

By the end of August this year, this Senate had acted on only 9 out of 61 nominees. Indeed, by the end of September in President Bush's final year in office, the Senate confirmed 59 of his 72 nominees. This Senate is on pace to confirm only 16 out of a comparable number of nominations.

Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. We can pass all the crime bills we want, but you cannot try the cases and incarcerate the guilty if you do not have judges. The mounting backlogs of civil and criminal cases in the dozens of emergency districts, in particular, are growing taller by the day. National Public Radio has been running a series of reports all this week on the judicial crises and quoted the chief judge and U.S. attorney from San Diego earlier this week to the effect that criminal matters are being affected.

I have spoken about the crisis being created by the vacancies that are being perpetuated on the Federal courts around the country. At the rate that we are going, we are not keeping up with attrition. When we adjourned last Congress there were 64 vacancies on the federal bench. After the confirmation of 16 judges in 9 months, there has been a net increase of 32 vacancies. The Chief Justice of the Supreme Court has called the rising number of vacancies "the most immediate problem we face in the Federal judiciary."

The Judiciary Committee has heard testimony from second circuit, ninth circuit and 11th circuit judges about the adverse impact of vacancies on the ability of the Federal courts to do justice. The effect is seen in extended delay in the hearing and determination of cases and the frustration that litigants are forced to endure. The crushing caseload will force Federal courts to rely more and more on senior judges, visiting judges and court staff. Judges from the Second Circuit Court of Appeals testified, for example, that over 80 percent of its appellate court panels over the next 12 months cannot be filled by members of that court but will have to be filled by visiting judges. This is wrong.

We ought to proceed without delay to consider the nomination of Judge Sonia Sotomayor to the second circuit and move promptly to fill vacancies that are plaguing the second and ninth circuits. We need to fill the 5-year-old vacancy in the Northern District of New York and move on nominations for over 30 judicial emergency districts.

In choosing to proceed on this nominee, the Republican leadership has chosen for at least the fourth time this month to skip over the nomination of Margaret Morrow. I, again, urge the Senate to consider the long-pending nomination of Margaret Morrow to be a district court judge for the Central District of California.

Ms. Morrow was first nominated on May 9, 1996—not this year, but May

1996. She had a confirmation hearing and was unanimously reported to the Senate by the Judiciary Committee in June 1996. Her nomination was, thus, first pending before the Senate more than 15 months ago. This was one of a number of nominations caught in the election year shutdown.

She was renominated on the first day of this session. She had her second confirmation hearing in March. She was then held off the Judiciary agenda while she underwent rounds of written questions. When she was finally considered on June 12, she was again favorably reported with the support of Chairman HATCH. She has been left pending on the Senate Executive Calendar for more than three months and has been passed over, time and again, without justification or explanation.

What is this mystery hold all about? In spite of my repeated attempts to find out who is holding up consideration of this outstanding nominee, and why, I am at a loss.

Ms. Morrow is a qualified nominee to the district court. I have heard no one contend to the contrary. She has been put through the proverbial wringer—including at one point being asked her private views, how she voted, on 160 California initiatives over the last 10 years.

The committee insisted that she do a homework project on Robert Bork's writings and on the jurisprudence of original intent. Is that what is required to be confirmed to the district court in this Congress?

With respect to the issue of "judicial activism," we have the nominee's views. She told the committee:

The specific role of a trial judge is to apply the law as enacted by Congress and interpreted by the Supreme Court and courts of appeals. His or her role is not to make law.

She also noted:

Given the restrictions of the case and controversy requirement, and the limited nature of legal remedies available, the courts are ill equipped to resolve the broad problems facing our society, and should not undertake to do so. That is the job of the legislative and executive branches in our constitutional structure.

Margaret Morrow was the first woman President of the California Bar Association and also a past president of the Los Angeles County Bar Association. She is an exceptionally well-qualified nominee who is currently a partner at Arnold & Porter and has practiced for 23 years. She is supported by Los Angeles' Republican Mayor Richard Riordan and by Robert Bonner, the former head of DEA under a Republican Administration. Representative JAMES ROGAN attended her second confirmation hearing to endorse her.

Margaret Morrow has devoted her career to the law, to getting women involved in the practice of law and to making lawyers more responsive and responsible. Her good works should not be punished but commended. Her public service ought not be grounds for delay.

She does not deserve this treatment. This type of treatment will drive good people away.

The President of the Women Lawyers Association of Los Angeles, the President of the Women's Legal Defense Fund, the President of the Los Angeles County Bar Association, the President of the National Conference of Women's Bar Association and other distinguished attorneys from the Los Angeles area have all written the Senate in support of the nomination of Margaret Morrow. They write that: "Margaret Morrow is widely respected by attorneys, judges and community leaders of both parties" and she "is exactly the kind of person who should be appointed to such a position and held up as an example to young women across the country." I could not agree more.

Mr. President, the Senate should move expeditiously to consider and confirm Margaret Morrow, along with Anthony Ishii, Richard Lazzara, Christina Snyder and Marjorie Rendell.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

#### EXPLANATION OF ABSENCE

● Mr. BIDEN. Mr. President, this evening, the Senate conducted two rollcall votes—on the conference report to the Defense Department Appropriations bill and on the nomination of Katharine Sweeney Hayden to be U.S. District Judge for the District of New Jersey. Unfortunately, I was not present for those votes.

Tonight, at my daughter's school in Wilmington is what is called mini roster night. That is what most people know as open house or parents' night—where the parents go around and meet all of the teachers. Because of the Senate voting schedule, I will either have to miss votes or miss mini roster night at my daughter's school.

On both matters voted on tonight, my position is already on the record, and my vote is not expected to change the outcome.

With regard to the defense bill, I voted for the bill on July 15 when it passed the Senate by the overwhelming margin of 94-4. There have been no substantial changes in the legislation, and I continue to support it.

On July 10, the Senate Judiciary Committee reported out the nomination of Katharine Sweeney Hayden to be a New Jersey district judge. I supported her nomination, and I continue to do so.

Again, Mr. President, on both matters, my vote is not expected to change the outcome, and therefore, I have decided to attend parents' night at my daughter's school. I appreciate the understanding of my colleagues and my constituents.●

#### LEGISLATIVE SESSION

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