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Judicial Vacancy Crisis - 09/09/1997 - AFL-CIO Action Packet on Judicial Vacancies

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Jon Hiatt
General Counsel

September 18, 1997

We thought you would be interested in the enclosed packet of information, which we recently mailed to our network of judicial contacts, urging them to contact Senators and otherwise publicize the need for action on judicial nominations.

Jon Hiatt

202/637-5053 TEL.
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American Federation of Labor and Congress of Industrial Organizations



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MEMO

To: Judicial Contacts
From: Jon Hiatt and Lynn Rhinehart *JRH*
Subject: Letters to Senate on Judicial Vacancies
Date: September 9, 1997

Following up on our recent communications regarding judicial vacancies, the purpose of this memo is to ask your assistance in communicating with the Senate about the need to move on judicial nominations, and in publicizing the need for the Senate to act.

We have compiled the enclosed packet of information to assist you in preparing and sending letters to the Senate, as well as in preparing resolutions, op ed pieces, or letters to the editor about this issue. Our hope is that each of you will (1) send a letter from yourself and/or your firm, (2) encourage other LCC members in your area to do the same, and (3) pursue available contacts with other appropriate organizations (e.g., state or local bar associations, other professional organizations, union clients) to explore the possibility of those groups passing resolutions and/or sending letters as well. The enclosed materials should also be helpful in preparing letters to the editor or editorial pieces on the need for action on judicial nominations.

Specifically, we have enclosed the following:

1. Sample letter to Senators, to be tailored as appropriate;
2. Current list of judicial vacancies and pending nominees;
3. List of members of Senate Judiciary Committee;
4. Letter sent to President Clinton and Majority Leader Trent Lott from major bar associations seeking action on judicial nominations;

5. Letter sent by the national American Bar Association to all state and local chapters, seeking letters to the Senate on judicial nominations;

6. Press clippings on judicial vacancies.

7. Speech by Attorney General Janet Reno to the ABA regarding judicial vacancies.

To maximize impact, letters should be sent under the auspices of individuals or firms, not the AFL-CIO or the LCC. Please send Jon or Lynn a copy of any letters you or groups with which you are affiliated send to the Senate, and any letters or op eds that are published.

Finally, we are trying to gather anecdotes that illustrate the impact of judicial vacancies on litigants, to help personalize and dramatize the problem. If you have such an example, we would greatly appreciate your sharing it with us.

Thanks for your continued interest in this issue. Please feel free to contact either your regional contact or Jon or Lynn for further assistance in developing letters or editorials, or if you have other questions or comments.

Sample letter to home-state United States Senators regarding judicial vacancies

(Copies should be sent to Senator Orrin Hatch and Senator Patrick Leahy, as Chairman and Ranking Minority Member of the Senate Judiciary Committee. Blind copies should also be sent to Jon Hiatt, General Counsel, AFL-CIO)

Dear Senator _____:

As an attorney in your state who regularly practices in the federal courts, I am writing to express my serious concern over the extraordinary number of judicial vacancies and the Senate's failure to act on pending nominations to the federal courts.

More than 100 seats on the federal district courts and courts of appeals are now vacant -- more than one out of every 10 seats -- with the number increasing each week as additional judges retire or take senior status. Certain geographic areas and courts have been particularly hard-hit by vacancies. For example, there are currently 10 vacancies on the Ninth Circuit, four on the Second Circuit, and nine vacancies on the three district courts in Pennsylvania. **[Add details about your area from information provided on the enclosed vacancy list]**. Nearly one third of the present vacancies qualify as "judicial emergencies," meaning that the seat has been vacant for 18 months or longer.

The impact of these vacancies is being felt, and will continue to be felt, by litigants who depend upon the federal courts to hear and resolve their cases on a timely basis, as well as by the attorneys who represent them. **[If you have an anecdote that illustrates the real-world impact of current vacancies, consider highlighting it here]**. The disillusionment caused by excessive delays and overburdened judges undermines faith in our judicial system and our system of government as a whole.

In addition, the men and women who have been nominated by the President for federal judgeships deserve to have their nominations considered and voted upon by the Senate in a timely manner. The nominations of dozens of highly qualified individuals have been pending before the Senate for months, and several of these nominees had to be renominated this year because their nominations expired last year without Senate action. As of early September, the Senate had confirmed only 11 judges in all of 1997.

The Senate has a responsibility to keep the nominations process moving and to give timely consideration to the President's judicial nominees. As a constituent and as practicing attorney in your state, I ask that you do your part in giving prompt consideration to the President's judicial nominees, and that you encourage your colleagues in the Senate to do the same.

Thank you for your consideration.

cc: Senator Orrin Hatch
Senator Patrick Leahy

9/8/97

CURRENT JUDICIAL VACANCIES
AND NOMINEES

COURT	VACATING JUDGE	NOMINEE
	FIRST CIRCUIT	
Ct. Appeals (ME)	Cyr, Conrad K.	
D Puerto Rico	Acosta, Raymond L.	Anabelle Rodriguez
	SECOND CIRCUIT	
Ct. Appeals (NY)	Altimari, Frank X.	Sonia Sotomayor
Ct. Appeals (NY)	Mahoney, J. Daniel	
Ct. Appeals (NY)	Miner, Roger J.	
Ct. Appeals	Newman (CT)	
NDNY	Cholakakis, Con. G.	Clarence Sundram
SDNY	Haight, Charles S. Jr.	Richard Casey nominated for one of the SDNY vacancies - unclear which one.
SDNY	Stanton, Louis L.	
SDNY	Keenan, John F.	
SDNY	Leisure, Peter K.	
WDNY	Telesca, Michael A.	Charles Siragusa
DCT	Daly, T.F. Gilroy	Chris Droney
DCT	Nevas, Alan H.	Janet Hall
	THIRD CIRCUIT	
Ct. Appeals (PA)	Hutchinson, William D.	Marjorie Rendell
Ct. Appeals (NJ)	Sarokin, H. Lee	
DNJ	Sarokin, H. Lee	Katherine Sweeney-Hayden

