in that lonely field in western Pennsylvania.

We have come together to tell their families they are not alone. They are part of our American family and we are with them—now in their hour of grief, and in the days and years to come.

And we have also come together to say, in the strongest possible terms, that we stand with President Bush in his determination to find those who committed these hideous attacks and hold them accountable, and to destroy their global network of hate and terror.

I had the opportunity to join many of my Senate colleagues in the days after the attack to visit Ground Zero in New York City. There, in a mountain of rubble and wreckage that is beyond my ability to describe, I saw a sign scrawled on a wall. It read simply: ''We will never forget.''

That is true. Whether we live another hundred months, or another hundred years, we will never forget the thousands of innocent victims who lost their lives on September 11th.

We will never forget the heartbreak of those they left behind, or the stunning bravery of those who tried to save them.

And we will never forget our responsibility to find those who committed these evil acts and stop them.

That is our promise.

In the aftermath of the attacks, America has searched for words to describe the enormity of what happened.

Every description has fallen short—and so we simply refer to the day: September 11th.

This day has become hallowed in our memories, and in our history.

Today, Senator LOTT and I are introducing a resolution to honor it on our calendars, as well.

This resolution designates September 11 as our national day of mourning and remembrance.

We ask that each year on September 11, the President issue a proclamation, the flags be lowered to half-mast, and that America observe a moment of silence.

It is yet another guarantee that as years pass, and wounds heal, that we will never forget what happened on that day.

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays were ordered.

Is all time yielded back?

Mr. DASCHLE. I yield back the remainder of my time.

Mr. LOTT. Mr. President, I yield back the remainder of our time.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The resolution having been read the third time, the question is, Shall the resolution pass?

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 296 Leg.]

YEAS—100

Akaka	Durbin	McCain
Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Feingold	Murkowski
Bennett	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Helms	Schumer
Cantwell	Hollings	Sessions
Carnahan	Hutchinson	Shelby
Carper	Hutchison	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kerry	Thomas
Corzine	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wellstone
Dodd	Lincoln	Wyden
Domenici	Lott	
Dorgan	Lugar	

The resolution (S.J. Res. 25) was agreed to, as follows:

S.J. RES. 25

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Day of Remembrance Act of 2001''.

SEC. 2. NATIONAL DAY OF REMEMBRANCE.

(a) DESIGNATION.—September 11 is National Day of Remembrance.

(b) PROCLAMATION.—The President is requested to issue each year a proclamation—

(1) remembering those who tragically lost their lives as a result of the terrorist attacks on the United States on September 11, 2001, and honoring the police, firefighters, and emergency personnel who responded with such valor on September 11, 2001;

(2) calling on United States Government officials to display the flag of the United States at half mast on National Day of Remembrance in honor of those who lost their lives as a result of the terrorist attacks on the United States on September 11, 2001;

(3) inviting State and local governments and the people of the United States to observe National Day of Remembrance with appropriate ceremonies; and

(4) urging all people of the United States to observe a moment of silence on National Day of Remembrance in honor of those who lost their lives as a result of the terrorist attacks on the United States on September 11, 2001.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, all Senators should know that the next two votes are 10-minute votes. When we finish these two votes, we will go on to the antiterrorism legislation. The majority leader said we are going to finish that night. We will stick to the 10-minute votes. If Members are not here at or near that time, we will close the vote.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

NOMINATION OF BARRINGTON D. PARKER, JR., OF CONNECTICUT, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

NOMINATION OF MICHAEL P. MILLS, OF MISSISSIPPI, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI

Mr. LEAHY. Mr. President, when the Senate confirms Barrington Parker to the Second Circuit, we will have confirmed more Court of Appeals judges since July of this year than were confirmed in the entire first year of the Clinton administration. When the committee completes its consideration of Edith Brown Clement and she is confirmed to the Fifth Circuit, we will match the total confirmed Court of Appeals judges for the entire first year of the first Bush administration.

When we confirmed Judge Roger Gregory to the Fourth Circuit on July 20, the Senate had confirmed more Court of Appeals judges than a Republican-controlled Senate was willing to confirm in all of the 1996 session—a year in which not a single nominee to the Courts of Appeals was confirmed, not one all session.

Until I became chairman and began holding hearings in July, no judicial nominations had hearings or were confirmed by the Senate this year. We are now ahead of the pace of confirmations for judicial nominees in the first year of the Clinton administration and the pace in the first year of the first Bush administration.

In the first year of the Clinton administration, 1993, without all the disruptions, distractions and shifts in Senate majority that we have experienced this year through July and without the terrorist attacks of September 11, the first Court of Appeals judge was not confirmed until September 30, the third was not confirmed until November and, as I have noted, the Senate never confirmed a fourth Court of Appeals nominee.

In the entire first year of the first Bush administration, 1989, without all the disruptions, distractions and shifts of Senate majority that we have experienced this year through July and without the terrorist attacks of September 11, the fourth Court of Appeals nominee was not confirmed until November 8. Today, on October 11, the Senate will confirm its fourth Court of Appeals nominee since July 20 of this

year. Thus, in spite of everything we are more than one month ahead of the pace in 1989.

