

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar Nos. 132, 199, 200, 316, 410, 417, 419, 421, 434, 435, 451, 452, 453, 454, 456, 458, 459, 460, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 475, 476, 477, 479, 483, 485, 486, 487, 489, 491, 492, 493, 494, 510, 526, 527, 529, 532, and 474.

NOMINATIONS DISCHARGED

I further ask unanimous consent that the following nominations be discharged from the Foreign Relations Committee and the Senate proceed to the nominations en bloc: David Mulford, PN 1110; James Oberwetter, PN 1113; further, that the following nominations be discharged from the Banking Committee and the Senate proceed to their consideration: April Foley, PN 1155; Joseph Max Cleland, PN 1154.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Bruce E. Kasold, of Virginia, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

AFRICAN DEVELOPMENT FOUNDATION

Ephraim Batambeze, of Illinois, to be a Member of the Board of Directors of the African Development Foundation for a term expiring February 9, 2008.

John W. Leslie, Jr., of Connecticut, to be a Member of the Board of Directors of the African Development Foundation for a term expiring September 22, 2007.

DEPARTMENT OF LABOR

Howard Radzely, of Maryland, to be Solicitor for the Department of Labor.

THE JUDICIARY

George W. Miller, of Virginia, to be a Judge of the United States Court of Federal Claims for the term of fifteen years.

DEPARTMENT OF THE INTERIOR

David Wayne Anderson, of Minnesota, to be an Assistant Secretary of the Interior.

DEPARTMENT OF TRANSPORTATION

Karan K. Bhatia, of Maryland, to be an Assistant Secretary of Transportation.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

Charles Darwin Snelling, of Pennsylvania, to be a Member of the Board of Directors of the Metropolitan Washington Airports Authority for the remainder of the term expiring May 30, 2006.

UNITED STATES SENTENCING COMMISSION

William K. Sessions III, of Vermont, to be a Member of the United States Sentencing Commission for a term expiring October 31, 2009.

DEPARTMENT OF JUSTICE

David L. Huber, of Kentucky, to be United States Attorney for the Western District of Kentucky for the term of four years.

ELECTION ASSISTANCE COMMISSION

Paul S. DeGregorio, of Missouri, to be a Member of the Election Assistance Commission for a term of two years.

Gracia M. Hillman, of the District of Columbia, to be a Member of the Election Assistance Commission for a term of two years.

Raymundo Martinez III, of Texas, to be a Member of the Election Assistance Commission for a term of four years.

Deforest B. Soaries, Jr., of New Jersey, to be a Member of the Election Assistance Commission for a term of four years.

THE JUDICIARY

D. Michael Fisher, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

DEPARTMENT OF STATE

Edward B. O'Donnell, Jr., of Tennessee, a Career Member of the Senior Foreign Service, Class of Counselor, for the rank of Ambassador during his tenure of service as Special Envoy for Holocaust Issues.

Jon R. Purnell, of Massachusetts, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Uzbekistan.

Margaret DeBardleben Tutwiler, of Alabama, to be Under Secretary of State for Public Diplomacy.

Louise V. Oliver, of the District of Columbia, for the rank of Ambassador during her tenure of service as the United States Permanent Representative to the United Nations Educational, Scientific, and Cultural Organization.

William J. Hudson, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Tunisia.

Margaret Scobey, of Tennessee, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Syrian Arab Republic.

Thomas Thomas Riley, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

Jackie Wolcott Sanders, for the rank of Ambassador during her tenure of service as United States Representative to the Conference on Disarmament and the Special Representative of the President of the United States for Non-Proliferation of Nuclear Weapons.

Mary Kramer, of Iowa, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Barbados and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Kitts and Nevis, Saint Lucia, Antigua and Barbuda, the Commonwealth of Dominica, Grenada, and Saint Vincent and the Grenadines.

Timothy John Dunn, of Illinois, a Career Member of the Senior Foreign Service, Class of Counselor, for the rank of Ambassador during his tenure of service as Deputy Permanent Representative to the Organization of American States.