EDPA	Kelly, James McGirr	Frederica A. Massiah-Jackson
EDPA	O'Neill, Thomas N. Jr.	Bruce Kauffman
EDPA	Ludwig, Edmund V.	
EDPA	Katz	
MDPA	Caldwell, William W.	A. Richard Caputo
MDPA	Conaboy, Richard P.	
MDPA	Kosik, Edwin M.	
WDPa	Cohill, Maurice B. Jr.	John Bingler
WDPa	Bloch, Alan N.	
Delaware	Longobardi, Joseph	
	FOURTH CIRCUIT	
Ct. Appeals (NC)	New position	
Ct. Appeals (NC)	Phillips, J. Dickson	James A. Beaty, Jr.
EDVA	Doumar, Robert G.	Jerome Friedman
WDVA	Kiser, Jackson L.	
SDWV	Hallanan, Elizabeth V.	Robert Charles Chambers
EDNC - future vacancy (12/7/97)	Britt, W. Earl	
	FIFTH CIRCUIT	
Ct. Appeals (TX)	Garwood, William L.	Jorge Rangel
EDLA	Jones, Okla II	
EDLA	Wicker, Veronica	Ivan L.R. Lemelle
EDLA	Livaudais, Marcel	
WDLA	Shaw, John M.	
NDTX	New position	

NDTX	Sanders, Barefoot	Michael Schattman
SDTX	New position	Hilda G. Tagle
SDTX	Black, Norman W.	
	SIXTH CIRCUIT	
Ct. Appeals (MI)	Keith, Damon	Helene White
Ct. Appeals (TN)	Milburn, H. Theodore	Ronald Gilman
EDMI	La Plata, George	Victoria Roberts
EDMI	Cook, Julian Abele Jr.	
EDMI	Hackett, Barbara K.	
NDOH	Bell, Sam H.	James S. Gwin
NDOH	Dowd, David D.	Dan A. Polster
SDOH	Holschuh, John D.	Algenon L. Marbley
	SEVENTH CIRCUIT	
NDIL	Hart, William	Jeffrey Colman
NDIL	Duff, Brian B.	Rebecca R. Pallmeyer
CDIL	Baker, Harold Albert	
SDIL	Beatty, William L.	G. Patrick Murphy
SDIL	Stiehl, William D.	Michael P. McCuskey
SDIN	Brooks, Gene	Richard Young
EDWI	Curran, Thomas J.	
	EIGHTH CIRCUIT	
Ct. Appeals (ND)	Magill, Frank	
EDMO	Gunn, George F.	Ronnie White
EDMO	Limbaugh, Stephen	Rodney W. Sippel
D.NE	Strom, Lyle E.	Joseph F. Bataillon
WDAR	Waters, H. Franklin	

	NINTH CIRCUIT	
Ct. Appeals (WA)	Beezer, Robert	
Ct. Appeals (AZ)	Canby, William C.	
Ct. Appeals (WA)	Farris, Jerome	Margaret M. McKeown
Ct. Appeals (CA)	Norris, William A.	William A. Fletcher
Ct. Appeals (CA)	Poole, Cecil F.	Richard A. Paez
Ct. Appeals (CA)	Wallace, J. Clifford	James Ware has been nominated for one of the California seats - not clear which one
Ct. Appeals (CA)	Noonan, John	
Ct. Appeals (CA)	Wiggins, Charles	
Ct. Appeals (CA)	Hall, Cynthia	
Ct. Appeals (OR)	Leavy, Edward	Susan Graber
NDCA	Aguilar, Robert P.	
NDCA	Lynch, Eugene F.	Martin Jenkins
NDCA	Jensen	Charles Breyer
EDCA	Coyle, Robert E.	Anthony W. Ishii
EDCA	Garcia, Edward J.	Frank Damrell
CDCA	Gadbois, Richard A.	Margaret M. Morrow
CDCA	Rafeedie, Edward	Christina Snyder
CDCA	Takasugi, Robert M.	Carlos Moreno
CDCA	Hupp, Harry L.	
SDCA	Thompson, Gordon	Lynne R. Lasry
SDCA	Rhoades, John	
D.HI	Fong, Harold M.	Susan Oki Mollway
D.OR	Frye, Helen	

D.OR	Redden, James A.	Ann L. Aiken
EDWA	McDonald, Alan	
WDWA - future vacancy (11/1/97)	Dimmick	
	TENTH CIRCUIT	
D.KS	Crow, Sam A.	
NDOK	Brett, Thomas R.	
D. Utah	Winder, David K.	
	ELEVENTH CIRCUIT	
Ct. Appeals (FL)	Kravitch, Phyllis A.	
NDAL	Hancock, James H.	
NDAL	Propst, Robert B.	
SDAL	Howard, Alex	
MDFL	Moore, John H. II	Richard A. Lazzara
NDGA	O'Kelly, William C.	
	D.C. CIRCUIT	
Ct. Appeals	Buckley, James L.	
DCDC	Harris, Stanley S.	
DCDC	Richey, Charles	
	FEDERAL CIRCUIT	
	CT. OF INT'L TRADE	
	Tsoucalas, Nicholas	
	DiCarlo, Dominick	
	Ct. Of Fed'l Claims	
	Gibson, Reginald	Lawrence Baskir

Judicial Emergencies

(vacancies in existence for 18 months or longer)

August 1, 1997

Court	Vacancy Created By	Reason	Vacancy Date	Days Pending
01	PR			
	Acosta, Raymond L.	Senior	6/1/94	1161
02	CCA			
	Altimari, Frank X.	Senior	1/1/96	582
02	NY-N			
	Cholakis, Con. G.	Disabled	10/23/92	1747
02	NY-S			
	Haight, Charles S. Jr.	Senior	9/23/95	682
03	CCA			
	Hutchinson, William	Deceased	10/8/95	667
03	NJ			
	Sarokin, H. Lee	Elevated	10/4/94	1036
03	PA-M			
	Caldwell, William W.	Senior	5/31/94	1162
	Conaboy, Richard P.	Senior	9/1/92	1799
03	PA-W			
	Cohill, Maurice B. Jr.	Senior	11/28/94	981

Court	Vacancy Created By	Reason	Vacancy Date	Days Pending
04	CCA			
	Phillips, J. Dickson Jr.	Senior	7/31/94	1101
	PL 101-650	New Position	12/1/90	2439
05	TX-N			
	PL 101-650	New Position	12/1/90	2439
	Sanders, Barefoot	Senior	1/1/96	582
05	TX-S			
	PL 101-650	New Position	12/1/90	2439
06	CCA			
	Keith, Damon	Senior	5/1/95	827
07	IL-C			
	Baker, Harold Albert	Senior	10/4/94	1036
07	IL-S			
	Beatty, William L.	Senior	11/9/92	1730
08	NE			
	Strom, Lyle E.	Senior	11/2/95	642