During the more than 6 years in which the Republicans most recently controlled the Senate schedule, there were 34 months with no hearing at all, 30 months with only one hearing and only 12 times in almost 6½ years did the Judiciary Committee hold as many as two hearings involving judicial nominations during a month. I held two hearings in July involving judicial nominations and two unprecedented hearings in August, during the traditional recess. I held a fifth hearing in September, the sixth last week, and have scheduled a seventh hearing and second for October for next week. Thus, during the 4 months that I have been chairman with a reconstituted Judiciary Committee we will have held seven hearings involving judicial nominees and held two hearings in three of those 4 months.

A fair assessment of the circumstances of this year—in this shortened time frame of only a few months in session, with the obstruction in reorganization, the Republican objection that required all judicial nominations to be returned to the White House over the August recess, the President's unprecedented change in the process that shunted ABA peer review to the back end after the nomination, and now with the aftermath of the September 11 terrorist attacks—the committee and the Senate should be commended, not criticized, for our efforts to out pace the confirmations in the first years of the Clinton administration and the first year of the first Bush administration. Although we have redirected much of the committee work and attention to hearings and a legislative response following the terrible terrorist attacks on September 11, I have continued to hold confirmation hearings for judicial nominations at a pace far in excess of that maintained by my Republican predecessor.

In spite of unfair and unfounded criticism, I have continued to proceed with additional hearings and press onward as best I can to have the committee work to fulfil its role in the confirmation process. With cooperation from the White House and all Senators, both Republican and Democratic, I have no doubt that we can match and likely better the confirmation totals for the first year of the first Bush administration in 1989 by the end of the month.

I was encouraged to hear the White House sound a different tune recently when its spokesperson suggested that the point at which to assess our progress on judicial nominations will be at the end of the session. That is a far cry from the predictions earlier that there would be no confirmations by the Democratic majority and the subsequent White House prediction, which we have already topped, that there would be only five confirmations all year. I think that is a sensible thought and that we would be in position to compare apples with apples at the end of the first year of this administration.

Some Republican Senators have worked with me to expedite consideration of judicial nominees needed for their States and I appreciate their courtesy and have tried to accommodate them and the needs of the Federal courts in their States at the earliest opportunity. Others will carp and criticize no matter what we are able to achieve. I only wish those who now are rushing forward in the first weeks of my chairmanship to ''champion'' the cause of the Federal judiciary and see the current vacancies as a crisis would have sounded the call during the slowdown over the last 7 years. Had they joined with me in my efforts when they were in the majority, we would not have the vacancies we have now around the country. Many more would have been filled more quickly. I welcome them to the cause of the administration of justice but have to wonder whether their conversion is one of principle or partisanship. With few exceptions—Senator SPECTER comes to mind as someone who urged prompt action on nominees over the course of his Senate career including during the last several years—today's critics were comfortable defenders of slower confirmation hearings, long-delayed action on scores of nominees and no action on many others. Given that none of the current critics has yet admitted that Republicans did anything wrong over the last 7 years and has steadfastly defended the pace at which the Republican majority chose to act then, I would think they would be praising our current efforts that exceed the confirmation pace and hearing schedule that Republicans maintained when they held the Senate majority.

When I became chairman in June, I expressed my commitment to improving upon the inefficiency and lack of bipartisanship displayed by the committee in recent years. With respect to judicial nominations, our first hearing was noticed within 10 minutes of the adoption of the reorganization resolution and within a day of the committee's membership being set on July 10. I have alluded to the two unprecedented August recess hearings I chaired last month involving judicial nominations.

Indeed, at the first on August 22, no Republican member of the committee even attended. In addition to taking place during the August recess, those August hearings were unusual in that they were held without having nominations pending before the committee.

Just before the Senate recessed in early August, the Senate leadership requested that nominations, including all pending nominations for judicial appointment, be retained through the August recess. This proposal was made by the Democratic leadership notwithstanding the Senate rule that nominations should be returned to the President when the Senate recesses for a period of more than 30 days.

It was the objection of the Republican leader to that unanimous consent request that resulted in the return of all nominations, including all judicial nominations, to the President in early August. That Republican objection has resulted in the strict application of the Senate rules which has required needless paperwork and occasioned more unnecessary delay.

Given the objection by the Republican leader, no nominations were pending before the Senate or the Judiciary Committee on August 22 or August 27 when we convened our recess hearings. In order to proceed last month, we did so in a highly unusual manner. I did so with a high level of concern about that unusual procedure and noting the exceptional nature of those hearings.

Like the month-long delay in reorganizing the Senate, the objection of the Republican leader to the Senate retaining pending nominations through the August recess served to complicate and delay consideration of nominations. The bumps in the road created by the other side are especially frustrating. Similarly, President Bush's decision to delay the American Bar Association's evaluation of a judicial nominee's qualifications until the nomination is made public, has forced delays in the rest of the process as well.

As a result of this administration's break with the 50-year-old precedent established under President Eisenhower, the confirmation process of even the least controversial and most qualified candidates is necessarily delayed by several weeks after nominations are received by the Senate. There were no District Court nominees who had been evaluated in time for the confirmation hearing I convened on July 24.

With the return to the President of the District Court nominees the President sent to the Senate in early August and the delay in ABA peer review that results from the White House's decision to change the process that had worked for more than 50 years for Republican and Democratic Presidents alike, we have continued to have a limited pool of District Court nominees available for consideration at hearings.

Likewise, this administration's failures early on to consult with Senators from both parties and to seek nominees who would enjoy broad bipartisan support remains a source of concern. We have nominees pending whom the home State Senators do not know, and with whom they are not familiar and have never met.