James Curtis Struble, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Peru.

INTER-AMERICAN DEVELOPMENT BANK

Hector E. Morales, of Texas, to be United States Alternate Executive Director of the Inter-American Development Bank.

DEPARTMENT OF STATE

Marguerita Dianne Ragsdale, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Djibouti.

Stuart W. Holliday, of Texas, to be Alternate Representative of the United States of America for Special Political Affairs in the United Nations, with the rank of Ambassador.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Jennifer Young, of Ohio, to be an Assistant Secretary of Health and Human Services.

Michael O'Grady, of Maryland, to be an Assistant Secretary of Health and Human Services.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Rixio Enrique Medina, of Oklahoma, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

DEPARTMENT OF JUSTICE

James B. Comey, of New York, to be Deputy Attorney General.

Federico Lawrence Rocha, of California, to be United States Marshal for the Northern District of California for the term of four years.

DEPARTMENT OF TRANSPORTATION

Jeffrey A. Rosen, of Virginia, to be General Counsel of the Department of Transportation.

CORPORATION FOR PUBLIC BROADCASTING

Elizabeth Courtney, of Louisiana, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2010.

Elizabeth Courtney, of Louisiana, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for the remainder of the term expiring January 31, 2004.

Cheryl Feldman Halpern, of New Jersey, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2008.

DEPARTMENT OF THE TREASURY

Arnold I. Havens, of Virginia, to be General Counsel for the Department of the Treasury.

OFFICE OF SPECIAL COUNSEL

Scott J. Bloch, of Kansas, to be Special Counsel, Office of Special Counsel, for the term of five years.

FEDERAL DEPOSIT INSURANCE CORPORATION

Thomas J. Curry, of Massachusetts, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation for a term of six years.

FEDERAL HOUSING FINANCE BOARD

Alicia R. Castaneda, of the District of Columbia, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2004.

Alicia R. Castaneda, of the District of Columbia, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2011.

THE JUDICIARY

Lawrence B. Hagel, of Virginia, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

David Eisner, of Maryland, to be Chief Executive Officer of the Corporation for National and Community Service.

Carol Kinsley, of Massachusetts, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2006.

Read Van de Water, of North Carolina, to be a Member of the National Medication Board for a term expiring July 1, 2006.

NATIONAL MEDIATION BOARD

Read Van de Water, of North Carolina, to be a Member of the National Medication Board for a term expiring July 1, 2006.

DEPARTMENT OF LABOR

Steven J. Law, of the District of Columbia, to be Deputy Secretary of Labor, vice Donald Cameron Findlay, resigned.

DEPARTMENT OF STATE

David C. Mulford, of Illinois, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to India.

James C. Oberwetter, of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Saudi Arabia.

EXPORT-IMPORT BANK

Joseph Max Cleland, of Georgia, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 2007.

April H. Foley, of New York, to be First Vice President of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 2005.

Mr. HATCH. Mr. President, I stand today in strong support of D. Michael Fisher, who has been nominated to serve for the U.S. Court of Appeals for the Third Circuit. Let me speak briefly about his background and the reasons I endorse his confirmation.

Attorney General Fisher has extensive legislative experience, having served for 22 years in the Pennsylvania General Assembly. He has also practiced in civil litigation for close to 20 years. Parenthetically, I would note my understanding that Attorney General Fisher's first law office was across the hall from my law office in Pittsburgh—the 9th floor of the Frick Building—in 1970. Since 1997, Attorney General Fisher has served as Pennsylvania Attorney General and he has been a great leader. He coauthored Pennsylvania's Megan's Law; he supported the passage of a State DNA postconviction statute; and he helped negotiate the landmark national tobacco settlement.

