

“alarming.” More than 10 percent of Federal judgeships are currently vacant. So this problem for our nation that is very serious, particularly after the terrorist attacks in New York and here in Washington.

I have talked to Senator DASCHLE about it. Senator NICKLES and I, along with Senator HATCH, have talked to Senator LEAHY and Senator REID. I know, having been majority leader, that sometimes these problems are hard to resolve. The Judiciary Committee doesn't always follow instructions even from the elected leaders. But this creates a problem. We have been trying to resist slowing down or blocking meetings or progress on the legislative process because we want to move forward on these important bills. But we have to point out that there is a blatant unfairness here, to the country and to the nominees. I can't help but think of the cliché that justice delayed is justice denied. That is what is happening here.

I know my time is running out. I probably will come back and talk more about this later. I ask for fairness, fairness for these eight circuit judges. We can argue about the others later, the other circuit nominees, other district judges, but after an entire year President Bush's first eight nominees should have a hearing. They should have a vote on the Senate floor. No criticisms have been raised against them other than un-attributed hints that they are conservative, and the current majority in the Senate is looking for some sort of a litmus test or conformance, I guess, based on philosophy and ideology. I don't think that either fair or appropriate. It is not what is called for under the Constitution. I hope that the Senate will ultimately find a way to make progress in this area and give these nominees the opportunity to be fairly considered based upon their temperament, professional and educational qualifications, and their personal integrity.

As President Bush has noted in making the case for getting his nominees confirmed, Federal judges are key to making sure America functions well. Every day they uphold the rights of an individual, they protect the innocent, they punish the guilty. Their rulings are essential to the rule of law in our nation. To discharge their responsibilities the federal courts must have judges.”

Because of the number of vacancies in our nation's courts, Americans are being forced to wait for justice, and the burden on federal judges is growing heavier.

Mr. President, one newspaper, the Wichita Eagle, got it exactly right on the judges issue back in March in part I think because it is located in the heart of America when it said: “But just as presidents have an obligation not to nominate the incompetent or unqualified to the federal bench, presidents deserve the broad authority in making their choices for such judicial

posts. And the Senate has a responsibility to give those choices every possible consideration and, barring some glaring defect, confirm them quickly. Yet the backstabbing and stalling on judicial confirmations has escalated to the point of obstructing justice. It needs to stop.”

This President's nominees are men and women of distinction and great accomplishment. They are solidly within the mainstream of American legal opinion, and they share a principled commitment to follow the law, not legislate it from the bench.

Mr. President, President Bush' nominees should be given fair hearings, voted on, and confirmed by the Senate as soon as possible.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, the people who have been discussing and negotiating the trade matter have asked for a little additional time. In order to accommodate their discussions, I ask unanimous consent that the period for morning business be extended until 3:45.

Mr. LOTT. Mr. President, at this point I would have to object. I don't know that I would want to. I just have not had a chance to discuss this with Senator DASCHLE.

The PRESIDING OFFICER. The Senator from Georgia.

(The remarks of Mr. CLELAND pertaining to the introduction of S. 1492 are located in today's RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

The PRESIDING OFFICER. The Senator from Nevada is recognized.

EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the time for morning business expire at 3:45 today.

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

The Senator from Kansas is recognized.

JUDICIAL NOMINATIONS

Mr. BROWNBACK. Mr. President, I rise to speak about the past year's judicial nominations, which is something on which several people have spoken today. I just came from a meeting with the President where he was talking about his frustration in getting judicial nominees considered. He was quite animated and discouraged that we have not been getting more judicial nominees through the system—particularly circuit court judges. That is what he was stating. That is what the meeting

was about. He wants to see more happening and more of them occurring, and we need to do so. People have been pretty clear on the information of what technically and specifically has happened.

Since May 9 of last year, we have had 11 judicial nominees for the U.S. circuit courts of appeal. Those eleven were nominated 1 year ago. Since that time, only 3—including 2 Democrats—have been confirmed. Of the remaining 8, not one has even been scheduled for a hearing. We have not held hearings on these individuals. We need to get this done and start to move them forward. It is an issue that is engaging the country, and I think increasingly so, as we move into the fall. We have a number of pieces of legislation that I think, in the post 9-11 environment, will be considered and looked at by the courts and need to be reviewed. We need to have a fully staffed court. Right now we have a 20-percent vacancy on the circuit court; and within some of the circuits, it is even a much larger one.

In the Sixth Circuit there are 16 positions and only half of those are filled.

What is even more troubling is that we have had a long and established tradition of giving the President—regardless of his political affiliation—a good deal of deference on his nominees who might be unfairly targeted as being extremists.

However, as we found out during the Charles Pickering nomination and subsequent hearings, the real extremism is being employed by those people who are artfully using the terms “balance” and “moderation” to set the stage for ending deference to the President and excluding perfectly qualified judges. Judge Pickering was an individual nominated to go on the circuit court. He served on the Federal bench for over 10 years.