In spite of these difficulties, we continue to move forward and exceed the pace set by both the Bush administration in 1989 and the Clinton administration in 1993. Under Democratic leadership, the Judiciary Committee is making important strides toward replenishing our Federal judiciary. I have adhered, and will continue to adhere,

to a rigorous schedule, despite the terrorist attacks of September 11, and despite the limited opportunities provided by my not assuming the chairmanship until mid-session.

The Federal courts remain a symbol of justice to our citizens and to believers in peace and democracy throughout the world, and therefore, I will work diligently to keep the judicial nominations process on track.

Judge Parker will be a good addition to the Second Circuit. He is universally praised by the Senators from New York and Connecticut. He has been an outstanding District Court Judge. He is another from among the first group of nominees sent to the Senate by President Bush in May and resubmitted in September. He was reported unanimously by the Judiciary Committee, received the highest possible review from the ABA, and comes from a distinguished family of jurists.

Justice Mills is strongly supported by his home State Senators. He literally went the extra mile and drove from Mississippi to his confirmation hearing on September 13 when the air travel system in the country was still recovering from the terrorist hijackings of September 11. I was gratified to hear Justice Mills testify that he will follow the time-honored principles of stare decisis and respect the settled law establishing a woman's right to choose.

I had been concerned about his interpretation of binding precedent and the law given his dissent in McMillan v. City of Jackson. In his dissent he concluded that a protester convicted of trespassing at a family planning clinic should have been permitted to present a defense of necessity—in other words to justify his unlawful conduct by arguing that the protester had a reasonable belief that such action was necessary to prevent a significant evil.

Having heard Justice Mills state at his hearing that he will have the utmost respect for judicial precedent as a judge on the federal bench, I am prepared to support his nomination in spite of his dissent in McMillan and out of respect for Senator COCHRAN and Senator LOTT.

In addition to the judicial nominees the Senate is considering, we are also considering the nominations of 14 men and women to become United States Attorneys across the country, as well as the nomination of Benigno Reyna to be the Director of the United States Marshals Service.

Earlier this year I raised the problem created by the administration being so slow to nominate United States Attorneys after calling upon those holding those critical law enforcement posts to tender their resignations. I am glad that the White House took those observations to heart and began sending us nominees to be the Justice Department representatives in districts in each of our States all across the country.

The President did not nominate anyone to be a United States Attorney until July 31, just before the August recess. Unfortunately, due to the objection of the Republican leader even those few nominations were required under Senate rules to be returned to the White House during the recess. In essence, we are working through nominees effectively received on September 5 and thereafter.

Since that time the Judiciary Committee has already reported almost half of the nominations received between September 5 and September 19 and will continue to press the administration to complete the paperwork requirements on these nominations as soon as possible. The paperwork on the first group of nominees was not completed until the second week of September. They were then reported out and confirmed.

This second large group of 14 United States Attorneys will bring to 26 the United States Attorneys confirmed in the period between September 14 and October 11. I am proud of our record. We have managed to work through almost half of the 54 nominations for United States Attorney in a short period. Of course, the President has yet to nominate as many as 40 United States Attorneys. We will continue to try to work with the administration to make progress on these nominations.

I remain disturbed that the administration has yet to nominate a single United States Marshal for the 95 Districts across the country. The Marshals Service is older than the Department of Justice itself and has long been an essential component in Federal law enforcement. Yet here we are in mid-October without a single nominee. It was created by the first Congress in the Judiciary Act of 1789.

When we are calling upon the Marshal Offices and their deputies to help with security at airports, to contribute to the sky marshal program, to provide security at Federal buildings and for the Federal courts and to protect us in so many ways, we need to take these matters seriously and move forward.

I know that Deputy Marshals from Vermont, for example, are helping with operations in Vermont and in other parts of New England to ensure airport security and to protect government operations and all Americans. Senators can be helpful to the administration in the selection of United States Marshals and trust that the administration will begin consulting with Senators so that we can move forward to fill these vital positions.

Today the Senate does have before it the nomination of Benigno Reyna to head the United States Marshals Service as its new Director. He will direct a crucial component of our Federal law enforcement family, the United States Marshals Service. In this difficult time for America in the wake of the attacks on September 11, I am pleased that we have been able to expedite his consideration by the Senate.

Having received his nomination on September 12, we proceeded to include him in a confirmation hearing on September. Even though we did not receive his nomination until September 12, we were able to move him quickly to a hearing within a week and he is being considered by the Senate less than one month after his nomination.

I thank the Acting Director of the United States Marshals Service, Louie T. McKinney, and all of the acting United States Marshals and Deputy Marshals from around the country for their service in the past difficult days and for their continuing dedication and sacrifice.

I wish Director Reyna, as well as the 14 new United States Attorneys around the country success in their new challenges.

I am proud of the hard work the Judiciary Committee has been doing to confirm these and others of the President's nominees to the Department of Justice. Since the committee was reassigned members on July 10, we have held ten nomination hearings for executive branch nominees.

We have proceeded expeditiously with hearings for the FBI Director, the Administrator of the Drug Enforcement Administration, the Commissioner of the Immigration and Naturalization Service, the Assistant Attorney General for the Tax Division, the Assistant Attorney General for the Office of Justice Programs, the Director of the National Institute of Justice, the Director of the Bureau of Justice Assistance, the Director of the Office for Victims of Crime, the Director of the United States Marshals Service, the Associate Attorney General, and the Assistant Attorney General for the Office of Legal Counsel.