Attorney General Fisher's nomination is widely supported. His endorsers include Democratic Pennsylvania Governor Edward Rendell, the bipartisan 19-member Pennsylvania delegation to the U.S. House of Representatives, the Pennsylvania State legislators, the Pennsylvania District Attorneys Association, and the Pennsylvania Trial Lawyers Association. He is also fully endorsed by serving attorneys general from across the country. The former attorney general of Tennessee, Charles W. Burson, who also served as legal counsel for former Vice President Gore, has written in support of Attorney General Fisher's nomination: "While [Attorney General Fisher] and I may differ on particular issues, I am certain that as a Federal Appellate Judge, he will deliberately, and with an even hand, apply the law to the facts and render sound judgments."

I cannot recall seeing such a range of support for a judicial nominee as Attorney General Fisher enjoys. It is truly impressive and speaks well of him.

I will support Attorney General Fisher's confirmation, and I urge my colleagues to do the same.

Mr. LEAHY. Mr. President, I am troubled today that the Senate is proceeding to a vote on the nomination of D. Michael Fisher to a lifetime appointment to the U.S. Court of Appeals for the Third Circuit, when there is an open verdict against him in a Federal civil rights case. While Mr. Fisher has considerable bipartisan support, it is unfortunate that the committee vote, and now the Senate vote, on his nomination could not have at least waited for the district court judge in the pending civil rights case to rule on Mr. Fisher's motion challenging the jury verdict against him.

Over the course of this year in the Judiciary Committee, we have seen a number of firsts. At the first nominations hearing of the year, for the first time ever, Republicans unilaterally scheduled three controversial circuit court nominees at one hearing contrary to a long-established agreement and practices of the committee. Then we saw Republicans declare that the longstanding committee rules protecting the rights of the minority would be broken when Rule IV was violated. A rule that was adopted 25 years ago—in order to balance the need to protect the minority members of the committee with the desire of the majority to proceed—was unilaterally reinterpreted to override the rights of the minority for the first time in our history. For the first time ever, this year, Republicans insisted on proceeding on nominations that the committee had previously voted upon and rejected after full and fair hearings and debate. Of course that followed the first ever resubmission by a President of the names of defeated nominees for appointment to those same judgeships.

Several other practices were reversed from when a Democratic President was making nominations in light of the Republican affiliation of the current President. This committee has proceeded on nominations that did not have the approval of both home-State Senators. Moreover, this committee altered its prior practice and overrode the objections of home-State Senators to vote on the nominations of Carolyn Kuhl in spite of the opposition of both home-State Senators. Then, in connection with a nomination to the circuit court from Michigan, this committee for the first time proceeded with a hearing in spite of the opposition of both home-State Senators.

The hearing on the nomination of Michael Fisher to the U.S. Court of Appeals for the Third Circuit was also unprecedented. Never before to my knowledge has a President nominated to a lifetime position on a Federal circuit court or this committee held a

hearing on a judicial nominee with an outstanding jury verdict naming him as personally liable for civil rights violations. In February 2003, a Federal jury in the U.S. District Court for the Middle District of Pennsylvania found that Mr. Fisher and other high level officials of the Pennsylvania Office of the Attorney General violated the civil rights of two plaintiffs, former narcotics agents with the Bureau of Narcotics Investigation, BNI, in Philadelphia. Never before in the history of Federal judicial nominees of which I am aware, has a nominee ever come before this committee with an outstanding judgment against him for so serious a claim.

The jury verdict is so recent that the trial transcript was only delivered to the parties within the last several weeks, and so complex that even Mr. Fisher and his lawyers asked for extensions of time in order to complete their post-trial motions. Just 6 weeks ago, Mr. Fisher and the other defendants filed their brief in support of their motion for judgment as a matter of law or a new trial. Soon, the Federal district court trial judge will review the verdict against Mr. Fisher and make a decision on Mr. Fisher's motion. If the jury verdict is sustained by the district court judge, an appeal would lie to the very court to which Mr. Fisher has been nominated. Mr. Fisher has indicated that he intends to pursue all appellate options if the verdict is not reversed. These, too, appear to be unique circumstances.