This practice does not bode well for the future of this committee when it may have to deal with Supreme Court nominees in the near future. To highlight just how bad it can be, it might be helpful to see how many Supreme Court Justices of the past would fare under the ideological litmus test that is now plainly evident and used on the committee.

Would some of our great Justices of the past survive the litmus test being put forward by the committee now?

John Marshall, the first Chief Justice of the Supreme Court and author of some of the most important legal decisions for this Nation, would likely be rejected today by the Judiciary Committee because his view on interstate commerce in the *Gibbons v. Odgen* would be seen as too pro-federalism.

Oliver Wendell Holmes, perhaps the greatest Supreme Court justice, would have trouble because he affirmed a state law providing for the sterilization of the mentally ill in *Buck v. Bell*. Felix Frankfurter, an ACLU member and a “liberal” Roosevelt appointee, would be rejected because he did not believe that the fourth amendment required the exclusion of evidence seized

by State police officers without a warrant in the 1961 *Mapp v. Ohio* case. Nor would his argument in *West Virginia Board of Education v. Barnette* that the first amendment prohibited schools from requiring students to salute the American flag pass muster with the committee today.

Even Earl Warren, the most liberal chief justice ever and author of *Brown v. Board of Education*, would have a tough confirmation battle under the committee's new standard. After all, he took the reactionary position of not supporting extension of the first amendment protection to flag burning.

Louis Brandeis, the great liberal craftsman, would no doubt be rejected because he supported federalism against New Deal legislation and voted to strike down legislation in the *Schechter* case as being beyond the power of Congress.

Byron White, President Kennedy's nominee, whose recent passing was mourned and elegantly eulogized around the Nation, would of course be rejected today because he committed the unpardonable sin of disagreeing with *Roe v. Wade*.

The question facing the President on this anniversary date is what he can do to move judges to the floor for swift confirmation. Given the extremist tactics of outside interest groups and their influence over committee members, the President could consider compromising on his philosophy of nominating judges, men and women of experience who meet the highest standards of legal training, temperament, and judgement. As history has shown, however, it would mean overlooking the kind of judges who have made our judiciary a model for the world. Unlike some issues, the integrity of the law and the qualifications of judges who will interpret and uphold them cannot be compromised.

I join my colleagues in urging Chairman LEAHY of the Judiciary Committee and Majority Leader DASCHLE in scheduling hearings and floor votes as soon as possible. I believe we have had ample time to make our points. It's now time to act.

I think if we do not act, this is going to continue to fester across the country, and that will embroil us even greater this fall, with the President leading the charge on this issue of why the Senate isn't acting. Why isn't the Senate moving these judges through—particularly circuit court judges? It will be a much more engaged and animated issue this fall, with the President leading the charge.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I rise to speak in morning business on the topic that has been the issue du jour—the question of Federal judges. It is my great honor to serve on the Senate Judiciary Committee. I have witnessed and experienced personally the Clinton administration and their efforts to fill

vacancies on the Federal bench, and the first Bush administration—President George W. Bush—and his efforts to fill vacancies on the Federal bench.

I find it extremely interesting that today appears to be the national day for members of the Republican Party to complain about the pace of approval of President Bush's judicial nominees. What I find interesting about that complaint is that, just on its face, it makes no sense because we just approved four more Federal nominees who were brought to us by President Bush, bringing the total to 56.

Now, 56 Federal judges—to put it into historic context—is more than the Republicans, in any similar period of time, approved while President Clinton was in the White House during his entire tenure. In any given year, the Republicans failed to approve as many judges for President Clinton as the Democrats have already approved for President Bush. Today, the total number came to 56.

Now, I understand where the Republicans are coming from on this. They want them all. They want to fill every vacancy with a proposed nominee from President Bush, and they want this to happen immediately. It is more than just rewarding their friends and giving them lifetime appointments to the Federal bench. What is at issue here, even more importantly, is putting people with a certain philosophy on these Federal courts. Of course, their decisions as Federal judges are going to be meaningful to the Nation for generations to come—whether we are talking about rights of privacy or the environment, all of these things decided by judges.

Historically, we think, when we talk about courts and their impact, that we should focus on the Supreme Court. Of course, we should. It is the highest court in the land. But just consider for a moment this statistic: Last year, the Supreme Court of the United States decided approximately 80 cases. The courts of appeal, circuit courts, decided over 57,000 cases.

For most people looking for justice through the Federal court system, the court of appeals for their region is the last stop, the final word. These courts make binding decisions relative to statutes that have been passed by Congress and issues that are important to the American people on a regular basis, on a daily basis.

So when we consider nominees by the Bush White House for lifetime appointments to these important appellate level courts, I hope you can understand that those of us on the Democratic side feel a responsibility to know something about the nominees, and, more importantly, to make certain those nominees come close to meeting several basic standards. One of those standards, of course, is legal skill. We insist on that. I hope that is something that is not debatable. Second is integrity, which is certainly not debatable. Third, and most important, we are looking for

people who take a moderate point of view.