Further, we have proceeded to confirm Assistant Attorneys General to head the Civil Rights, Antitrust, Civil and Tax Divisions.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, let me just say, if I may, in the first year of the Clinton administration the committee was controlled by Democrats. In the last year of the Bush administration the committee was controlled by Democrats. I have to say—when the all-time champion, with 382 confirmed judges, was Ronald Reagan—that it seems to me the moaning should quit at this point because we confirmed 377, 5 fewer than Reagan, including the time Senator BIDEN was chairman; and he did a good job. There were five fewer than Reagan during the Clinton years. In my opinion, they would have had at least three more than Reagan, had it not been for Democratic holds and objections to their own nominees.

So let's just understand something: We are not putting these judges through anywhere near as fast as we should be putting them through. Most of the statistics show that the judges who were nominated in the first year of a President, up to August 1st, basically went through.

When we have had confirmation of these two judges, there will be eight

who will have gone through, three of whom are Democrats, whom I support. I think we have to do a better job because the Federal judiciary is one-third of the separated powers of this country. We now have 110 vacancies. With these 2, it will be 108. We have 51 judges, nominees, sitting here, not getting hearings.

I happen to appreciate the work the distinguished Senator from Vermont has done with the ones who have gone through, but we have not done nearly what we should do before the end of this particular session of Congress. I hope we can do a better job in the last week or so of this Congress to get more judges confirmed.

It isn't a matter of politics; it is a matter of doing what is right for a third of the separated powers of our Government. I have to say, I do get a little tired of hearing that we put through as many as the first year of the Clinton administration and the last year of the Bush administration, both of which were controlled by Democrats.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. LOTT. Thank you, Mr. President.

First, let me say to Senator LEAHY from Vermont, for those who have been confirmed and those who are going to be reported out, I say thank you very much. We do appreciate that sincerely. I am convinced that Senator LEAHY, as chairman of the Judiciary Committee, and the Judiciary Committee, working with the leadership, will be having more hearings and will be reporting out additional judges. I certainly hope that is the case.

Our concern, though, is some of the statistics that I think are not disputable. For instance, since the August recess, I believe we have only confirmed two judges—one circuit, one district. I understand there have been two more reported, and we will be voting on those two. So that is four.

I understand there has been a hearing, and maybe five more may be reported out this week, and then that they would be voted on, I assume, next week. But it is a fact that there are 110 vacancies, and there are 49 nominees pending before the committee. I believe that is right.

Mr. HATCH. Fifty-three.

Mr. LOTT. Well, I keep hearing different numbers. The fact is, there is a large number pending. But here is what really does concern me. Of the judges whose names were submitted as far back as May and June, of that group of circuit judges, which included 19 of them, and including Judge Gregory, who clearly is a Democratic nominee, only 3 have been confirmed. One more has been reported. And there has been 1 hearing, leaving 14 of the 19 circuit judges' names submitted in May or early June. I understand the ABA reports are completed. They have had no hearing and have not been reported.

On the circuit judges, of those who were reported in May and June, three have been confirmed. None is on the calendar. Two hearings have been completed. And there are two on which there has been no action.

So there are 16 judges—circuit and district—who have been there since May and June.

Having said that, I know the chairmanship changed in June, and it took time to get organized in July, and we were out in August, and we had an incident on September 11 that affected our schedule, and the Senator from Vermont and the committee have been involved in the counterterrorism.

But that is as it is.

What I have asked Senator DASCHLE and Senator LEAHY is to give me some indication of how the hearings will proceed, how the reports will proceed throughout the rest of October and into November.

You know, it is so funny. One final point.

Mr. LEAHY. Would the Senator like an answer?

Mr. LOTT. I would. One final point: It is amazing how history repeats itself. What you were saying last year we are saying this year. I guess before that, we were saying it or you were saying it.

So I would like to submit for the RECORD—and I ask unanimous consent to have this printed in the RECORD—quotes that were being offered just 1 year ago on this same subject. There were complaints from me that the intelligence authorization bill was being held up, appropriations bills were being delayed, not enough judges were being moved. So this is not new. But I just ask that we continue to work together to try to move the judicial nominations forward.

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

A YEAR AGO, IT WAS DEMOCRATS PUSHING FOR JUDICIAL CONFIRMATIONS

''I was in the Minority for a number of years in my present position and . . . I worked very hard in moving legislation, and we did not hold up legislation based on judges. We did not do that. . . . We did not hold up legislation based upon judges . . . we had a right to do so, but I felt, and Senator Daschle felt as minority leader that we had an obligation to move legislation. . . .''—Senator Harry Reid, Congressional Record, 10/10/2001, S10405

Compare the Majority Whip's remarks yesterday with the following statements he and the then Minority Leader made a year ago when they were in the minority and their party's president was in the White House.