Accordingly, this is a most unusual vote today. As the administration and Republican majority have abandoned traditional practices and standards, we are being confronted with more and more difficulties. The few judicial nominations on which the Senate has withheld a final vote this year have each presented extraordinary circumstances or nominees with extreme positions. During the years in which President Clinton was in the White House, Republicans attempted a number of filibusters and, when they were in the majority, successfully prevented votes on more than 60 judicial nominees, including a number of nominees to the Federal courts in Pennsylvania.

At Mr. Fisher's hearing, I indicated that I had not yet reached a determination about his nomination but was troubled by the jury verdict. I have now reviewed the trial transcript and materials from the civil rights case. Mr. Fisher has been found liable by a jury for violating the constitutional rights of his employees. Mr. Fisher testified at trial that he had knowledge of and approved of the actions found by the jury to be retaliatory. The jury found that he acted maliciously or wantonly and awarded the plaintiffs punitive damages. We should all be concerned about his ability to protect the constitutional rights of plaintiffs who may enter his courtroom. The trial court judgment is a significant piece of information in order for us to

evaluate Mr. Fisher's qualifications to a lifetime appointment on the federal bench. In all due respect to my friends on the other side of the aisle, I do not think that the courts or the American people gain by rushing the nomination through.

In addition to the pending civil rights judgment against him, I am concerned about other aspects of Mr. Fisher's record. He authored Pennsylvania's death penalty legislation as a State representative and has opposed placing a moratorium on the death penalty in Pennsylvania. He reiterated at his hearing and in response to my written questions that he does not believe that there is racial discrimination in the application of the death penalty in Pennsylvania or that innocent people are being sentenced in capital cases, despite repeated evidence to the contrary. I would like to take this opportunity to urge Mr. Fisher to take seriously the imposition of the death penalty and to do what he can to ensure that the death penalty is applied fairly.

Mr. Fisher has also indicated his opposition to gay rights and has advocated against benefits for same-sex partners. Mr. Fisher, however, has assured the committee that he would follow Supreme Court precedent recognizing that gays and lesbians have a constitutional right to be free from government intrusion into their private lives. I am hopeful that Mr. Fisher will be a person of his word: that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his private beliefs rather than his obligations as a judge. I also sincerely hope that Mr. Fisher will treat all those who appear before him with respect, and will not abuse the power and trust of his position.

The Senate has already confirmed two of President Bush's nominees to the Third Circuit, including one controversial circuit court nominee from Pennsylvania who had broken his promise to the committee about his membership in a discriminatory club. Yet, with Democratic support, the Senate has already confirmed 13 Federal district court nominees from Pennsylvania and 19 district court nominees in the Third Circuit.

A look at the Federal judiciary in Pennsylvania indicates that President Bush's nominees have been treated fairly and far better than President Clinton's. This treatment is in sharp contrast to the way vacancies in Pennsylvania were kept vacant during Republican control of the Senate when President Clinton was in the White House.

Despite the best efforts and diligence of the senior Senator from Pennsylvania, Senator SPETER, to secure the confirmation of all of the judicial nominees from every part of his home state, there were 10 nominees by President Clinton to Pennsylvania vacancies who never got a vote: Patrick Toole,

John Bingler, Robert Freedberg, Lynette Norton, Legrome Davis, David Fineman, David Cercone, Harry Litman, Stephen Lieberman, and Robert Cindrich to the Third Circuit. Despite how well-qualified these nominees were, they were never considered by the Senate, many waited more than a year for action.

Just last month, the Senate voted to confirm another nominee from Pennsylvania whose record raised serious concerns the nomination of Thomas Hardiman to the U.S. District Court for the Western District of Pennsylvania. That nominee came to us with no judicial experience, a relatively small amount of litigation experience and very low peer-review ratings by both the American Bar Association and the local Allegheny County Bar Association. Far too many of this President's judicial nominees seem to have similarly troubling records. In fact, 26 of this President's judicial nominees have earned partial or majority "Not Qualified" ratings from the ABA. Certainly, the citizens of Pennsylvania deserve a well-qualified judiciary to hear their important legal claims in federal court.