There are lawyers who I have met that have extreme positions on the right and the left. The Republicans on the Senate Judiciary Committee sent word to the Clinton White House: Do not send us any left-wing judges because they are going nowhere. True to their word, anyone who looked like they were liberal did not have a chance when it came to the Senate Judiciary Committee in the Clinton years.

Interestingly enough, it appears the Bush White House believes they are not burdened by the same restriction. They are sending nominees for the Senate Judiciary Committee to consider who, frankly, are out of the mainstream, much more extreme in their points of view on the right than anyone ever nominated by President Clinton on the left.

When they send these controversial nominees to us, then we run into a position where it takes longer. We have to delve into their backgrounds, we have to establish their record, we have to answer the criticisms that have been raised within and without the committee about whether this person should be given a lifetime appointment to a critical Federal position.

This morning my colleague on the Senate Judiciary Committee, Senator SCHUMER of New York, held an interesting subcommittee hearing. His hearing related to what he calls the ghost of the nomination process from the Clinton years. I was glad Senator SCHUMER did that because on this day of national complaint by the Republicans, we brought to Washington four Clinton nominees who were not approved by that same Senate Judiciary Committee when Republicans controlled it. We did this so people who are following this debate could get an idea of the nominees rejected by the Republican Senate Judiciary Committee when President Clinton nominated them.

Frankly, as I look at the people who were brought before us, they are amazing in terms of their records and their backgrounds and what they brought to the job.

Let me speak for a moment about the Fifth Circuit which has become a focal point of discussion. Senator LOTT a few minutes ago was talking about the Fifth Circuit which, if I remember, includes the States of Texas, Louisiana, and Mississippi. This circuit has the highest minority population of any Federal circuit in America. The population of African Americans, Hispanics, and Asian Americans is larger in that circuit than any other circuit.

Naturally, when President Clinton was in office, he tried to address this by appointing people to the circuit court who represented the diversity of the circuit in which they would serve. Two of his nominees came before us today.

Jorge Rangel, 54 years of age, is currently an attorney in private practice in Corpus Christi, TX. He was nominated to the U.S. Court of Appeals for

the Fifth Circuit by President Clinton in 1997. Mr. Rangel was never granted a hearing by the Republican-controlled Judiciary Committee. Never. He graduated from the University of Houston and Harvard Law School. He went on to a distinguished career of 20 years in private practice with a Corpus Christi law firm where he had a mix of Federal and State work.

In 1983, he was appointed to a judgeship on the Texas State district court, and then was elected to serve for 2 years before returning to private practice. Jorge Rangel has also been very active in legal and community organizations, including time as an officer of the board of governors of the bar association of the Fifth Circuit and the American Board of Trial Advocates. He volunteered for many legal organizations, community organizations, and charitable organizations. He has written no controversial opinions or writings. He was affiliated with no liberal groups and gave no one any reason whatsoever to question his credentials and fitness for the Federal bench.

The American Bar Association took a look at Jorge Rangel and concluded he was "well qualified" to serve as a Federal appellate court judge. Yet, for purely political reasons, Jorge Rangel's nomination was held up more than a year from July 1997 until the end of 1998, a total of 15 months, with no explanation or hint of opposition to him.

Consider that for a minute. When you listen to this man's background, his rating of "well qualified" from the American Bar Association, why in the world would he be held up? It turns out that the two Senators from his home State opposed him, and because they were of opposite political faith with the President of the United States, they made certain he did not get a chance for even a hearing before the committee.

When you watch that happening, and when you listen to his testimony, you have to wonder: Where is the fairness? When you listen to the complaints today, even though the Senate Judiciary Committee under Democrat control has approved 56 nominees, many of whom are Hispanic and racial minorities, and rejected only 1, when you look at this you wonder: Why would we apply a different standard when it comes to Clinton nominees than we do to Bush nominees? That really has created the problem we face.

The simple fact is this: The nominees President Clinton sent to the Senate Judiciary Committee were held to a higher professional, political, and personal standard than the nominees being sent by the Bush White House, and many of them, even when they met those standards, were never given the courtesy of a hearing.

In that same Fifth Circuit was Enrique Moreno, 47 years old, an attorney in private practice in El Paso, a native of Mexico. Mr. Moreno graduated from Harvard University and Harvard Law School. He was nomi-

nated by President Clinton in September of 1999 to serve on the Fifth Circuit Court of Appeals. He was given the highest rating by the American Bar Association—"well qualified." He received significant support from community groups. He waited 15 months and, as had Mr. Rangel, he was never even given the courtesy of a hearing before the Senate Judiciary Committee.

