

Harkin	Lincoln	Schumer
Hatch	Lott	Sessions
Helms	Lugar	Shelby
Hollings	McCain	Smith (NH)
Hutchinson	McConnell	Smith (OR)
Hutchison	Mikulski	Snowe
Inhofe	Miller	Specter
Inouye	Murkowski	Stabenow
Jeffords	Murray	Stevens
Johnson	Nelson (FL)	Thomas
Kennedy	Nelson (NE)	Thurmond
Kerry	Nickles	Torricelli
Kohl	Reed	Voivovich
Kyl	Reid	Warner
Landrieu	Roberts	Wellstone
Leahy	Rockefeller	Wyden
Levin	Santorum	
Lieberman	Sarbanes	

## NOT VOTING—3

Byrd	Dayton	Thompson
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The nomination was confirmed.

The PRESIDING OFFICER (Mr. BAUCUS). The motion to reconsider is laid upon the table.

## LEGISLATIVE SESSION

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

The Senator from New Mexico.

## ORDER OF PROCEDURE

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Senator from Vermont, Mr. LEAHY, be allowed to speak for up to 5 minutes, followed by Senator MILLER from Georgia for 10 minutes, followed by Senator ROBERTS from Kansas for 10 minutes.

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Pennsylvania, Mr. SPECTER, be recognized for 5 minutes as in morning business.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, reserving the right to object, my concern is we have pending a cloture vote tomorrow at some time. I have no objection to accommodating my colleagues to speak this morning, but I wonder if we could get some idea as to how to proceed so that this would not take away from the time before the proposed cloture vote. I have no idea what time it would be.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to my friend from Alaska, the majority leader said that people can talk tonight as long as they care to talk. He has not yet decided what time the cloture vote will be in the morning, but there should be time to talk in the morning also.

Mr. MURKOWSKI. Then, I would simply appeal to the majority leader, who I see is on the floor, to allow us an additional time from whatever his time may be, which we do not know.

But to extend the courtesy, I have no objection.

The PRESIDING OFFICER. Is there objection?

Mr. MURKOWSKI. Mr. President, I put our Members on notice, we have probably 15 Members who want to speak today. So I suspect we will be in rather late this evening.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I modify my request, that after the Senator from Vermont and the Senator from Pennsylvania and the Senator from Georgia and the Senator from Kansas have all spoken, that we go back on the bill, and that I be recognized to speak at that time on the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Vermont.

## NOMINATIONS

Mr. LEAHY. Mr. President, I thank my colleagues for their unanimous and positive vote on the last nominee. I will bring everybody up to date.

Today, the Senate is voting on the 44th judicial nominee to be confirmed since last July when the Senate Judiciary Committee was reassigned new members in connection with the reorganization of the Senate after the shift in majority. The confirmation of Judge Africk will be the third district court judgeship we have filled in Louisiana and the seventh judgeship filled overall in the Fifth Circuit since July, including the first new judge for the Fifth Circuit in seven years. In fact, it was this Senate's confirmation of Judge Edith Brown Clement last fall that created this vacancy, which we are now proceeding to fill without delay.

In the past few months, the Senate has also confirmed Judge Kurt Engelhardt and Judge Jay Zainey to fill vacancies on the District Court for the Eastern District of Louisiana. The Senate has confirmed Judge Michael Mills to fill a vacancy on the District Court for the Northern District of Mississippi. The Senate has also confirmed Judge Philip Martinez to fill a vacancy on the District Court for the Western District of Texas and Judge Randy Crane to fill a vacancy on the District Court for the Southern District of Texas.