Court	Vacancy Created By	Reason	Vacancy Date	Days Pending
09	CA-C			
	Gadbois, Richard A. J	Disabled	1/24/96	559
	Rafeedie, Edward	Senior	1/6/96	577
09	CA-S			
	Rhoades, John S. Sr.	Senior	11/4/95	640
09	CCA			
	Farris, Jerome	Senior	3/4/95	885
	Norris, William A.	Senior	7/7/94	1125
	Poole, Cecil F.	Senior	1/15/96	568
09	HI			
	Fong, Harold M.	Deceased	4/20/95	838
09	OR			
	Frye, Helen	Senior	12/10/95	604
	Redden, James	Senior	3/13/95	876
11	CCA			
	Fay, Peter T.	Senior	1/18/94	1295
11	FL-M			
	Moore, John H. II	Senior	12/31/95	583
DC	DC			
	Green, Joyce Hens	Senior	7/1/95	766
	Harris, Stanley S.	Senior	2/1/96	551

Total Judicial Emergencies: 31

Committee on the Judiciary

SD-224 Dirksen Senate Office Building, Washington, DC 20510-6275

(202) 224-5225

Fax: (202) 224-9102

Internet Home Page: <http://www.senate.gov/committee/judiciary.html>

Jurisdiction: All areas not delegated to the subcommittees, including but not limited to: (1) Nominations; (2) Holidays, commemorations, Federal charters and celebrations; (3) Department of Justice oversight, authorization and budget; (4) Revision and codification of the statutes of the United States; (5) Criminal justice, including (a) criminal laws, (b) criminal judicial proceedings, (c) Rules of Criminal Procedure, (d) national penitentiaries, (e) Bureau of Prisons, (f) U.S. Parole Commission, (g) oversight of the Criminal Division of the U.S. Department of Justice, (h) juvenile justice, (i) Youthful Offenders Act, (j) oversight of the Office of Justice Programs. Excluded from (5) above is criminal legislation, which is delegated to the Subcommittee on the Constitution.

Ratio: 10/8

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July 14, 1997

The Honorable William J. Clinton
The President
The White House
Washington, DC 20500

The Honorable Trent Lott
The Majority Leader
United States Senate
Washington, DC 20510

Dear Mr. President and Mr. Majority Leader:

Among the constitutional responsibilities entrusted to the President and the Senate, none is more essential to the foundation upon which our democracy rests than the appointment of justices and judges to serve at all levels of the federal bench. Notwithstanding the intensely political nature of the process, historically this critical duty has been carried out with bipartisan cooperation to ensure a highly qualified and effective federal judiciary.

There is a looming crisis in the Nation brought on by the extraordinary number of vacant federal judicial positions and the resulting problems that are associated with delayed judicial appointments. There are 102 pending judicial vacancies, or 11% of the number of authorized judicial positions. A record 24 of these Article III positions have been vacant for more than 18 months. Those courts hardest hit are among the nation's busiest; for example, the Ninth Circuit Court of Appeals has 9 of its 28 positions vacant. At the district court level, six states have unusually high vacancy rates: 10 in California, 8 in Pennsylvania, 6 in New York, 5 in Illinois, and 4 each in Texas and Louisiana.

The injustice of this situation for all of society cannot be overstated. Dangerously crowded dockets, suspended civil case dockets, burgeoning criminal caseloads, overburdened judges, and chronically undermanned courts undermine our democracy and respect for the supremacy of law.

We, the undersigned representatives of national legal organizations, call upon the President and the Senate to devote the time and resources necessary to expedite the selection and confirmation process for federal

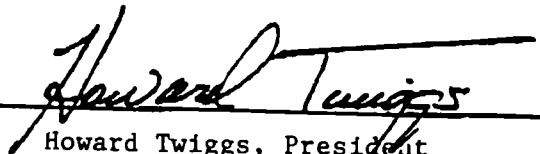
July 14, 1997

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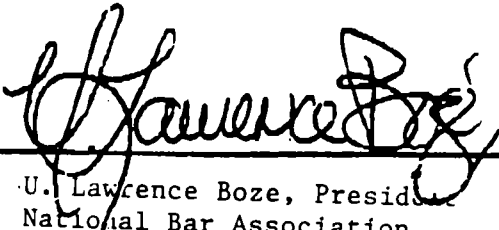
judicial nominees. We respectfully urge all participants in the process to move quickly to resolve the issues that have resulted in these numerous and longstanding vacancies in order to preserve the integrity of our justice system.



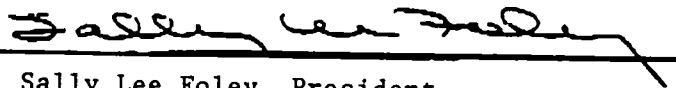
N. Lee Cooper, President
American Bar Association



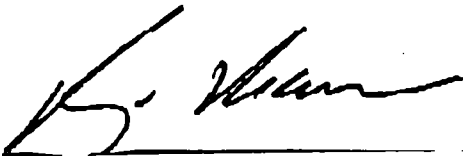
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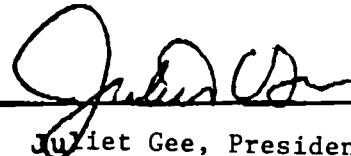
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National Bar Association



Sally Lee Foley, President
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Juliet Gee, President
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Paul Chan, President
National Asian Pacific American
Bar Association

N. LEE COOPER
President

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July 25, 1997

I write on behalf of the American Bar Association to ask you and your bar association to assist in a national bipartisan effort to urge all participants in the judicial selection and confirmation process to devote the time and resources necessary to fill the extraordinary number of vacant federal judicial positions. Attached is a copy of an "Open Letter" that was recently sent to President Clinton and Majority Leader Trent Lott, signed by the ABA and six other national legal organizations.

We believe this effort is necessary to avert a looming crisis in our Nation's justice system. At present there are over 100 pending judicial vacancies, or 12 per cent of the number of authorized judicial positions. A record 25 of these vacancies fall into the "judicial emergency" category, having been vacant for more than 18 months. This is all occurring at a time when the federal judiciary is facing record caseloads across the board and across the country: For FY 1996, appeals were up four percent to 51,991, and district court civil filings rose eight percent to 269,132 with criminal filings up five percent to 47,889. Since no new judgeships have been created since December 1990, each of the 179 federal appellate judges and 649 district court judges are handling unprecedented levels of work.

Your participation in this effort is particularly important in showing the universal concern of all segments of the organized bar. It would be most helpful if you would inform your congressional delegation, particularly your Senators, of any adverse impact unfilled vacancies are having in your circuit and district courts, and urge that judicial vacancies be filled expeditiously. Please forward copies of your correspondence to Robert Evans at the American Bar Association Washington Office, 740 15th Street, N.W., Washington, DC 20005.