Excuse me. When I hear my colleagues on the other side come to this Chamber and complain that we are not moving fast enough in approving the Bush nominees, consider what happened to Mr. Rangel and Mr. Moreno. What happened to them was sad, it was wrong, and it is unforgivable.

I could go through the long list of accomplishments of Mr. Moreno. Trust me, it is a long page of extraordinary accomplishments, and yet, when it came right down to it, Republicans on the Senate Judiciary Committee were determined he would never even receive a hearing, and he did not.

Let me refer to Kent Markus. Kent Markus was before our subcommittee today. He is 46 years old. He was nominated by President Clinton in February 2000 to serve on the U.S. Court of Appeals for the Sixth Circuit. The interesting thing about Mr. Markus is he had the approval of both his home State Senators, two Republicans: Senator MIKE DEWINE and Senator GEORGE VOINOVICH. Despite bipartisan support, despite being qualified by the American Bar Association and his excellent record of achievement and service, he was never, ever given the courtesy of a hearing before the Republican-controlled Senate Judiciary Committee. Finally, at the end of the 106th Congress, his nomination was returned to the White House.

Again, I will make it a matter of my official record in my statement, but trust me, his biography, his resume, are impeccable.

A final nominee I will mention today who testified before us is Bonnie Campbell. She was nominated by President Clinton in 2000 to serve on the U.S. Court of Appeals for the Eighth Circuit. She was supported by both of her Senators, Democrat TOM HARKIN of Iowa and Republican CHUCK GRASSLEY of Iowa. She was given a qualified rating by the American Bar Association. She was given a hearing before the Judiciary Committee a few months after she was nominated and given a chance at her hearing to answer any questions about her work. There were no objections voiced at all during her hearing before the Senate Judiciary Committee. No opposition surfaced in any quarter.

However, despite a noncontroversial, really unremarkable hearing, Ms. Campbell was never scheduled for a committee vote. No explanation was ever given to her. Her nomination languished until the end of the 106th Congress, and despite President Clinton's attempt to renominate her, President

Bush did not do the same. Her nomination died.

Consider those four people and what they went through at the hands of the Republican Senate Judiciary Committee and then put that in context of the Republican complaints which we hear today, when we have already, under Democratic control, approved 56 nominees. I think it really makes the case.

Judicial nominees have a right, whether the Judiciary Committee is controlled by Democrats or Republicans, to expect fair and impartial treatment. But, equally, the American people have a right to expect fair and impartial judges.

Now let us get down to the bottom line. The President will find that this Senate Judiciary Committee, under the control of Democrats, will provide more approvals of his judicial nominees than Republican Judiciary Committees have done for Democrat Presidents in the past. I think that is a standard we can live up to. We have already lived up to it.

We are going to treat people fairly. We are going to give them a chance. Does that mean President Bush will get every name he sends before the Judiciary Committee approved? No. That is not going to happen because if the President sends people who, frankly, do not meet the test of moderation, legal skill and integrity, there is going to be, of course, an investigation, as there is with every nominee. There will be hearings in many cases, and some will not survive that.

The message to the President is very clear: As long as he will send us people who are moderate and not too extreme, he will be very successful. He already has 56 judicial nominees approved.

I think the single best thing this White House could take from this all-day debate about judicial nominees is this: If the President decided and said, We are going to take these four nominees—Bonnie Campbell, Jorge Rangel, Enrique Moreno, and Kent Markus—all nominees under the Clinton White House, and we are going to send them to Capitol Hill in a show of bipartisan good faith, I think we could start to make progress. I think we could start having some balance in terms of the people who will be appointed to these critical positions. But if this is going to be confrontation after confrontation, then I am sorry to say it is going to continue almost indefinitely. I hope it does not.

Let me give a list of those who never received a hearing before Congress during the Clinton years, judicial nominees sent to Capitol Hill by President Clinton while there were Republicans in charge of the Senate Judiciary Committee: Wenona Whitfield of Illinois, Leland Shurin of Missouri, Bruce Greer of Florida—none of these received a hearing before the Republican-controlled Senate Judiciary Committee.

Sue Ellen Myerscough of Illinois; Cheryl Wattleby of Texas; Michael

Schattman of Texas; James Beaty and Rich Leonard of the Fourth Circuit, North Carolina; Annabelle Rodriguez of Texas—none of those received a hearing. Their names were sent to Capitol Hill, to the Republican-controlled Senate Judiciary Committee; no hearings.

Then in the next Congress, there were 10: Helene White of Michigan; Jorge Rangel I mentioned earlier, of Texas; Jeffrey Coleman of Illinois; James Klein of the District of Columbia; Robert Freedberg of Pennsylvania; Cheryl Wattleby of Texas; Lynette Norton of Pennsylvania; Robert Raymar for the Third Circuit; Legrome Davis, Pennsylvania; Lynne Lasry of California; Barry Goode of the Ninth Circuit, California—all of those names, judicial nominees, sent to Capitol Hill by President Clinton never even received the courtesy of a hearing before the Republican-controlled Senate Judiciary Committee.