Of course many of the vacancies in the Fifth Circuit are longstanding. Judge Clement was confirmed to fill a judicial emergency on the Fifth Circuit. Judge Martinez and Judge Crane likewise filled what had been judicial emergencies. These many vacancies and emergencies are the legacy of the years of inaction. For example, despite the fact that President Clinton nominated Jorge Rangel, a distinguished Hispanic attorney, to fill a Fifth Circuit vacancy in July 1997, Mr. Rangel never received a hearing and his nomination was returned to the President without Senate action at the end of 1998. On September 16, 1999, President Clinton nominated Enrique Moreno, another outstanding Hispanic attorney,

to fill a vacancy on the Fifth Circuit but that nominee never received a hearing either. When President Bush took office last January, he withdrew the nomination of Enrique Moreno to the Fifth Circuit. The Senate has moved quickly to confirm Judge Armijo in New Mexico and Judges Martinez and Crane in Texas, who were among the very few Hispanic judicial nominees sent so far by this Administration to us.

The Senate received Judge Africk's nomination the last week in January and his paperwork was complete on March 6. Judge Africk was scheduled for the very next confirmation hearing on March 19. He has been serving as a federal magistrate in the Eastern District of Louisiana for more than a decade. Judge Africk is a member of the Federalist society and a registered Republican. His confirmation, along with that of Judge Clement, Judge Wooten in South Carolina, Judge Mills in Mississippi, Judge Caldwell in Kentucky, Judge Granade in Alabama, Judge Hartz to the Tenth Circuit, and so many others, shows that the Senate has been very accommodating to this Administration's conservative nominations.

The Senate is making progress on judicial confirmations. Under Democratic leadership, the Senate has confirmed more judges in the last nine months than were confirmed in four out of 6 full years under Republican leadership. The number of judicial confirmations over this time—44—exceeds the number confirmed during all 12 months of 2000, 1999, 1997 and 1996.

During the preceding 6½ years in which a Republican majority most recently controlled the pace of judicial confirmations in the Senate, 248 judges were confirmed. Some like to talk about the 377 judges confirmed during the Clinton administration, but forget to mention that more than one-third were confirmed during the first 2 years of the Clinton administration while the Senate majority was Democratic and Senator BIDEN chaired the Judiciary Committee. The pace of confirmations under a Republican majority was markedly slower—especially in 1996, 1997, 1999, and 2000.

Thus, during the 6½ years of Republican control of the Senate, judicial confirmations averaged 38 per year a pace of consideration and confirmation that we have already exceeded under Democratic leadership over these past nine months in spite of all of the challenges facing Congress and the Nation during this period and all of the obstacles Republicans have placed in our path.

I ask myself how Republicans can justify seeking to hold the Democratic majority in the Senate to a different standard than the one they met themselves during the last 6½ years. There simply is no answer other than partisanship. This double standard is most apparent when Republicans refuse fairly to compare the progress we are making with the period in which they were

in the Senate majority with a President of the other party. They do not want to talk about that because we have exceeded, in just 9 months, the average number of judges they confirmed per year.

They would rather unfairly compare the work of the Senate on confirmations in the past 9 months to a period more than twice as long, the work of previous Senates and Presidents over entire 2-year Congresses. They say it is unacceptable that the Democratic-led Senate has not yet confirmed as many judges in nine months as were confirmed in 24-month-periods at other times. I would say it is quite unfair to complain that we have not done 24 months of work on judicial vacancies in the little more nine months we have had since the Senate reorganized. After all, we have already topped their efforts for 12-month periods and are still hard at work.

These double standards are wrong and unfair, but that does not seem to matter to Republicans intent on criticizing and belittling every achievement of the Senate under a Democratic majority.

Republicans have been imposing a double standard on circuit court vacancies as well. The Republican attack is based on the unfounded notion that the Senate has not kept up with attrition on the Courts of Appeals. This is a case of the arsonist coming forward and saying: We need a better fire department around here. Look at all these buildings that are burning down. All these vacancies were there because Republicans refused to hold hearings on the Court of Appeals nominees. We are now holding such hearings.

The Democratic majority in the Senate has more than kept up with attrition and we are seeking to close the vacancies gap on the Courts of Appeals that more than doubled under the Republican majority.