Sincerely,


N. Lee Cooper

cc: Executive Director
Attachment as stated

Empty Judicial Benches Hurt Us All

In his Aug. 13 Rule of Law column "There's No Vacancy Crisis in the Federal Courts," Sen. Orrin Hatch, chairman of the Judiciary Committee, protested that the vacancy crisis in the federal judiciary is only illusory and that the "numbers" surrounding the judicial confirmation process—vacancies, nominations and confirmations—are not so different from those in recent periods when the Senate and the presidency were controlled by different parties.

There are now 103 vacant seats in the federal judiciary—12% of the total number of judges and more than twice the number at the beginning of 1996, a year in which the Senate confirmed only 17 district court judges—and no court of appeals judges (a record without parallel in the past 40 years). Thus far in 1997, with perhaps only 45 days left in this session of Congress, the Senate is operating at an even slower pace, with only nine judges confirmed. At this rate of about one judge a month, by the end of 1998 normal attrition will leave the judiciary with at least 150 vacancies.

Sen. Hatch argues that the Senate has been prevented from confirming more judges in 1997 because the president has not nominated enough candidates. But, with all respect, that argument is odd at best. By February, the president had sent 26 nominees to the Senate—enough to keep the Judiciary Committee well occupied, even if there had not been a single additional nomination (in fact, there have been 36 more). Yet the committee has held hearings on only 18 nominees and the Senate has confirmed only nine. In any event, since there will be 53 nominations pending when the Senate returns from its August recess, there should be no similar barriers to progress for the remainder of this session.

This year began with Chief Justice William Rehnquist warning that all was not well with the federal judiciary—that more judges were needed to ensure "the fair and effective administration of justice." His report on the state of the judiciary in 1996 was the final word on a distressing year in which, as I have noted, the Senate confirmed only 17 district judges—compared with the 66 district court and court of appeals judges confirmed in the last year of President Bush's term, when the Democrats controlled the Senate.

And only recently, Chief Judge Proctor Hog of the Ninth Circuit Court of Appeals, reported that he was forced to cancel oral arguments in upward of 600 civil cases because of the shortage of judges on the Ninth Circuit, where nine of 28 seats are vacant. Although the president has nominated candidates for five of those vacancies, in the first seven months of this Congress the Judiciary Committee has not even held a hearing on any of those nominations, three of which were actually first submitted to the 104th Congress more than a year ago.

The question raised is not one of "mere numbers," but rather of the real-world consequences of a strained justice system

for individual citizens and businesses alike. With district court filings climbing 8% nationally last year alone, and by 60,000 cases over the past five years, the outlook in the short term is not reassuring. Inexplicably, many of the same voices who have decried the delays in the civil justice system and who clamor for reform have failed thus far to draw a connection between filling judicial vacancies and improving the efficiency of the system.

We may be approaching a point where rhetoric about judges becomes an end in itself, blocking the movement of nominees and subverting the principle of judicial independence that makes our system work. In the past two decades, Senate confirmation of judicial nominees has, by and large, proceeded in "regular order," only to roil up on rare occasions for certain controversial nominations and then return to the more deliberate process of assessing the merits of particular nominees. There is now, however, a danger that inquiry into the experience and qualifications of the individual candidate is being submerged by broad-ranging, amorphous charges of "judicial activism" (abetted by threats of impeachment of sitting judges). While the Founding Fathers themselves considered every manner of test and procedure for evaluating and predicting future judicial performance, they in the end rejected all save two: that judges be competent individuals of sound character who will honor their oath to support the Constitution.

We neither seek nor expect immunity for our nominees from the rough-and-tumble of the political process. For all our sakes, however, that process ultimately must work toward the constitutionally mandated goal of ensuring the fair and efficient administration of justice. If we in both branches follow that simple rule, as have generations in government before us, the numbers will take care of themselves.

CHARLES F.C. RUFF
Counsel to the President

Washington

Wall Street
Journal
9/10/97

Reno Blames Senate for Judicial Vacancies

Wash. Post A-1 8/6/97

By Sandra Torrey
Washington Post Staff Writer

SAN FRANCISCO, Aug. 5—Attorney General Janet Reno today denounced the Republican-controlled Senate for causing "an unprecedented slowdown" in confirming Clinton administration nominees to the federal bench and asserted that moves to impeach judges for controversial decisions is "chilling judicial independence."

In a speech to the American Bar Association here, Reno complained

that the pace of confirmations is causing a dangerous backlog of cases around the country and thus denying people swift access to the courts.

Reno's uncharacteristically blunt remarks represented a pointed departure from her normally soft-spoken approach to dealing with Congress. For several months she has voiced concern over the backlog in judicial confirmations but has expressed confidence the Senate would come around.

Today she clearly intended to take

the gloves off both with the tone of her remarks and pairing the issue with her concern over unfair criticism of judges.

According to Reno, only nine federal judges have been confirmed this year—less than 15 percent of those nominated by President Clinton. Yet around the country there are 101 vacancies on the federal bench.

"At this rate, it would take almost seven years just to fill the existing vacancies," Reno said.

The attorney general also berated

See RENO, A8, Col. 1

3 WEDNESDAY, AUGUST 6, 1997

8

THE WASHINGTON POST

Reno Blames Senate for Judicial Vacancies, Complains About Backlog

RENO, From A1

ome critics who have questioned slings of judges and argued for their removal for making unpopular decisions in the name of "judicial activism."

"When you peel away this slop, you find more drastic proposals beneath the surface," she said.

While Reno did not identify her targets, she cited moves to impeach federal judges and do away with their life tenure. Both ideas have been proposed by conservative Republicans in Congress.

Senate Judiciary Committee chairman Orrin G. Hatch (R-Utah) retorted in a statement that the Senate's power to approve judicial

nominees "should not be reduced to a mere numbers game," adding that confirmations for life-tenured positions are "a serious matter."

Reno's remarks fired up a political battle that began last year when Republican presidential nominee Robert J. Dole charged Clinton's judicial appointees are liberal activists more interested in pushing their agenda than in following the law as written.

Since then, congressional conservatives have taken up the attack, which has coincided with what Democrats see as the Senate's laggard pace in approving nominees.

Reno said that during the first three years of the Clinton adminis-

tration, the Senate confirmed nearly 80 percent of Clinton's nominees, but in the 1996 presidential election year "that progress ... was derailed."