In the 106th Congress, 33 names sent by the President who were not given the courtesy of a hearing: Alston Johnson of Louisiana; James Duffy of Hawaii; Elana Kagan of the D.C. Circuit; James Wynn of North Carolina; Kathleen McCree-Lewis of Michigan; Enrique Moreno of Texas; James Lyons of Colorado; Kent Markus of Ohio; Robert Cindrich of Pennsylvania; Stephen Orlofsky of New Jersey; Robert Gregory of Virginia; Christine Arguello of Colorado; Elizabeth Gibson, North Carolina; Rich Leonard of North Carolina; Patricia Coan of Colorado; Dolly Gee, California; Steve Bell, Ohio; Rhonda Fields, District of Columbia; David Fineman, Pennsylvania; Linda Riegle, Nevada; Ricardo Morado, Texas; Gary Sebelius, Kansas; Ken Simon, Hawaii; David Cercone, Pennsylvania; Harry Litman, Oklahoma; Valerie Couch, Oklahoma; Marion Johnston, California; Steve Achelphol of Nebraska; Richard Anderson of Montana; Stephen Liberman of Pennsylvania; and Melvin Hall of Oklahoma.

These 52 names of judicial nominees I have read were sent to the Republican-controlled Senate Judiciary Committee under President Clinton and they were never even given the opportunity for a public hearing, never given a chance for a vote. I knew some of them personally, and I can say it is a great hardship on a professional like an attorney, where their name is pending before a committee and there is uncertainty about their future.

Some of these went on for literally years. Some of them were never given a hearing, and during that period of uncertainty their family suffered, their law practice suffered, their efforts to be part of public service were never realized. I think that is unfortunate.

That is why we are back to the point I made earlier. President Bush and those working for him and with him in the White House want to break through this situation and want to see more cooperation and want to find more balance, as we do, in terms of the judiciary.

I submit to them the four names of the nominees from the Clinton White House which we considered today, people who came before the Judiciary Committee today. Earlier, the minority leader spoke of a nominee for the D.C. Circuit Court of Appeals who is Hispanic, and I certainly think we need more Hispanic Americans on the bench.

President Bush should have a chance. Jorge Rangel is prepared to serve on the Fifth Circuit. Enrique Moreno is also prepared to serve on the Fifth Circuit. These are Hispanic Americans who should be renominated and given a chance to serve.

At the current time, we have looked at Hispanic nominees and President Bush has sent us five nominees of Hispanic origin. Of those, three have already been confirmed by the Senate under Democratic control. Two are pending: Miguel Estrada in D.C. and Jose Martinez in Florida.

Under President Clinton, Hispanic nominees who were not confirmed by the Republican-controlled Senate Judiciary Committee include: Jorge Rangel of the Fifth Circuit; Enrique Moreno of the Fifth Circuit; Christine Arguello of the Tenth Circuit; Ricardo Morado of Texas; Anabelle Rodriguez, Puerto Rico.

I think that takes us to the point where we have to ask ourselves if our friends on the Republican side really do want to see balance and want to see fair treatment, whether they will give that same fair treatment to people who were summarily rejected when the Republicans controlled the Senate Judiciary Committee. I think we have a chance to be very careful in our selection, but also to meet our national needs and obligations.

Today, incidentally, during the course of a press conference on this subject, we brought in a number of people who have had bad experiences in court to dramatize what is at stake. This debate is not a matter of rewarding an attorney, who has skills, with a new title and an opportunity to serve on the bench. It is also to create an opportunity for public service where people can make decisions that really have an impact on families' lives across America.

Today, Denise Mercado came to see us. She is the mother of three from Fayetteville, NC. She is the legal guardian of her son, Danny, who has cerebral palsy and severe mental retardation. Due to his disabilities, Danny is eligible for Medicaid funding. Jane Perkins is an attorney at the National Health Law Program in Chapel Hill, NC. Jane has represented Denise and many other clients in efforts to compel States to fulfill their legal obligations under Medicaid, to cover children like Danny. Currently, four Federal courts of appeals are considering whether States have sovereign immunity from such lawsuits, as at least one district court has ruled.

So the men and women appointed to these court positions will make deci-

sions which have an impact on families with children with disabilities. That is just part of their responsibility, but it tells us about the gravity and seriousness of this decisionmaking process.

Rose Townsend and Bonnie Sanders are residents of South Camden, NJ. They live in a small neighborhood called Waterfront South. It contains 20 percent of the city's contaminated waste sites. The residents of this neighborhood suffer from a disproportionately high rate of asthma and other respiratory ailments. Last year, these two people joined with other residents to block the placement of a cement processing facility in their neighborhood. In December, the Third Circuit Court of Appeals ruled they could not compel the State to comply with Federal environmental regulations that implement the 1964 Civil Rights Act.