EXHIBIT NO. 1: On July 21, 2000, while objecting to Majority Leader Lott's attempt to proceed to S. 2507, the Intelligence Authorization Bill, Minority Leader Daschle stated: ''I hope we can accommodate this unanimous consent request for the intelligence authorization. As [does] Senator Lott, I recognize that it is important, and I hope we can address it. I also hope we can address the additional appropriations bills. There is no reason we can't. We can find a compromise if there is a will, and I am sure there is. But we also want to see the list of what we expect will probably be the final list of judicial nominees to be considered for hearings in the Judicial Committee this year. I am anxious to talk with him and work with him on that issue. All of this is interrelated, as he said, and because of that, we take it slowly.'' [Congressional Record, S7426]

EXHIBIT NO. 2: On July 24, 2000, while objecting to Senator Lott's repeated attempt to proceed to S. 2507, the Intelligence Authorization Bill, Minority Whip Reid stated: ''I think it is unfortunate that we have been unable today to deal with [Judiciary Committee Chairman] Hatch. . . . I hope this evening or tomorrow we can sit down and talk. For example, I believe the judge's name is White . . . who has been before the committee and has not had a hearing. . . . In short, we hope in the meeting with Senator Hatch, either tonight or tomorrow, we will be in a position where we can expedite the rest of the work this week and move on to other things.'' [Congressional Record, S7469]

EXHIBIT NO. 3: On July 25, 2000, while discussing with Senator Domenici the delays in proceeding to the Energy and Water Appropriations Bill, Senator Reid stated: ''We believe there should be certain rights protected. Also under [the] Constitution, we have a situation that was developed by our Founding Fathers in which Senators would give the executive branch—the President—recommendations for people to serve in the judiciary. Once these recommendations were given, the President would send the names back to the Senate and we would confirm or approve those names. One of the problems we are having here is it is very difficult to get people approved, confirmed. This has nothing to do with the energy and water bill. It does, however, have something to do with the other bills. We could have moved forward on the energy and water bill on Friday until this glitch came up.'' [Congressional Record, S7525]

EXHIBIT NO. 4: On July 25, 2000, while discussing with Senator Wellstone the need to ''do the Senate's business'' and the then-current status of bills under the Republican-lead Senate, Senator Reid stated: ''We have a very simple situation here. We in the minority believe we have had the right to have a few judges approved by the Senate. . . . We also believe we have some appropriation bills that need to move forward, and there are some strings on that. We want to work, but there are some things that we think, in fairness, we deserve. As a result of that, things have slowed down, which is too bad.'' [Congressional Record, S7504]

Mr. LOTT. Mr. President, I understand that a judge whose name was submitted in June, and had his ABA rating of ''excellent'' in July, has not had a hearing. But, as a matter of fact, he is going to have one next week. So the process is moving. I hope we will continue to get that done. But we have a lot of them who have been here since May and June on whom we do need action. I hope we can get a commitment to get that action soon.

With that, I yield for a question or comment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. The distinguished Republican leader and I have been friends for over 20 years. He is a year younger, so I think of him as still a good friend. I must admit that he is ahead of me in one area, especially: He has two grandchildren now, and will be happy to show any Senators pictures. I only have one.

But he asked where we are going to go. I will tell him there is a couple

things we will not do. We had 34 months the Republicans controlled the Senate during the Clinton years where there were no hearings at all. I have no idea how many months or years I might be chairman of this committee, but I have no intention of having a record like that.

In fact, when we reorganized committees, we actually had a committee within 10 minutes of the time—10 minutes—and the notice of the first hearing in a matter of days. When Senators have told me there was a problem—the Senator from Mississippi had no problem getting his judges up. We are going to vote on one in just a few minutes. There were earlier objections because of rulings that judge made. I helped clear those objections. I believe the Senator from Mississippi has another judge up for a hearing next week.

So, one, I will not go 34 months; two, I have been trying to accommodate Senators when they have told me they have had a problem. I even had hearings in the August recess to help out with this.

Now the Republicans did control the Senate for a while this year. They did not have any hearings. I had 2 days of hearings during the August recess. Ironically enough, no Republican even showed up for one of them, for judges; and one Republican member of the committee issued—actually two members criticized us for even holding the hearings in August on President Bush's nominees.

So I think you are kind of in a ''damned if you do, damned if you don't'' situation. One Republican Senator announced to the whole Senate that I had announced in the press that one of these nominees would never get a hearing. When I asked him where that was in the press, he said, well, maybe somebody else said it; but he did nothing to retract that, of course.

So it is kind of a difficult thing, I tell my good friend. But I am not going to do as the Republicans did in 1996, where we had no courts of appeals hearings. I do recognize there are some vacancies. Of course, there were nominees for those vacancies. Some sat here for 3 or 4 years without having any hearing or vote under the Republican administration of the Senate; 3 or 4 years unable to even get a hearing or vote.

We are moving. We will have more hearings next week. I will probably continue to have hearings during recesses. I will probably continue to have complaints from Republican Senators or their offices when I have those hearings during a recess, and some will probably not bother to show up. But because I have told my friend from Mississippi we will keep moving, we will. He should rest assured that, as tonight, when his judge is here, in a couple more weeks, his judge will be here again. I don't know if that helps as an answer to him.

I also suspect, I say to my friend from Mississippi, we have a terrorism bill to go to tonight. He would probably like us to get to votes on his judge and another judge so we can get to terrorism.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I will take another couple minutes. I want to set the record straight. During the first year of the Clinton administration, only five court of appeals nominees were nominated during the first year. Of those five nominees, three were reported out the same year. That is 60 percent of President Clinton's court of appeals nominees in his first year that were reported. In contrast, President Bush has nominated 25 circuit court nominees, and the committee has reported 4. That is 16 percent. There were only two circuit court nominees at the end of President Clinton's first year left in the committee. There are currently 21 of President Bush's circuit court nominees pending in committee and who will be left at the end of his first year if the committee does not act soon.