Altogether, 46 individuals had nominations pending for trial or appellate judgeships during the 1996 Senate session. Of those, only 17 were confirmed, all for the trial courts. "For the first time in 40 years ... not even one" appellate judge was approved, Reno said.

The appeals courts are considered the most powerful and high-profile in the federal system because they are the last stop for the vast majority of cases since so few get heard by the Supreme Court.

Reno said that of the president's

current 62 nominees, 32 had arrived at the Senate by the end of May.

While apparently agreeing on the figures, Republicans differed on how to interpret them. "We have not even had a nominee for over two-thirds of those vacancies until the past few weeks," Hatch said in the statement, released by his office.

Reno's speech came on the heels of harsh critiques at the convention by incoming ABA president Jerome Shestack and another administration official.

Decrying the Senate's confirmation pace at a panel Sunday, White House Deputy Chief of Staff John Podesta said, "This is a Congress

that likes to experiment with shutting down government."

Monday, Shestack called some attacks on judicial independence by congressmen and columnists "un-American." Shestack, who did not name any of those critics, said later he was referring to those calling for impeachment of judges "for their opinions." Judges, he said, can be impeached only for "high crimes and misdemeanors," while their decisions can be appealed.

Conservatives attending the convention bristled at the strong language. "It's offensive to call critics ... un-American," said D.C. lawyer Leonard Leo, a leader of the conservative Federalist Society.

"There are many who are trying to find legitimate limited constitutional solutions to balance judicial independence and judicial accountability."

A spokesman for House Majority Whip Tom DeLay (R-Tex.), reached in Washington, defended DeLay's call to impeach several federal judges, including one in San Francisco who barred implementation of a California referendum to roll back affirmative action programs. The new law has since been revived by a federal appeals court.

"When you strip away her [Reno's] language, she is advocating unchecked power by the judicial branch," DeLay press secretary Tony Rudy said. "We have three branches, and the only check Congress has on judicial power is impeachment."

PERSPECTIVE ON THE FEDERAL JUDICIARY

LA Times 8/18/97

No Nominees, No Judges, No Justice



One-third of the chairs in the 9th Circuit are vacant, resulting in 600 hearings canceled in a single month.

By ROBERT M. KAUFMAN

One of the golden virtues of our form of government is the means, through our judiciary, to obtain a prompt and fair resolution of disputes.

This virtue is in jeopardy.

It has been more than four years since the Clinton administration was elected, promising to end the gridlock in Washington. It has been more than two years since the Gingrich revolution pledged to restore government to the people. It has been more than six months since leaders of both parties, chastened by the election results of 1996, promised to cooperate.

But if you have a matter pending before the federal judiciary—a business dispute or an environmental claim, for example—you might as well worry about something else. In the 9th Circuit Court of Appeals in one month alone, more than 600 hearings on such cases were canceled.

There were no judges available to consider them.

In California, more than 20% of the federal trial judgeships are vacant. In the 9th Circuit, almost 33% of the judicial chairs are empty. Nationwide, there were 103 federal judicial vacancies on election day last year. Now, seven months after inauguration day, there are 97 vacancies.

But this abdication of responsibility didn't start with President Clinton. Seven years ago, with a Republican in the White House and the Democrats in the majority in Congress, there were 48 judicial chairs vacant, 25% of them for more than 18 months.

Not only do legal issues remain tangled, but the delay in filling vacancies makes for heavier workloads for the sitting judges, less time in which to render thoughtful decisions on pending matters and virtual hopelessness in finding a resolution to civil litigation.

The explanations are not hard to find.

Many qualified people no longer view nomination to the federal bench as attractive. The Clinton administration has been slow to send candidates' names to the Senate for approval. And the Republican Senate has picked clean the bones of many of those they've been asked to confirm.

The nomination/confirmation process itself has become something like an inquisition. Before the White House actually nominates anyone, a person under consideration for appointment must fill out a 600-page form that probes every decision ever rendered, every action ever taken.

If candidates pass through that gauntlet successfully, the administration sends their names to the Senate, where they face additional grilling. Just as often, they face weeks and months of inaction as senators look for their own reasons to block the nomination.

How bad is it?

In the past 18 months, only one federal appeals court judge has been confirmed by the Senate.

Clinton has become so wary of charges that his nominees are "liberal judges" that his spokespersons even chastised one of the administration's own appointees during the election campaign, days after the Dole campaign accused the judge of being soft on crime.

For the 103 judicial vacancies that existed on election day, the White House has named 39 candidates. Atty. Gen. Janet Reno told the American Bar Assn. earlier this month that she had submitted

the names of 62 people for consideration by the Senate. Still, there are far too many vacancies.

The former president of the Los Angeles County Bar Assn., Margaret Morrow, was nominated by President Clinton to a federal district judgeship in Los Angeles. The Senate Judiciary Committee approved her by a vote of 13 to 5. A full vote in the Senate has not been scheduled.

A law professor at UC Berkeley, William Fletcher, was nominated for the 9th Circuit more than two years ago. Last year, the Judiciary Committee approved him, 12 to 6. The nomination was not brought to the Senate floor and now appears dead.

Change in this process is desperately needed:

- Federal judicial leadership should strongly encourage judges to give advance notice of their decisions to retire, resign or take senior status so that the process of filling an anticipated vacancy can begin before the vacancy occurs.

- The White House should instruct its staff and the Department of Justice that all investigations should be completed two to four months after a vacancy occurs. The White House should send a nominee's name to the Senate no later than four months after a judge leaves the bench.

- The Senate should establish and observe deadlines of no more than three months to consider nominees.

An editorial in *Judicature*, the journal of the American Judicature Society, concluded: "The problem of vacancies in the federal judiciary demands immediate and serious attention."

That was in 1990. It's seven years later, and nothing has changed.

Robert M. Kaufman is president of the American Judicature Society, a nonprofit organization of judges, lawyers and non-lawyers that promotes an effective judiciary.

Pay Too Much for Too Little

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THE WAR AGAINST JUDICIAL INDEPENDENCE

BYLINE: Herman Schwartz, Herman Schwartz, a professor of constitutional law at American, University, is the author of "Packing the Courts: The Conservatives', Campaign to Rewrite the Constitution" (Simon & Schuster)

DATELINE: WASHINGTON

BODY:

Judicial independence is one of those laudable virtues that is praised on Law Day but resented when practiced. Since judges must often decide politically sensitive issues, virtually certain to displease some political interests, that resentment often erupts into politically partisan attacks.