Whether it is a matter of public health, or environmental safety, these judges make critical decisions. These are just some of the people who were impacted by judges put on the Federal courts. These are important decisions. They should be handed out fairly and evenly, with some balance. The Judiciary Committee has met that standard.

I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Kentucky.

Mr. McCONNELL. Madam President, I listened with interest to comments of the Senator from Illinois, looking at the whole 8 years of the Clinton administration. It is important to reiterate the only clear way to look at the 8 years of the Clinton administration is to compare them to the 8 years of the Reagan administration. President Reagan got more judges confirmed than any other President, 382. He had a distinct advantage because 6 of the 8 years he was President his party controlled the Senate. President Clinton came in a close second, 377 judges confirmed, 5 fewer, but he was in a disadvantage because his party only controlled the Senate for 2 of his 8 years. It is hard to make the case that President Clinton was treated unfairly by the Republican Congress.

What we want to talk about today is the first 2 years of any President's term—how were they treated at the beginning of their 8 years. Particularly, we focus on the circuit judge nominations.

During the first 2 years of President Clinton's term, when his party controlled the Senate, he got 86 percent of his nominees confirmed for the circuit courts. During the first President Bush's first 2 years, when his party did not control the Senate, he got 95 percent of his circuit court nominees confirmed in his first 2 years. President Reagan, in his first 2 years, got 95 percent, as well, 19 out of 20.

Let's focus on the first 2 years, the beginning of what I certainly hope will be an 8-year period of the Presidency of George W. Bush. George W. Bush has gotten a mere 30 percent of his circuit

court nominees confirmed, compared to 86 percent for President Clinton, 95 percent for the first President Bush, and 95 percent for President Reagan.

I call attention, since this is the 1-year anniversary of the first 11 nominations of President George W. Bush to the circuit courts. Only three have been confirmed, eight languish 1 year later without so much as a hearing to get a chance to explain their credentials to the Senate Judiciary Committee and to the larger Senate as well. Eleven distinguished and diverse men and women were nominated by President George W. Bush a year ago today. Only three have been confirmed. Of the remaining eight, none, not a single one, has even been afforded the courtesy of a hearing, not to mention a vote—a hearing by the Judiciary Committee.

Everyone in America is entitled to have their day in court. Even a judge is entitled to have their day in court. Our colleagues on the other side continually assure this side they are pushing fast to consider the President's judicial nominees, but my Republican colleagues and I have seen neither hide nor hair of these nominations in the Judiciary Committee. Frankly, some in the committee are worried about what might have happened to them. Where could they possibly be? A few people may recognize these individuals by sight. After all, none of them have even had a hearing. All most people know is a name attached to the nomination. No one knows what they look like; their whereabouts are a mystery. It is my hope citizens around the world would notify the Judiciary Committee if they spot these missing nominees somewhere out in America so maybe a hearing can be quickly scheduled on their behalf.

We have become accustomed to seeing missing children's pictures on milk cartons around America. We thought it might be appropriate to put the names of some of the nominees on milk cartons, so if any of our people across the country have seen any of them, maybe they could report them to the Judiciary Committee and the missing people could actually be given an opportunity to be heard.

A good first person to put on the milk carton is Miguel Estrada, nominated 365 days ago, this very day last year, to the D.C. Circuit Court. The ABA gave Miguel Estrada a unanimous well qualified. That is very hard to do. It is very tough to even get a partial well-qualified rating from the ABA but to get a unanimous rating of well qualified is truly extraordinary.

Miguel Estrada's life and his career is a great American success story. I am married to one of those immigrants who came to this country and didn't speak a word of English at 8, so I am very familiar with these wonderful stories of coming to America, particularly those who have been thrown into our public schools at an early age, not speaking English and coming to grips with that.

That is exactly what happened to Miguel Estrada. He came from Honduras, emigrated to the United States as a teenager, speaking virtually no English. Yet he graduated phi beta kappa from Columbia in New York and was editor of the Harvard Law Review. Miguel Estrada came to this country, not speaking a word of English, an honor student at Columbia, elected to the Law Review at Harvard, unanimously "well qualified" by the American Bar Association, an inspiration to immigrants all across America and particularly to Hispanic immigrants. He has argued 15 civil and criminal cases before the U.S. Supreme Court. But Americans do not know what he looks like. He has never had a hearing. He has never been able to show up in public and make his case that maybe this immigrant success story, an example to look up to by everyone in America, but particularly our immigrant population who came here and had to deal not only with learning the language but learning a new culture, this hero of the immigrant community has been languishing in the Judiciary Committee for 365 days. There is no indication in sight that he will be given a hearing.

To anyone who may be looking, if you have seen this man, you might want to report it to the Judiciary Committee so he can get a hearing.