It is an unfair comparison when you take into account the fact that President Bush has chosen to nominate 20 more circuit court nominees than President Clinton did in his first year.

The fact is, most of these circuit court nominees have well-qualified ratings, meaning they have the highest ratings the American Bar Association can give. I can point to a lot of instances where the ABA has not done a fair job. You have to presume they really have to be good to get well-qualified ratings. It is absolutely wrong that we are not moving on those circuit court nominees as well as the district court nominees. I hope we can get that done in the near future.

I will work with Senator LEAHY to try to get it done. We have to do better than we are doing.

Mr. LEAHY. Mr. President, I agree, we want to do better than we did in the last 6 years. I will certainly try to move faster on these than the Senator from Utah did when he was chairman.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, in light of the conversations just ensued, I say to the Senator from Vermont that he has done an absolutely superb job over the last month since September 11 in being able to put together the antiterrorism bill we will be considering later this evening. I, for one, think this should have been clearly the first and only priority of the committee over that period of time.

We have had this long discussion. Certainly for the period since September 11, the accomplishments of the chairman of the Judiciary Committee and his colleagues on that committee in shaping that legislation and getting it before us tonight were splendid.

I yield the floor.

Mr. DODD. Mr. President, I rise in support of the nomination of Judge Barrington Parker to be United States Circuit Judge for the Second Circuit. It is a distinct pleasure for me to recommend Judge Parker to the Senate.

I would like to point out that this is not the first time that the Senate has been called upon to confirm Judge Parker. On September 14, 1994, he was unanimously confirmed by the Senate to serve as judge for the United States District Court for the Southern District of New York.

Judge Parker is a distinguished jurist. He has proven that the Senate's trust in his abilities were well placed. He has accumulated a superb record as a Federal jurist. His career on the bench has been marked by the same character of excellence and the same principled work ethic that marked his career as a lawyer first at the New York law firm of Sullivan & Cromwell, Parker Auspitz Neesemann & Delehanty and finally at the firm of Morrison & Foerster.

I suppose we shouldn't be surprised that Judge Parker has made such great contributions to the legal community in New York and to the Federal bench. After all, he was educated at an extraordinary college and law school in the great state of Connecticut. The time he spent at Yale equipped him to serve with distinction. And incidentally, his choice of residence in the State of Connecticut further demonstrates, at least to me, that he possesses excellence judgement.

Members of law enforcement sometimes refer to themselves as the ''thin blue line.'' In a similar way, members of the judicial branch can be considered the ''thin black line.'' Judges stand as the critical bulwarks in our society against forces that can break down a society, against injustice, against prejudice and against the neglect of individual rights. They take the high and lofty principles upon which our republic is founded and hand them down to all, the rich and the poor, the high and the low, all alike.

It has been said that the Constitution and the laws that are enacted under the Constitution comprise living, breathing documents. That is, of course, true. But it's also true that it is the labor of people who live, professionally speaking, in the law, the students, the practitioners, and especially the adjudicators of the law, that constantly breath new life into what would otherwise be fine but ineffectual words on a page.

The rights and freedoms that we each enjoy as Americans are an inheritance, not an entitlement. They exist for us only to the degree that we are willing to struggle to retain them and to constantly define what they mean for our times.

Judges are indispensable actors in this struggle. In Judge Parker I believe we have a jurist whose experience and temperament will prove a valuable asset to the Second Circuit and the great and enduring cause of equal justice under law. Especially now, when that cause has come under unprecedented attack from acts of terror, our

nation needs the commitment and service of people like Barrington Parker. Based on everything I know about Judge Parker, he meets the highest standards of judicial professionalism.

I hope and trust that the Senate will reach the same conclusion that I have reached and Judge Parker will confirm him as United States Circuit Judge for the Second Circuit.

Mr. HATCH. Mr. President, I would like to respond to three points raised earlier this evening concerning judicial nominations. The first is the assertion that the Judiciary Committee has acted on as many nominations this year as it did during President Clinton's first year in office. That assertion is not only incorrect, but also ignores several important facts.

President Clinton nominated 32 judges before October 31, 1993, his first year in office. Twenty-eight were confirmed that year. That's an 88 percent confirmation rate. It's similar to the confirmation rate during the first year of President G.H.W. Bush's presidency—89 percent—and compares to President Reagan's 100 percent rate of confirmation for nominees sent to the Senate before October 31, 1981.

Compare these rates to where we are under President Bush and Chairman LEAHY. President Bush has nominated 59 judicial nominees. Only eight have been confirmed—including the two the Senate confirmed tonight. That's a rate of 13.5 percent. If the Senate completes this session without raising this rate to the range of 88 to 100 percent, it will be a dramatic break with precedent and a great embarrassment to this entire body. This is especially true because today we have 108 vacancies in the federal judiciary. That means that 12.6 percent of federal judgeships are unfilled. These empty seats should especially concern us in light of the enormous law enforcement effort underway to investigate the recent terrorist attacks and to prevent any future terrorist events.