Politically motivated criticism of the courts is nothing new. Today's assaults are, however, more vitriolic, more determined and thus more dangerous, for they threaten to undermine judges' independence. Also, because the strategy for going after the federal bench includes stalling the judicial-selection process itself, there are huge backlogs in many federal courts that are increasing daily.

These attacks are a reaction to the revolutionary changes of the postwar period, when minorities, women, gays and other groups began to claim the equality that the Declaration of Independence and 14th Amendment promise to all. The attacks began with the "Impeach Earl Warren" signs that sprang up all over the South after the 1954 Brown vs. Board of Education desegregation decision. Republicans realized the political value of assailing the courts during Sen. Barry M. Goldwater's 1964 attacks on judges who were "soft on crime," and Richard M. Nixon used both race and crime to go after the judiciary in his 1968 presidential campaign. After the fury of the reaction to the 1973 abortion decision, targeting the courts became central to Republican campaign strategy, particularly as the religious right and other conservative elements in the party became stronger.

It is thus hardly surprising that Sen. Bob Dole's presidential campaign featured an attack on President Bill Clinton's judicial appointments. Dole's favorite target was a federal judge in New York who had ruled in a drug case that prosecutors could not use certain evidence because the police had seized it unconstitutionally. Though close, the decision was not unreasonable. Yet, Dole



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demanded that the judge resign, and soon the judge folded. In an unusual move, he reheard the case, and reversed himself.

Dole had other candidates for what he labeled Clinton's "judicial Hall of Shame." One was Federal Appellate Judge Martha Craig Daughtry, who had dissented from her colleagues' refusal to hold a Tennessee state judge criminally liable under federal law for sexually assaulting female court employees, job applicants and attorneys. For this, Dole attacked her as one of Clinton's "liberal activists." But, in March, the U.S. Supreme Court agreed with Daughtry unanimously.

With the presidential campaign over, Congress has gotten into the act. This week, the GOP-controlled House Judiciary Committee will hold hearings on "judicial activism" and a bill to curb the federal courts. A few months ago, House Majority Whip Tom DeLay (R-Texas) called for the impeachment of federal judges who issue decisions that Congress doesn't like. In March, he said, "articles of impeachment are being written right now" for certain judges the GOP finds objectionable. Should anyone think that for a judge to displease the GOP majority is not usually considered an impeachable offense, DeLay has asserted "an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history." DeLay has obviously studied communist legal practice closely.

DeLay's bizarre suggestion has been given a sophisticated veneer by former Judge Robert H. Bork, who recently proposed a constitutional amendment to allow federal and state court decisions to be overruled by a simple majority of either house of Congress. On this one, he even lost many of his usual allies.

The DeLay and Bork proposals will go nowhere, as even they must know. Judges have lifetime tenure because, as Alexander Hamilton explained, "that inflexible and uniform adherence to the rights of the Constitution and the individual, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by temporary appointments." DeLay's purpose, however, is clear: to intimidate the judiciary. The New York drug-case reversal proves this can occur.

On the state level, there has been more than intimidation. Because most state judges are either elected (21 states), or must go through some form of electoral process to stay in office (38 states), they are particularly vulnerable. Californians will remember the brutal campaign against Chief Justice Rose Elizabeth Bird for her court's capital-punishment rulings. Last year, a Tennessee Supreme Court judge was denied reelection because she had joined in one decision requiring a new hearing for someone sentenced to death; in Nebraska, supporters of term limits blocked the reelection of a judge who had ruled against the measure; in Florida, a supreme-court judge barely survived a nasty reelection campaign for dissenting from a death sentence, though she had voted to impose the death penalty in 200 other cases. Few state judges can fail to get the message.

The attempt to control the judiciary includes not only after-the-fact reprisals but also who goes on the bench. Federal judges are subject to Senate confirmation. Throughout U.S. history, the Senate has usually confirmed a president's nominees routinely, particularly for lower federal courts. President Ronald Reagan relied on this tradition to appoint extremely conservative judges like Antonin Scalia. Since the Republicans lost the White House, but now control



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the Senate, they have decided to use their advise-and-consent power to block whoever doesn't have the proper ideology.

The strategy is two-pronged: First, to slow the nomination process; then to veto ideologically unacceptable nominees.

One delaying tactic has been to impose ever-more onerous informational requirements. Last year a woman nominee for a California judgeship was approved by the Judiciary Committee but the Senate did not vote on it because of the GOP's delaying tactics. Although she satisfactorily answered everything initially asked of her, many more questions are now being posed. A revealing example is a request for "your views in support or in opposition to California initiatives in the last decade"--all 160 of them!

As a result of this and other tactics, the Senate confirmed, in 1996, just 17 district judges and no appellate judges; this year, only two judges have gotten through. Today, 99 federal judgeships are vacant, 23 considered "judicial emergencies."

Schemes to block ideologically impure nominees, the other part of the strategy, are also being hatched. Sen. Phil Gramm (R-Texas) recently proposed that the Judiciary Committee reject any circuit-court nominee opposed by GOP senators from that circuit. The Republican Caucus rejected this, primarily because it encroached on the power of committee chairmen. The caucus did, however, resolve to give "strict scrutiny" to nominees to weed out "activist" judges.

The "activist" label is, of course, just a dirty word for judges who issue decisions that Gramm and his friends don't like. The most activist Supreme Court judges today are conservatives and their allies on the lower courts; the more liberal members are just trying to hold on to what has already been gained. Chief Justice William H. Rehnquist and his allies have struck down hundreds of federal, state and locally adopted affirmative-action plans, as well as scores of congressional statutes on crime, religion, fair-labor standards, gun control and legislative-executive relations. Scalia not only wanted to strike down the independent-counsel law, but he has often expressed his contempt for legislators and the legislative process.

All judges faced with hard constitutional and legal questions are activist. They must be if the law is to offer guidelines for a changing society.

Ironically, the stepped-up conservative attacks on the federal judiciary come when it seems least necessary. The federal judiciary is dominated by Reagan-Bush appointees and Clinton has never been willing to risk political capital on judges--even those he can probably win.

Criticizing the performance of the courts is justified and indeed necessary. Partisan attacks that undermine their independence are not, for without an independent judiciary neither the rule of law nor liberty itself can long survive.

GRAPHIC: GRAPHIC-DRAWING: (...), JOHN PACK / for The Times

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GOP Mulls Fighting Bill's Dread Judges

When it comes to President Clinton's nominees, Republicans have been almost as generous as the Riadys. Even Alexis Herman, she of the \$500,000-for-no-investment windfall, seems likely to get a pass to speak for the working man.