Another nominee from a year ago, arguably pending for a decade, John Roberts has been waiting over 10 years for a hearing. He was nominated by the first President Bush over a decade ago to the D.C. Circuit Court and back then was pending for over a year without ever receiving a hearing. The current President Bush renominated Mr. Roberts 365 days ago, a year ago today, to the same court, the D.C. Circuit Court. Again, he has not had a hearing. This outstanding lawyer, again, unanimously rated "well qualified" by the ABA—and it is very tough to get a rating such as that—has actually been waiting for 2 years, 2 years just to get a hearing, an opportunity to tell his story. So we thought maybe he ought to be on the milk carton, too.

This unanimously well-qualified nominee has a long and distinguished career in public service, including serving as principal deputy to the Solicitor General from 1989 to 1993, and associate counsel to President Reagan from 1982 to 1986. The previous nominees had 15 arguments before the U.S. Supreme Court; this nominee has argued 36 cases before the U.S. Supreme Court and 20 cases in the U.S. appeals court across the country.

Has anyone seen John Roberts? Does anyone even know what he looks like? Has he been dropped into a black hole? Another great nominee of a year ago missing in action, not even given a hearing.

Also nominated a year ago today was Jeffrey Sutton. The ABA gave him—a majority—"qualified," and the rest gave him "well qualified." So it was a

split rating. The minority gave him "well qualified"; the majority gave him "qualified"—a very good rating.

Mr. Sutton graduated first in his class from Ohio State University College of Law. He has argued nine cases before the U.S. Supreme Court, both as a private attorney and as solicitor for the State of Ohio. He has taught constitutional law at Ohio State for the last 8 years.

Has anyone seen Jeffrey Sutton? Does anybody know what he looks like? He hasn't had an opportunity to be seen in public. Maybe he, too, should be put on a milk carton so somebody could recognize this guy and maybe report to the Senate Judiciary Committee that they have seen him. He really does exist. Maybe he ought to get an opportunity to be heard.

Jeffrey is a nominee for the Sixth Circuit, and I want to dwell on that for just a moment. Kentucky happens to be one of the States in the Sixth Circuit: Michigan, Ohio, Kentucky, and Tennessee. It is 50 percent vacant. That is not because the President has not sent up nominations. There are seven nominations up here. But not a single nominee from the Sixth Circuit has been confirmed. We have a judicial emergency. The Sixth Circuit is dysfunctional, not because the President has not made nominations.

I mentioned Miguel Estrada's success story. Here is a nominee from Michigan who, if confirmed, would become the first Arab American on a circuit court in American history, a nominee from the State of Michigan who, if confirmed, would become the first Arab American on a circuit court in the Nation's history. He has not yet had a hearing.

Jeffrey Sutton has been sitting there for 365 days, also for the Sixth Circuit. He is from the State of Ohio. If anybody sees Jeffrey Sutton, I want you know what he looks like. This is what he looks like. Send his picture in to the Judiciary Committee. Maybe he could at least get a hearing and an opportunity to state his qualifications for the court.

Deborah Cook: She has been a justice on the Ohio Supreme Court for the last 8 years—again, a Sixth Circuit nominee. This is the circuit that is 50 percent vacant—not because the President has not sent up nominations but because they have not been acted upon. Deborah Cook has been sitting there for 365 days. She was nominated a year ago today in the first batch sent up by President Bush.

Prior to her service on the Ohio Supreme Court, she was an appellate court judge for 4 years. She has been unanimously rated "qualified" by the American Bar Association. Has anybody seen Justice Cook? I wanted to make sure we could get a sense of what she looked like. This is a picture of Deborah Cook. If anyone wants to call her qualifications to the attention of the Judiciary Committee, they might take this opportunity to do that.

Terence Boyle is another nominee who arguably has been waiting 10 years for a hearing. He was nominated a decade ago by the first President Bush and waited for over a year without receiving a hearing at that time. He was nominated again 365 days ago, a year ago today, to the Fourth Circuit. The ABA unanimously rated him well qualified, just like Miguel Estrada—unanimously “well qualified.” That is as good as it gets. That means the committee of the ABA unanimously found this nomination to be of the highest order.

This nominee currently serves as the chief judge of the U.S. District Court for the Eastern District of North Carolina and has been on that court since 1984 when his nomination to that court was unanimously confirmed by the Senate.

Has anyone seen Judge Boyle? We know he exists. We have seen his name on paper. This is what he looks like. If anybody sees Judge Boyle, they might call the Judiciary Committee and say maybe this unanimously well qualified nominee ought at least to get an opportunity to be heard, a chance to be questioned by the members of the committee, so we can make a determination as to whether or not he deserves a chance to be voted upon.

Michael McConnell—I wish this fellow were related to me, but he is not. In fact, I found out after he was nominated that he is from my hometown. I went to high school in Louisville, KY. I never knew him. I am not related to him or his parents, but I wish I were. What an outstanding nominee.

He was nominated for the Tenth Circuit 365 days ago, a year ago today. Again, the ABA found him, unanimously, “well qualified.” Like Miguel Estrada, like several of the other nominees I have mentioned, that is as good as it gets—unanimously well qualified.

