorney for General Motors. Since 2005, he has served as the U.S. attorney for the Eastern District of Michigan.

I urge my colleagues on both sides of the aisle to support the President's nominees. We have worked hard in a bipartisan manner. It has taken a long time to get to this point, but I am very pleased we are here together supporting these nominees for the Sixth Circuit Court of Appeals and the Eastern District of Michigan. I am hopeful that, very shortly, we will confirm each of these nominees.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, I listened to Senator SPECTER talk about one of our most important responsibilities; that is, the confirmation process on the President's nominations for our courts, which are lifetime appointments. It is a major responsibility each of us has in the Senate.

I think the way this confirmation process has proceeded with the three judges before us is an example as to how we should be working on the confirmation of judges. First, I think the process under which the Senators worked with the White House on the appointments is a model that should be used, I hope, in more circuits, where there is a real working relationship between the Senators and the White House to come up with the best qualified individuals to serve on the Federal bench. I congratulate Senators LEVIN and STABENOW for the manner in which these nominations were brought forward.

Second is the confirmation process before the Judiciary Committee. I spent a lot of time reading the backgrounds on each of our nominees, as well as the hearing itself. I must tell you that as a result of reading the background material, as a result of the confirmation hearings, I am a strong supporter of Judge White for her confirmation to the court of appeals. I also support Mr. Kethledge for the court of appeals. I must tell you, in reading his background, I was a little concerned because he didn't have any real experience in writing opinions, didn't have experience in trying cases, as far as a judge is concerned, and there wasn't much to judge his ability to reason on the court of appeals by his background. But I must tell you, after listening to the confirmation hearings, I was convinced that he is well qualified to serve on the court of appeals. I am supporting his nomination. That is what the confirmation process should be about.

I listened to Senator SPECTER have concerns about Judge White because of some of her opinions. I must tell you, I am pleased we have before us a nominee who has the experience to go onto the court of appeals or appellate courts. Judge White has served 15 years on the State appellate court. She has written numerous opinions, has participated in over 4,000 cases, served 12 years on the circuit court in Michigan. So she has trial court experience as a judge, and she has appellate court experience as a judge.

Quite frankly, I have been disappointed by a lot of the nominees who have been brought forward by the White House because they have brought forward individuals who do not have experience to go on our second highest court. I think experience is important. I raised those concerns during Judge Elrod's confirmation hearing and Judge Haynes's hearing. I would like to have people with more experience so that we can judge their qualifications.

In Judge White's case, we have that record, and it is a great one. Has she been reversed in her 4,000 decisions? Yes. That is why we have appellate courts. But she has never been challenged as far as her reasoning and her fairness and her demeanor. In fact, she has been rated by the American Bar Association as ''well-qualified.''

One more thing, Mr. President, as to why I strongly support Judge White's confirmation, and that is the manner in which she handled the confirmation hearings. They were not easy hearings. There were tough questions that were asked. She exercised the type of demeanor I want to see in our Federal judges. She exercised the type of response that I think represents the types of qualifications I want to see on our Federal bench. So I am very much supporting her confirmation. I hope she will receive a strong vote on the floor.

I urge my colleagues to support all three of the Michigan judges who are before us for confirmation.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I appreciate the comments of my colleagues. First, I commend the two Senators from Michigan, who spent years working out this conclusion for these three nominees to be here. I commend Senator LEVIN and Senator STABENOW for working so hard. Senator CARDIN spent so much time at the hearing with me. I appreciate the amount of time he spent there. His words of calm reasoning, but with questions that cut right to the importance of the hearing, were extremely valuable.

If nobody else is seeking recognition, I am going to suggest the absence of a quorum in a moment. So that Senators will understand, at 6:30 I will call off the quorum, and the time will be yielded back on both sides. Then we will go to a rollcall vote on Helene White.

If Judge White is confirmed, as I fully expect she will be, then we will go to the next two judges, but only if she is confirmed. Again, Senator SPECTER and I have both said we expect she will be. We will go to the next two judges, and I don't know of anyone who will require a rollcall vote on those two judges.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the nominee.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Is all time yielded back?

Mr. LEAHY. I am authorized to yield back all time on both sides. I yield back all time on both sides.

The PRESIDING OFFICER. All time is yielded back. The question is, Will the Senate advise and consent to the nomination of Helene N. White, of Michigan, to be United States Circuit Judge for the Sixth Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 63, nays 32, as follows:

[Rollcall Vote No. 156 Ex.]

YEAS—63

Akaka	Hagel	Nelson (FL)
Baucus	Harkin	Nelson (NE)
Bayh	Hatch	Pryor
Biden	Inouye	Reed
Bingaman	Isakson	Reid
Boxer	Johnson	Rockefeller
Brown	Kerry	Salazar
Cantwell	Klobuchar	Sanders
Cardin	Kohl	Schumer
Carper	Landrieu	Sessions
Casey	Lautenberg	Shelby
Clinton	Leahy	Smith
Coleman	Levin	Snowe
Collins	Lieberman	Stabenow
Conrad	Lincoln	Stevens
Crapo	Lugar	Tester
Dodd	McCaskill	Voinovich
Dorgan	Menendez	Warner
Durbin	Mikulski	Webb
Feingold	Murkowski	Whitehouse
Feinstein	Murray	Wyden

NAYS—32

Alexander	Cornyn	Inhofe
Allard	Craig	Kyl
Barrasso	DeMint	Martinez
Bennett	Dole	McConnell
Brownback	Domenici	Roberts
Bunning	Ensign	Specter
Burr	Enzi	Sununu
Chambliss	Graham	Thune
Coburn	Grassley	Vitter
Cochran	Gregg	Wicker
Corker	Hutchison	

NOT VOTING—5

Bond	Kennedy	Obama
Byrd	McCain	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid on the table, and the President shall be immediately notified of the Senate's action.

NOMINATION OF RAYMOND M. KETHLEDGE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. The clerk will report Executive Calendar No. 631.

The assistant legislative clerk read the nomination of Raymond M. Kethledge, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I am satisfied with a voice vote on this nominee.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Raymond M. Kethledge, of Michigan, to be United States Circuit Judge for the Sixth Circuit?

The nomination was confirmed.

NOMINATION OF STEPHEN JOSEPH MURPHY III TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

The PRESIDING OFFICER. The clerk will report Executive Calendar No. 632.

The assistant legislative clerk read the nomination of Stephen Joseph Murphy III, of Michigan, to be United States District Judge for the Eastern District of Michigan.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, because of the lateness of the hour, I am willing to forgo a rollcall on this nominee and a voice vote will be sufficient.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Stephen Joseph Murphy III, of Michigan, to be United States District Judge for the Eastern District of Michigan?

The nomination was confirmed.

Mr. LEAHY. Mr. President, I thank my colleagues, I thank the Chair, and I thank the distinguished leader for helping us to get here.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made en bloc, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

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

The majority leader.

AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008—Continued

Mr. REID. Mr. President, there will be no more votes this evening. If I could, though, have the attention of Senators who are here.

Mr. President, first of all, let me say on this package of judges, we have been working on these for 5 or 6 years. That is how long it has taken. So this is really a step forward. Everyone has cooperated. I appreciate very much the help of the entire Republican caucus. Senator KYL was especially helpful to work through what we have done. We are going to approve two more judges the day after tomorrow, and then we will see where we go from there on judges.