Just this week, the Senate confirmed Judge Terrence O'Brien to the United States Court of Appeals for the Tenth Circuit by a vote of 98 to zero. His confirmation was the eighth circuit court nominee to be confirmed in the little more than nine months since I became Chairman this past summer.

We have already confirmed eight Court of Appeals nominees and held hearings on 11 Court of Appeals nominees. In comparable periods at the beginning of the Clinton administration, with a Senate majority of the same party as the President, the confirmations numbered only two and hearings were held on only three. In the comparable period during the administration of George H. W. Bush, within the first 10 months the Senate had confirmed only three Court of Appeals judges and had hearings on only four.

The facts on what Republicans are now calling the judicial vacancies crisis in our Courts of Appeals are important and startling. The Republican majority assumed control of judicial confirmations in January 1995 and did not

allow the Judiciary Committee to be reorganized after the shift in majority last summer until July 10, 2001. During that period, from 1995 through July 2001, vacancies on the Courts of Appeals more than doubled, increasing from 16 to 33!

When I became chairman of a committee to which members were finally assigned on July 10, we began with 33 Court of Appeals vacancies. That is what I inherited. Since the shift in majority last summer, five additional vacancies have arisen on the Courts of Appeals around the country. With this week's confirmation of Judge O'Brien, we have reduced the number of circuit court vacancies to 30.

Rather than the 38 vacancies that would exist if we were making no progress, as some have asserted, there are now 30 vacancies—that is more than keeping up with the attrition on the Circuit Courts. Since our Republican critics are so fond of using percentages, I will say that we will have now reduced the vacancies on the Courts of Appeals by almost 10 percent in the last nine months. In other words, by confirming three more nominees than the five required to keep up with the pace of attrition, we have not just the matched the rate of attrition but surpassed it by 60 percent.

While the Republican Senate majority increased vacancies on the Courts of Appeals by over 100 percent, it has taken the Democratic majority nine months to reverse that trend, keep up with extraordinary turnover and, in addition, reduce circuit court vacancies by almost 10 percent overall. Alternatively, Republicans should note that since the shift in majority away from them, the Senate has filled more than 20 percent of the vacancies on the Courts of Appeals in a little over 9 months. This is progress. Rather than having the circuit vacancy numbers skyrocketing, as they did overall during the prior 6½ years—more than doubling from 16 to 33—the Democratic-led Senate has reversed that trend and the vacancy rate is moving in the right direction, down.

That is not to say that our job is completed, but a fair review of our efforts should acknowledge the progress we have made. It is not possible to repair the damage caused by longstanding vacancies in several circuits overnight, but we are improving the conditions in the 5th, 10th and 8th Circuits, in particular. The confirmation of Judge O'Brien this week made the second judge confirmed to the 10th Circuit in the last 4 months.

With this week's vote on Judge O'Brien, in a little more than nine months since the change in majority, the Senate has confirmed eight judges to the Courts of Appeals and held hearings on three others. In contrast, the Republican-controlled majority averaged only seven confirmations to the Courts of Appeals per year. Seven. We have confirmed eight circuit judges and there are almost 3 months left

until the 1-year anniversary of the reorganization of the Senate and the Judiciary Committee and we have already exceeded the annual number of Court of Appeals judges confirmed by our predecessors. The Senate in the last nine months has confirmed as many Court of Appeals judges as were confirmed in all of 2000 and more than were confirmed in 1997 or 1999, and eight more than the zero from 1996.

Overall, in little more than 9 months, the Senate Judiciary Committee has held 16 hearings involving 55 judicial nominations. That is more hearings on judges than the Republican majority held in any year of its control of the Senate. In contrast, one-sixth of President Clinton's judicial nominees—more than 50—never got a Committee hearing and Committee vote from the Republican majority, which perpetuated longstanding vacancies into this year. Vacancies continue to exist on the Courts of Appeals in part because a Republican majority was not willing to hold hearings or vote on more than half 56 percent—of President Clinton's Court of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Court of Appeals during the entire 1996 session.