So it qualifies as news that, behind the scenes, Senate Republicans are getting ready to grumble, and maybe even rumble, over Mr. Clinton's judicial nominees.

"On the cabinet, the president deserves the benefit of the doubt," says Sen. Slade Gorton, a moderate from Washington state. But regarding judges, he adds, "It's perfectly legitimate to vote against someone for a lifetime appointment based on ideology."

If he and his comrades mean it, judges will be a main battleground of Mr. Clinton's second term. Republicans have awakened to the fact that, almost without notice, the president has been remaking the third branch of government. He made more first-term nominations—202—than Ronald Reagan or George Bush or Richard Nixon, and with only four roll call votes. By the end of four more years, Mr. Clinton could have replaced 50% of the federal judiciary.

Allied with Jimmy Carter remnants, Clinton judges are already positioned to yank the courts back in an activist liberal direction. There are already portents. A California Carter appointee threw out a referendum outlawing racial preferences only days after voters passed it.

A Clinton appointee, Guido Calabresi, found a New York law against killing oneself to be quaint and out-of-date. As a philosopher king, he's much more hip. Numerous Clinton nominees have issued dissents that would have overturned criminal convictions had they been in the majority.

All of this has put judicial activism back at the top of the GOP agenda. A new Project on the Judiciary, sponsored by the Ethics and Public Policy Center here,

starts Monday to collect information on possible Clinton picks well before they are nominated.

Judge Robert Bork has suggested limiting judicial review—an idea being picked up by Republicans around the country. One such idea is already moving through the Washington state House.

Inevitably, this throws a spotlight on Orrin Hatch, the Senate Judiciary chairman who hates political fights but may end up leading a few. No senator has a reputation more out of line with reality. Far from being a bomb-thrower, he's one of the Senate's most congenial souls. He's been known to cut deals with his last friend Ted Kennedy. Mr. Hatch was so kind to Mr. Clinton's nominees in his first four years that a pair of the GOP's biggest legal names paid the senator a visit urging him to get tougher.

Mr. Hatch's defense was that by cooperating then he'd have more standing to influence the White House then and now. But re-election seems to have canceled the White House end of this deal.

Early in this Congress Mr. Clinton sent up 21 judicial picks without consulting Mr. Hatch. My sources say he first heard they were coming via a Senate Democratic aide. When Mr. Hatch sent word back that he wanted to be consulted first, the White House replied—no dice. Mr. Clinton may yet regret playing Mr. Hatch for a patsy.

Especially because a majority of his Senate GOP colleagues are also pushing for a tougher line. One sign is a special task force of senators preparing new rules for handling judicial picks. One of Mr. Hatch's own task-force proposals is that if the White House doesn't consult, in advance, with the home-state senator of a nominee, that senator could veto the pick. Other Republicans would then go along. Another idea is requiring a roll call vote on every nominee.

In a little-reported Feb. 18 speech in Utah, Mr. Hatch torched decisions by Clinton judges—by name and by case. Of the 30 Clinton appointees to the federal appeals bench, he said 22 have written or joined liberal activist decisions. These judges, he added, want to accomplish through the courts what "the president himself has been unable to achieve and unwilling publicly to admit to." And he promised more searching reviews of Mr. Clinton's judicial picks.

Not that this will be easy. Most nominees don't advertise their activism and some (Supreme Court Justice David Souter) disguise it. Judicial fights can also be loud and messy, making senators squeamish. Liberals (and some conservatives) will try to distill every fight to abortion, scaring GOP moderates. Most of the media will be on the other side of these cultural fights.

On the lack of consultation, one early test of GOP Senate resolve will be Helene White, a liberal Michigan judge nominated without a word to GOP Sen. Spencer Abraham. As for ideology, the nominee to watch is Seattle lawyer Margaret McKeown, who one GOP source says sends "red flags all over the place" as a liberal political activist but has no judicial paper trail. Even Washington GOP Sen. Gorton, for all of his fervor, hasn't yet taken a position on Ms. McKeown.

By debating these judges, Republicans can begin to educate the public in advance of the likely fight over any Clinton choice for the closely divided Supreme Court. Senate Democrats changed judicial history with their campaign against Reagan nominees. Republicans may return the fa-



Orrin Hatch

MAY 19, 1997

OBSTRUCTION OF JUSTICE

Some Republican senators, still unreconciled to President Clinton's re-election, are seeking to prevent him from discharging his constitutional duty to appoint federal judges. The Senate Republican Conference this week defeated a proposal by Senator Phil Gramm of Texas that would have allowed a two-thirds majority of GOP senators in any given judicial circuit to veto nominees to the federal appellate bench. But obstructionism is still in the air: the Republican Conference voted ominously to "respond legislatively to judicial activism." The Senate Judiciary Committee, furthermore, has not scheduled hearings on any of Clinton's outstanding nominees to the federal appellate courts, many of whom are being attacked on the floor of the Senate as "judicial activists." And the increasingly out-there Robert Bork, having recently abandoned his proposal for legislative override of judicial decisions as insufficiently radical, now says he wants to end judicial review entirely.

This magazine, long a supporter of liberal judicial restraint, has no sympathy for judicial activism. And that is why we consider it an editorial imperative to emphasize that the Republican attacks are intellectually incoherent and constitutionally subversive. One of President Clinton's most notable achievements in office has been to wean the Democrats of their attachment to judicial activism. Instead of applauding this achievement, the Republicans are politicizing the judiciary in a poisonous way.

The current wave of judicial bashing began in November, when *First Things*, a journal of religious opinion, published "The End of Democracy?," a symposium decrying judicial activism. Many conservatives at the time predicted that liberal judges would soon strike down the California Civil Rights Initiative and invent a constitutional right to die. Both predictions are being proved false. The U.S. Court of Appeals for the Ninth Circuit has recently upheld Proposition 209; and, in June, the Supreme Court will almost certainly decline to recognize a constitutional right to die.

A recent study by the libertarian Institute for Justice confirms the absurdity of GOP charges that Clinton's Supreme Court nominees are avatars of judicial activism. Justices Ruth Bader Ginsburg and Stephen Breyer are *more* restrained and *less* likely to strike down federal and state laws involving economic and civil liberties than any of their Republican colleagues. Both voted to limit the power of government in about 35 percent of the rel-

evant cases, compared to the most activist Justice, the Reagan-appointed Anthony Kennedy, who voted to second-guess the political branches 85 percent of the time.