Unfortunately, Mr. Fisher's record—particularly the outstanding Federal civil rights verdict against him—raises concerns, just as the record of far too many of President Bush's judicial nominees. Yet, I have great respect for the senior Senator from Pennsylvania and appreciate his efforts to help shepherd the White House's nomination through the Senate. I have also heard from a number of other supporters of Mr. Fisher whose opinions I value that they believe him qualified to serve as a judge of the Third Circuit. He does have significant experience as an attorney, formerly serving as an Assistant District Attorney, as an attorney in private practice for over 27 years, and in the Pennsylvania General Assembly for 22 years. We are, again, treating this President's judicial nominees far more fairly than Republicans treated President Clinton's judicial nominees.

NOMINATION OF JAMES B. COMEY

Mr. HATCH. Mr. President, I am pleased that the Senate today confirmed James B. Comey as the Deputy Attorney General. James Comey brings a wealth of experience and perspective as a line prosecutor, as a manager in the U.S. Attorney's Office for the Eastern District of Virginia, and most recently as the U.S. attorney for the Southern District of New York. His record demonstrates that he is a leader, one who can inspire others to accomplish great things, and one who can oversee and manage an organization such as the Justice Department.

With the recent departure of Larry Thompson, who was a fine Deputy Attorney General, I am sure everyone shares my view that Mr. Comey has very big shoes to fill. However, I am confident that he is the right person

for the job. His impressive background and past government service make me confident that he will be a great asset to the Department of Justice, the Judiciary Committee, and the American people.

The importance of the Deputy Attorney General within the Justice Department cannot be overstated. Over the years, the Deputy Attorney General's Office has played a greater role in overseeing the Department's operations, implementing new policy initiatives, and ensuring the effective enforcement of our criminal and civil laws.

A review of Mr. Comey's record establishes one simple fact—he is well qualified to serve as the Deputy Attorney General. Since January 2002, Mr. Comey has served as the U.S. attorney in the Southern District of New York, an office that many consider to be the premier U.S. Attorney's Office in the country. In the Southern District of New York, Mr. Comey has earned the respect of judges, defense counsel, and prosecutors for his professionalism, fairness and judgment. While serving as the U.S. attorney, Mr. Comey was responsible for leading his office in some of the more significant terrorism and white collar prosecutions.

Prior to assuming the position as the U.S. attorney, Mr. Comey served from 1996 to 2001, as managing assistant U.S. attorney, in charge of the Richmond Division of the U.S. Attorney's Office for the Eastern District of Virginia. From 1993 to 1996, Mr. Comey was an associate and later a partner at the law firm of McGuire Woods in Richmond, VA. Early in his career, from 1987 to 1993, Mr. Comey served as an assistant U.S. attorney in the Southern District of New York.

As a Federal prosecutor, Mr. Comey investigated and prosecuted a wide variety of cases, including firearms, narcotics, major frauds, violent crime, public corruption, terrorism, and organized crime. In the Eastern District of Virginia, he handled the Khobar Towers terrorist bombing case, arising out of the June 1996 attack of a U.S. military facility in Saudi Arabia in which 19 airmen were killed.

Mr. Comey was educated at William & Mary, B.S. with honors 1982, chemistry and religion majors, and the University of Chicago Law School, J.D. 1985. After law school, he clerked for then-U.S. District Judge John Walker in Manhattan.

Let me take one moment to highlight perhaps Mr. Comey's most important accomplishment. While serving his country in a variety of prosecutorial positions, he has demonstrated that he is a dedicated family man. He and his lovely wife, Patrice, are raising five wonderful children, ranging in age from 15 to as young as 3 years old.

Mr. Comey is a dedicated public servant, and a talented and well-respected prosecutor. He is uniquely qualified to lead as the Deputy Attorney General of the Justice Department.

Mr. DASCHLE. Mr. President, I am very pleased that we have been able to