Despite the new-found concern from across the aisle about the number of vacancies on the circuit courts, no nominations hearings were held while the Republicans controlled the Senate in the 107th Congress last year. No judges were confirmed during that time from among the many qualified circuit court nominees received by the Senate on January 3, 2001, or from among the nominations received by the Senate on May 9, 2001.

The Democratic leadership acted promptly to address the number of circuit and district vacancies that had been allowed to grow when the Senate was in Republican control. The Judiciary Committee noticed the first hearing on judicial nominations within 10 minutes of the reorganization of the Senate and held that hearing on the day after the Committee was assigned new members.

That initial hearing included a Court of Appeals nominee on whom the Republican majority had refused to hold a hearing the year before. We held unprecedented hearings for judicial nominees during the August recess. Those hearing included a Court of Appeals nominee who had been a Republican staff member of the Senate. We proceeded with a hearing the day after the first anthrax letter arrived at the Senate. That hearing included a Court of Appeals nominee. In a little more than nine tumultuous months, the Senate Judiciary Committee has held 16 hearings involving 55 judicial nominations—including 11 circuit court nominees—and we are hoping to hold another hearing soon for half a dozen more nominees, including another Court of Appeals nominee. That is more hearings on judges than the Republican majority held in any year of

its control of the Senate. The Republican majority never held 16 judicial confirmation hearings in 12 months.

The Senate Judiciary Committee is holding regular hearings on judicial nominees and giving nominees a vote in Committee, in contrast to the practice of anonymous holds and other obstructionist tactics employed by some during the period of Republican control. The Democratic majority has reformed the process and practices used in the past to deny Committee consideration of judicial nominees. We have moved away from the anonymous holds that so dominated the process from 1996 through 2000. We have made home State Senators' blue slips public for the first time.

I do not mean by my comments to appear critical of Senator HATCH. Many times during the 6½ years he chaired the Judiciary Committee, I observed that, were the matter left up to us, we would have made more progress on more judicial nominees. I thanked him during those years for his efforts. I know that he would have liked to have been able to do more and not have to leave so many vacancies and so many nominees without action.

I hope and intend to continue to hold hearings and make progress on judicial nominees in order to further the administration of justice. In our efforts to address the number of vacancies on the circuit and district courts we inherited from the Republicans, the Committee has focused on consensus nominees for all Senators. In order to respond to what Vice President CHENEY and Senator HATCH now call a vacancy crisis, the Committee has focused on consensus nominees. This will help end the crisis caused by Republican delay and obstruction by confirming as many of the President's judicial nominees as quickly as possible.

Most Senators understand that the more controversial nominees require greater review. This process of careful review is part of our democratic process. It is a critical part of the checks and balances of our system of government that does not give the power to make lifetime appointments to one person alone to remake the courts along narrow ideological lines, to pack the courts with judges whose views are outside of the mainstream of legal thought, and whose decisions would further divide our Nation.

The committee continues to try to accommodate Senators from both sides of the aisle. The Court of Appeals nominees included at hearings so far this year have been at the request of Senator GRASSLEY, Senator LOTT, Senator SPECTER, Senator ENZI and Senator SMITH from New Hampshire—five Republican Senators who each sought a prompt hearing on a Court of Appeals nominee who was not among those initially sent to the Senate in May 2001. Each of the previous 43 nominees confirmed by the Senate has received the unanimous, bipartisan backing of the Committee.

The confirmation of Judge Africk makes the 44th judicial nominee to be confirmed since I became chairman last July, and I hope to confirm our 50th nominee by the end of this month. I am extremely proud of the work this committee has done since the change in the majority. I am proud of the way we have considered nominees fairly and expeditiously and the way we have been able to report to the Senate so many qualified, non-ideological, consensus nominees to the Senate.

Mr. HATCH. Mr. President, I supported the nomination of Lance Africk to be U.S. District Judge for the Eastern District of Louisiana.