Mr. McConnell is a distinguished law professor at the University of Utah College of Law and has served as an Assistant Solicitor at the U.S. Department of Justice. He is widely regarded as an authority on constitutional law, particularly issues involving the first amendment and religious clauses.

Mr. McConnell has received the support of over 300 college law professors, including the noted liberal professors Cass Sunstein and Sanford Levinson. Support for Mr. McConnell is across the ideological spectrum from the people who know him best, law professors around America.

Has anybody seen Michael McConnell? I want you to be able to recognize him. This is his picture. This nominee, unanimously “well qualified” by the ABA, surely could at least be given a hearing before the committee to have an opportunity to state his qualifications and be asked questions.

Justice Priscilla Owen is on the Texas Supreme Court. She was nominated 365 days ago, a year ago today. She has served with distinction on the Texas Supreme Court for the past 8

years. Now she is being nominated for the Fifth Circuit. The ABA has unanimously rated her well qualified.

This is a situation where we have a judicial emergency. A judicial emergency has been declared here. Yet we have a nominee who has been languishing for a year with not even so much as a hearing.

So, this is what Justice Priscilla Owen looks like. She is an attractive, nice looking woman, smart lawyer.

If anybody sees her here in the hall, they might direct her down to the Senate Judiciary Committee. Maybe she could ask somebody for a hearing.

Dennis Shedd was nominated 365 days ago—1 year ago today—to the Fourth Circuit Court of Appeals. He served as a sitting Federal judge for the U.S. District Court for South Carolina since 1990. The ABA rated him “well qualified.” He taught at the University of South Carolina from 1989 to 1992 and has been chief counsel to the Senate Judiciary Committee right here in the Senate.

I am sure there are people over in the Senate Judiciary Committee who know what Dennis Shedd looks like because he used to run that committee staff. Maybe we don't need to send them a picture of Dennis Shedd. Maybe some of them actually remember him. You would think Dennis Shedd, as a matter of common courtesy, having formally been staff director over at the Judiciary Committee, could at least get a hearing so he could state his qualifications and have a chance to make his case.

The message for today is that it has been a year since the President sent up his first 11 nominations for the circuit courts. Eight of them have dropped into a black hole and have literally disappeared.

That is why we thought it might be a good idea to have a picture of some of them in case it might help in recognizing them and giving them an opportunity for fundamental fairness. We are in the first 2 years of George W. Bush's Presidency—not the last 2 years, not the last year, not the last 6 months. I think we can all concede that toward the end of a President's term, nominations frequently don't move. But there is no precedent—none—for this kind of slow walking and stonewalling in the beginning of a President's term. President Clinton got 86 percent of his circuit court nominees in the first 2 years. His party controlled the Senate. I am, frankly, surprised that it wasn't 100 percent because his party controlled the Senate in the first 4 years of his term. But he got 86 percent.

The first President Bush got 95 percent of his nominees in his first 2 years and his party did not control the Senate.

President Reagan got 95 percent of his circuit court nominees in his first 2 years and his party did control the Senate.

As you can see the pattern here, no matter who has been in the majority of

the Senate, and no matter who has been in the White House in the first 2 years, these games have not been played in the past. This is unprecedented. You can throw the statistics around as much as you want, but we are talking about the first 2 years of a President's administration. It has never been done before.

The good news is it is not too late. This is May 9. There is a month left. It is never too late for salvation.

It is my hope that these outstanding nominees missing in action and who have seemingly dropped down a black hole will get an opportunity to be heard as a matter of fundamental fairness.

I had an opportunity, along with others, to meet with the President earlier today on this issue. I heard some suggestions made on the other side of the aisle that this is really all about in effect telling the President who to send up. In other words, Mr. President, send up a certain kind of nominee or you won't get action. I can't speak for the President, but I have the clear impression that this President believes, as all other Presidents believe, that the business of selecting nominees to the circuit court level and to the Supreme Court level are Presidential prerogatives. I don't think this President is going to operate any differently on that issue than President Clinton or President Carter or President Roosevelt. We all know that Senators have an opportunity to make suggestions on district court nominees. That has not changed. But circuit court nominees and Supreme Court nominees have historically and will be forever the prerogative of the President.

The thought that any of us are going to be able to dictate to this President or any other President who those nominees might be is absurd. It is not going to happen tomorrow. It is not going to happen a month from now. It is not going to happen ever. No President—Republican or Democrat—is going to allow the Senate, no matter which party controls the Senate, to in effect tell him or her who they are going to pick for the circuit courts.

It is time for a fair hearing. And it is time to vote. If the members of the Judiciary Committee want to vote down these nominees, that is certainly their prerogative. They have done that already once this year. But it is time to quit hiding out. It is time to stand up and be counted. It is time to allow these missing people to be seen and heard, and to vote.

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. REID. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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