

point in the next 2 or 3 weeks that will be called up, and it will have a discussion period and a vote.

I hope that would be the case with any of these three that we had hoped to bring up. If we can't get an agreement of how to deal with all three of them, then we will not be able to move any of the three. But we are still working on that, and we hope to get it worked out.

Mr. LEAHY. Mr. President, will the distinguished leader yield on that point?

Mr. LOTT. Mr. President, I apologize.

Mr. LEAHY. Will the distinguished leader yield on that point?

Mr. LOTT. Surely.

Mr. LEAHY. Mr. President, there are one, two, three, four, five, six, seven judicial nominations on the calendar. I tell the distinguished leader that on this side of the aisle, at least, we are willing to agree to a time certain to vote on all of them—right now. We will be glad to enter into a time agreement to vote on each and every one of them. Obviously, our concern is that they all be considered and we suggest that they be in the order in which they appear on the calendar.

Mr. LOTT. Mr. President, I apologize again. I think the Senator is propounding a question. What I am trying to do is to move forward on judicial nominations. We have already cleared six, I believe, since we have been back. I believe we can move two more without any problem. That would be eight. Then it would be my intent to move in that block of three also the nomination of Mr. Stewart of Utah, Brian Theodore Stewart. It would be those three. If we could clear those three, that would be nine we have moved since we have been back from the August recess, leaving, I believe, only four on the calendar.

As I indicated, we have gotten tentative agreement on time on the nomination of White of Missouri, that we hope within the next week or so—at some point—when we find a window, in fact, we will call it up, and there will be a period of debate and a vote on that one, leaving only three judges on the calendar.

I understand the Judiciary Committee is moving toward reporting out other judges and will begin to move those right away who are not controversial and won't take time. If there is controversy, and we can get a time agreement, a limited time agreement and then a vote on some, then we would do that.

The three remaining on the calendar are Ninth Circuit judges, where there is considerable problem and concern about the size of the circuit, whether or not that circuit needs to be dealt with, whether it is split in two, and there are concerns about the judges themselves. So that is a complicated problem. I cannot give any indication of a time agreement at this point.

I call on the Senators on both sides of the aisle to allow me to continue to move forward. I have been showing good faith. Before the August recess, I

tried to move some of these judges, and if I did not include certain judges, there was objection from that side. If I did not include certain other judges, there was objection on this side.

So what I said was: This is not reasonable. It does not make good sense. I am going to just start calling them up, one by one, and clearing them and getting them done. And by doing that, I have done six, and I am on the verge of doing three more. So I would hope we would get cooperation on that.

I think Judge Stewart of Utah is a qualified nominee. He is obviously supported by the Senator from Utah, the chairman of the Judiciary Committee, who has been working in good faith. He was not particularly happy with my plan to just go forward and start calling up judges. I assured him that after we had done several of them that had been cleared, his would be next. His is going to be next. He will be in this package of three.

I understand Senators may want to talk some more about this in the next few minutes. I don't want to file cloture on Judge Stewart. I will do that, and then we will start down this 41-vote trail, which I don't think is wise. Let's try to have some cooperation with each other and a modicum of good faith, and we will continue to work on them.

It takes a lot of time for the majority leader and the minority leader to clear these judges—a lot of time. I have to check with 54 other Senators before I can enter into any kind of agreement. Sometimes the objections are: I need time to think about it; I need to meet with this person or that person. Sometimes it is a legislative issue. Sometimes they say: Well, I have a problem; I am going to vote no. Sometimes they say: I need a lot of time.

I have to work through all that. I will withhold right now on these three, on either of the three. I urge Senator LEAHY, Senator HATCH, Senator FEINSTEIN, anybody else who is involved and interested, to talk this out. I will be back here in a couple of hours, and I will see if we can't work out a way we can move the two who have been cleared already and move Judge Stewart. I do think you will want to talk about it some and perhaps discuss it further with Senator DASCHLE. That would be fine, too.

UNANIMOUS CONSENT AGREEMENT—H.R. 2587 CONFERENCE REPORT

Mr. LOTT. Mr. President, I ask unanimous consent that at 2 p.m., the Senate turn to the conference report to accompany the D.C. appropriations bill under the same terms as outlined in the earlier consent, with a recorded vote to occur at approximately 2:30.

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

Mr. LOTT. I thank the Senators, and I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

NOMINATIONS

Mr. LEAHY. Mr. President, while the distinguished majority leader is still on the floor, I note I, too, do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41. In fact, the distinguished majority leader is perhaps aware of the fact that during the Republican administrations I rarely ever voted against a nomination by either President Reagan or President Bush. There were a couple I did.

I also took the floor on occasion to oppose filibusters to hold them up and believe that we should have a vote up or down. Actually, I was one of those who made sure, on a couple controversial Republican judges, that we did. That meant 100 Senators voted on them, 100.

In this case, unfortunately, we have at least one judge who has been held for 3 years by one or two or three or four Senators, not 41 but less than a handful. All I am asking is that we give them the fairness of having the whole Senate vote on them.

Unfortunately, in the last couple years, women and minorities have been held up longer than anybody else on these Federal judgeships. They ought to be allowed a vote up or down. If Senators want to vote against them, then vote against them. If they want to vote for them, vote for them. But to have two or three people, quietly, in the back room, never be identified as being the ones holding them up, I think that is unfair to the judiciary, it is unfair to the nominees, and, frankly, it demeans the Senate.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, as a Senator representing California, who sits on the Judiciary Committee, I have to say a word or two on this subject.

First, I believe the chairman of our committee, Senator HATCH, has been very fair with respect to these judges. I believe he has tried his level best to move the calendar along.

I think what we on this side are encountering is the holding up of judges, particularly on the Ninth Circuit Court of Appeals, for years on end. That must stop. A nominee is entitled to a vote. Vote them up; vote them down. To keep them hanging on—the court has 750 cases waiting for a judge. These judges are necessary. If someone has opposition to a judge, which I believe to be the case in at least one, they should come to the floor and say that.

It is also my understanding and my desire to ask that there be some commitment from the other side as to when specifically the nominations of Judge Paez, Marsha Berzon, and Ray Fisher, pending on this calendar—