Today's 12.6 percent vacancy is atypical. Compare it to the rates at the conclusion of the three Congresses when Bill Clinton was President and I was Chairman of the Judiciary Committee. At the end of the 104th Congress, the vacancy rate was 7.7 percent. At the end of the 105th, it was 5.9 percent. And last year at the end of the 106th Congress, it was 7.9 percent. Ironically, some of the same people who constantly bemoaned the judicial vacancies when Bill Clinton was President are silent today despite the much larger number of vacancies.

Mr. President, the second point to which I want to respond is the implication that the lack of a Senate organizational resolution in June of this year precluded the Judiciary Committee from holding confirmation hearings on judicial nominees during the three weeks that elapsed between June 5, the date our Democratic colleagues assumed control of the Senate, and June 29, the date the Senate reached an agreement on reorganization. That implication arises from the statement that the Committee scheduled a hearing within minutes of the Senate reorganization. I am puzzled by these remarks, because I see no reason why the Committee could not have held confirmation hearings under Democratic control prior to reorganization.

The lack of an organizational resolution did not stop other Senate committees from holding confirmation hearings. In fact, by my count, after the change in Senate control, nine different Senate Committee Chairmen held 16 different nomination hearings for 44 different nominees before reorganization. One of these committees—Veterans' Affairs—even held a mark-up on a pending nomination. But in the same period of time, the Judiciary Committee did not hold a single confirmation hearing for any of the then 39 judicial and executive branch nominees pending before us—despite the fact that some of those nominees had been waiting nearly two months.

What's more, the lack of an organizational resolution did not prevent the Judiciary Committee from holding five hearings in three weeks on a variety of other issues besides pending nominations. Between June 5 and June 27, the Committee held hearings on the Federal Bureau of Investigation, the faith-based initiative, and death penalty cases. There were also subcommittee hearings on capital punishment and on injecting political ideology into the Committee's process of reviewing judicial nominations.

Although several members were not technically on the Committee until the Senate reorganization was completed, there was no reason why Senators who were slated to become official members of the Committee upon reorganization could not have been permitted to participate in any nomination hearings. This was successfully accomplished in the case of the confirmation hearing of Attorney General John Ashcroft, which was held when the Senate was similarly situated in January of this year. So, while I appreciate the Chairman's efforts, I am compelled to clarify that neither the lack of an organizational resolution nor any other factor prevented this Committee from holding confirmation hearings in June. Consequently, there is simply no significance to the fact that the scheduling of a hearing occurred in proximity to the adoption of the resolution.

Mr. President, the third point to which I want to respond is the use of a statistic: the number of months during my chairmanship in which no nominations hearings were held. I am not going to quibble over that particular number here tonight because I disagree with the whole idea that such a statistic could be relevant to any analysis of whether the Senate is performing its constitutional advice and consent function sufficiently.

Perhaps an analogy would help. Say you had a fire that is going to require 108 gallons of water to extinguish. And say that the person in charge of supplying you the water prefers to count in ''containers'' rather than gallons—but won't tell you how big the containers are or how much water is in them. Every time you say ''I need 108 gallons of water,'' he responds, ''I've already delivered several containers.''

My point is that, with 108 judicial vacancies in our courts, and only 8 of 59 nominees confirmed this year, it is not particularly useful to measure progress in terms of the number of hearings held. I suppose the Committee could hold 8 hearings to confirm 8 nominees if it wanted to, but the result would be no different than having a single hearing with 8 nominees. Although we cannot have confirmations without hearings, hearings are not an end in themselves. What matters is the number of judges confirmed to the bench.

The bottom line of the Chairmanship is that the Senate confirmed essentially the same number of judges for President Clinton as it did for President Reagan—only 5 fewer. This proves the Republicans were fair—especially because it was a six-year Republican-controlled Senate that confirmed 382 Reagan nominees, and a six-year Republican controlled Senate that confirmed 377 Clinton nominees. Some Democrats avoid discussing this bottom-line fairness because they know there is no partisan retort. So instead of working toward their own bottom-line number proving fairness to President Bush, some are focusing instead on the number of hearings held. In the end, the only statistic that matters is the number of confirmations. I urge the Democrats to get to work.

Mr. GRAMM. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. Under the previous order, the clerk will report the nomination of Barrington D. Parker, Jr.

The legislative clerk read the nomination of Barrington D. Parker, Jr., of Connecticut, to be United States Circuit Judge for the Second Circuit.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Barrington D. Parker, Jr., of Connecticut, to be United States Circuit Judge for the Second District? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 297 Ex.]

YEAS —- 100

Akaka	Brownback	Cochran
Allard	Bunning	Collins
Allen	Burns	Conrad
Baucus	Byrd	Corzine
Bayh	Campbell	Craig
Bennett	Cantwell	Crapo
Biden	Carnahan	Daschle
Bingaman	Carper	Dayton
Bond	Chafee	DeWine
Boxer	Cleland	Dodd
Breaux	Clinton	Domenici

Dorgan	Johnson	Roberts
Durbin	Kennedy	Rockefeller
Edwards	Kerry	Santorum
Ensign	Kohl	Sarbanes
Enzi	Kyl	Schumer
Feingold	Landrieu	Sessions
Feinstein	Leahy	Shelby
Fitzgerald	Levin	Smith (NH)
Frist	Lieberman	Smith (OR)
Graham	Lincoln	Snowe
Gramm	Lott	Specter
Grassley	Lugar	Stabenow
Gregg	McCain	Stevens
Hagel	McConnell	Thomas
Harkin	Mikulski	Thompson
Hatch	Miller	Thurmond
Helms	Murkowski	Torricelli
Hollings	Murray	Voinovich
Hutchinson	Nelson (FL)	Warner
Hutchison	Nelson (NE)	Wellstone
Inhofe	Nickles	Wyden
Inouye	Reed	
Jeffords	Reid	

The nomination was confirmed.