I have had the pleasure of reviewing Judge Africk's distinguished legal career, and I have concluded that he is a fine jurist who will add a great deal to the Federal bench in Louisiana.

Judge Lance Africk has an impressive record in the private and public sectors. Upon graduation from the University of North Carolina School of Law in 1975, Judge Africk clerked for the Louisiana Fourth Circuit Court of Appeal before joining the New Orleans firm of Normann & Normann as a civil attorney. In 1977, he moved to the Orleans Parish District Attorney's Office in New Orleans and became director of the Career Criminal Bureau, where he prosecuted criminal cases. From late 1980 to mid-1982, Judge Africk worked in private practice, representing plaintiffs and defendants in personal injury cases and serving as corporate counsel. In August 1982, he joined the U.S. Attorney's Office in New Orleans as an assistant U.S. attorney and served with distinction as chief of the Criminal Division until 1990. As a State and Federal prosecutor, Judge Africk became an expert in drug and public corruption matters. During his legal career, he tried to judgment or verdict approximately 40 cases. Since 1990, Judge Africk has served as U.S. Magistrate Judge for the Eastern District of Louisiana, bearing responsibility for often complex civil and criminal matters assigned from the U.S. District Court.

I have every confidence that Lance Africk will serve with distinction on the Federal district court for the Eastern District of Louisiana.

Ms. LANDRIEU. Mr. President, I am proud that the Senate today confirmed Lance Africk for Federal District Judge for the Eastern District of Louisiana. Again, I must commend President Bush for this nomination. He has chosen an exceptional man with a fantastic reputation for the Federal Bench.

I cannot say enough about Lance. Lance brings over 25 years of legal experience to this job, and for the past 12 years, he has served as the U.S. Magistrate for Civil and Criminal Matters. His commitment to community and country has permeated his career as an Orleans Parish District Attorney, a United States Attorney and most recently as a Federal Magistrate. I know that he looks forward to continuing his

service. He presents a true model of honor and professionalism to the bar.

Numerous letters of support have poured into my office praising Lance's qualities. Everyone who has ever talked to me about Lance has used the same words: fair, courteous, and intelligent. Not only does Lance possess these values, but he has instilled them in his family. His wife Diane and his four children mean the world to him and inspire his service. Today's action in the Senate only confirmed what I and everyone in Louisiana already knew; that Lance Africk will be an asset to the Federal Judiciary.

We need more people like Lance Africk on the Federal Bench. He is a true patriot who desires to serve his country to the best of his ability. He recognizes the importance of our judicial system and has dedicated his life to the system of laws that makes our country so unique. It is for these reasons that I wholeheartedly supported his nomination and am elated by the action of the Senate today.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from Georgia.

#### TEACHERS

Mr. MILLER. Madam President, I am at heart a teacher. Perhaps it is genetic, for I am the son of teachers. Whatever its source, a commitment to education runs deep in my soul. That is why, when I was Governor of Georgia, I chose to focus on education, for all our other challenges have at their root the same solution: Children who are loved and children who are educated.

I believe education is everything. It is the educated individual who makes this Nation stronger. It is the educated individual who adds to its wealth, protects against enemies, carries forward its ideals and faith.

The Latin phrase "alma mater" means "nourishing mother." That is a pretty good description of what our schools should be for our children.

Within those schools, all education starts with the teacher standing at the head of the child's classroom. Teachers are the world's most noble creatures, engaged in the world's most noble profession. Teachers are the architects who guide and shape the building of young lives. Teachers are the ones who call forth the best from our children and inspire them to reach new heights. Teachers, I think we would all agree, are the key ingredient to improving education.

So if we are to build a first class education system in this country, we must be able to attract and hold on to good teachers. Right now, we are losing that battle. We are losing that fight badly.

Last year we set a new standard in Federal aid for education with the passage of President Bush's far-reaching education reform bill. But while we have made big strides in Federal funding for education, we still have not touched teacher salaries at the Federal level.