VOTE ON NOMINATION OF MICHAEL P. MILLS

The PRESIDING OFFICER. The clerk will report the nomination Michael P. Mills.

The legislative clerk read the nomination of Michael P. Mills, of Mississippi, to be United States District Judge for the Northern District of Mississippi.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Michael P. Mills, of Mississippi, to be United States District Judge for the Northern District of Mississippi? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Connecticut (Mr. DODD) and the Senator from Vermont (Mr. JEFFORDS) was necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 298 Ex.]

YEAS—98

Akaka	Durbin	McCain
Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Feingold	Murkowski
Bennett	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Helms	Schumer
Cantwell	Hollings	Sessions
Carnahan	Hutchinson	Shelby
Carper	Hutchison	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Johnson	Specter
Cochran	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thomas
Corzine	Kyl	Thompson
Craig	Landrieu	Thurmond
Crapo	Leahy	Torricelli
Daschle	Levin	Voinovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wellstone
Domenici	Lott	Wyden
Dorgan	Lugar	

NOT VOTING—2

Dodd	Jeffords

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President is notified of the Senate's actions.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

Under the previous order, the Senator from Ohio is recognized.

FEDERALIZATION OF AVIATION SECURITY

Mr. DEWINE. Mr. President, let me first thank Senator HOLLINGS and Senator MCCAIN for their hard work and diligence in getting the aviation security bill passed this evening. I congratulate them for this accomplishment.

Let me also thank and commend my colleague from Montana, Senator BURNS, for his contribution to this bill. I cosponsored and I spoke earlier today in support of his amendment to put certain aspects of aviation security in the hands of the Justice Department.

I support this effort because the Justice Department is in the law enforcement and security business. The Department has a law enforcement mindset, a security mindset, and that is the mindset, a way of thinking, that is essential to making sure our airports and aircraft are safe and our people are secure.

Having said that, the bill we passed today, though it has some very good and very important provisions, also has, in my opinion, a very significant problem. That problem is the bill as currently written mandates all security functions at the Nation's major airports be handled exclusively by Federal employees. I believe this is a problem because this provision does not allow for the hiring flexibility necessary to protect the traveling public. How can this Congress say with absolute certainty that a 100-percent federalized security force will in every case do the best job in carrying out security measures? I do not think we really can say that.

The reality is we do not know right now. Yes, we do know we need the Federal Government to be in charge at our airports, and this bill, thank Heavens, does that. I also believe strongly that flexibility is key to determining the best makeup of the security workforce. Flexibility in hiring between Federal workers and private contractors is absolutely essential.

At the same time, we need the Government to establish and enforce higher, more stringent security standards. That is clear. The Government must set the security standards. The Government must be in charge. The Government must assess the risks, set the standards, and then test compliance with those standards. The standards, yes, must be strict and they must be tough and they must be comprehensive.

The public demands we do this, and the public is right. That does not necessarily mean a 100-percent federalized security workforce at our airports is in every case going to be the best security; that somehow a Federal takeover and full Government presence at our airports will restore the public's confidence in air travel. Rather, higher standards and enforcement of those standards by our Government will give the public back its trust in the system.

There are certainly gaps in our current airport security system. The way security works now is the airlines that have the biggest presence at a given airport usually are the ones responsible for hiring contract security employees. Not surprisingly, the jobs normally go to the lowest bidders. It should come as no shock that current security is not what it should be. Screeners of baggage are low-skilled, low-paid employees. Turnover is subsequently often as high as 100 percent in a given year, with the average employee today staying no longer than 6 months in that job.

The fact is, unless there is accountability, unless there is a way to ensure the security personnel are doing their jobs, we cannot protect the traveling public. If private sector personnel are not doing the job, we will and can cancel their contract. It is that simple. They have a very real and very practical incentive to do a good job.

Further, it is difficult for the Government to be in the business of ''regulating security'' and carrying out its actual operation. Other nations around the world don't do it that way. Israel, with one of the best security records and one of the most dangerous terrorist-ridden parts of the world, does not do it that way. They do not do what this bill mandates.

Most nations in Europe had total federalization, and now they have changed to a mixed system. Most of the countries in Europe, as the chart indicates, contract out well over a majority of the security operations while the government maintains the regulatory role.

The average Federal private personnel split in airport security across Europe is 85-percent private employees, mostly handling screening; 15 percent are government employees, performing the main law enforcement duties. The chart clearly shows this. European passenger screening is the responsibility of the government, not the airlines, but the European governments, in turn, have the flexibility to use either civil servants or private contractors to do the job. This works and it works very well. It is a public-private mix.

A recent FAA study found airport screeners in an unnamed European country were twice as likely as their American counterparts to spot dangerous items in scanned baggage. Additionally, in European airports they have a 2.5 times greater personnel outlay than in the United States. They pay more. The cost is 2½ times for security in Europe than in the United States. We see the results.

The fact is, privately contracted security personnel in Europe are seen as