The GOP attacks on pending appellate court nominees are similarly spurious. Consider the case of William Fletcher, nominated to the U.S. Court of Appeals for the Ninth Circuit last year. Fletcher, a law professor at the University of California at Berkeley, is a moderate Democrat and one of the most respected scholars of federal jurisdiction in the country. Republicans dislike his more liberal mother, Betty Fletcher, who sits on the Ninth Circuit; and, under pressure from Utah Senator Orrin Hatch last spring, Judge Fletcher agreed to take "senior status" on the day her son's commission was signed.

A band of partisan senators, led by John Ashcroft of Missouri, has now decided to Bork Professor Fletcher on the basis of a single sentence from an article that Fletcher published in the *Yale Law Journal* in 1982. In the article, Fletcher took the conservative and restrained position that, because remedies designed by trial courts are "presumptively illegitimate," courts should resist the urge to design them "unless the political bodies that ordinarily should do so are in such serious and chronic default that there is realistically no other choice." Misrepresenting Fletcher's criticism of discretion in the hands of trial judges as an endorsement of discretion in the hands of appellate judges, Ashcroft told the Heritage Foundation on March 18 that Fletcher "feels judges should be able to use what he calls 'discretionary' powers to achieve desired policy goals."

Distortions this crude would be amusing if they weren't so serious. There are eight appellate nominees now in limbo before the Senate Judiciary Committee, and none has been scheduled for a hearing because of nakedly partisan opposition on the right. It is disgraceful that the usual voices of responsible conservatism have not found the courage to say publicly what they must know privately: there is no epidemic of liberal judicial activism. The president's nominees are moderate and unobjectionable. The terms of debate on the courts have shifted, and the Republicans have won. And their only response to this historic victory has been to politicize the confirmation process beyond recognition. This is an ugly turn the Republicans have taken, and it will return to haunt them for years to come. •



The Cold War on Judicial Independence

Impeaching judicial 'activists' would mire judges in politics

By ABNER J. MIKVA

The House Judiciary Committee held hearings last month in response to a cacophony of complaints about the "activism" of federal judges. Rep. Tom DeLay of Texas led the chorus of these members of Congress who think that federal judges are usually pests, and that at least some of them ought to be impeached.

Rep. DeLay is not a lawyer — he would tell you that quite proudly — and his former profession involved getting rid of pests. But even non-lawyers ought to realize that our founder expected judges to be unpopular, which is why the Constitution gives them life tenure, pro-

they go away. Some congressmen want this judge impeached.

I have listed only three of the cases that seem to aggravate the impeachment activists the most. There are others. In fact, Rep. DeLay has boasted that he was receiving suggestions from all over the country as to judges who could be "prime candidate[s]" for impeachment under our approach.

Of course, every time a judge rules in any controversy, at least one of the parties is unhappy with the judge. If the controversy is big enough and gets enough publicity, the number of unhappy people multiplies. When open season is declared on judges, many will come out shooting.

Nor is this threat limited to federal judges. In Illinois, a state legislative

Lawful Pursuits

body took them against pay cuts, and makes it very difficult to remove them from office.

And even non-lawyers ought to realize that making it easier to remove judges from office will encourage judges to weigh their popularity in making decisions. Members of Congress should know better than anyone else how tempting it is to suspect your better judgments when your job hangs in the balance, and why that sickness hurts us all.

Why are DeLay and others so eager at federal judges? The bill of particulars is pretty astounding in its perversity.

There is a judge in Texas who issued a temporary order barring two Republicans from taking local office until there was an investigation of whether some military personnel who had been stationed in Texas many years ago should have been allowed to vote absentee from the base. While the local polls should be given credit for their ingenuity in expanding the voter roll by seeking out those former temporary Texans, a legitimate question as to their eligibility to vote has been raised.

Then there is another Texas judge, who has ordered the state prison system to abide by the Eighth Amendment to the U.S. Constitution and eliminate the "cruel and unusual" conditions that existed. While such orders might explain the angry mood of the Texas separatists who recently took hostages to emphasize their demand that Texas secede from the union, I think our founders hoped for better from members of Congress — especially members of the House leadership like Rep. DeLay, the majority whip.

NEVERMIND THE SUPREMACY CLAUSE

Beyond the borders of Texas, there is the California federal judge who had the temerity to rule unconstitutional under the U.S. Constitution a referendum amending the state constitution to prohibit affirmative action. Nevermind the supremacy clause of the U.S. Constitution, which requires all judges to measure state laws, including state constitutions, against the federal constitution and laws. Nevermind that the judge's opinion in the case was thoughtful and well-reasoned, and acknowledged the delicacy of telling the voters that a state referendum they had approved was beyond their authority. Never mind that the judge's order was reversed on appeal — which is the usual way that judges are corrected if

harm in the impeachment inquiry — is somewhat arrogant. I am not convinced that arrogance was the primary reason for the impeachment clamor. The justices happened to have written an opinion (for a unanimous court) awarding custody of a child to the natural parents even though the child had been living with

See MIKVA page 7

The politics of judicial appointments is wreaking gridlock on the bench

By PROCTER HUG JR.

Within the unique checks and balances set forth by our founding fathers, the federal judiciary plays a vital role preserving and protecting the individual rights and liberties guaranteed by the Constitution, as well as enforcing the federal statutes and other matters within its jurisdiction through fair and impartial judgments. The federal courts are frequently called the guardians of the Constitution.

But these traditional roles are becoming endangered in the face of the growing number of vacancies on federal district courts and the circuit courts of appeals — a problem that is critically hampering the administration of justice. As the number of unfilled judgeships mounts, courts are filling further behind their growing dockets of pend-

ing cases. It is time for the president and the Congress to do their constitutional duty in providing the resources we need to do our job.

As [U.S.] Chief Justice [William] Rehnquist stated in a recent speech to the Federal Judges Association:

The most immediate problem we face in the federal judiciary is the failure to fill the vacancies on the federal courts.

A significant source of concern to the judiciary is the filling of judicial vacancies. As I am sure many of you know, some very troubling statistics were recently published on this topic in *The Third Branch*. These statistics show that, unless the executive and legislative branches change their ways, the future for judicial appointments is bleak.

As of April 1, 1997, there were 97 judicial vacancies. Twenty-three of these vacancies have been vacant for 18 months or more, thus earning the dubious distinction of being "judicial emergencies" from the point of view of the Federal Conference.

As of April, no nominations have been made for 70 of the 97 vacant positions. In turn, since August of last year, the Senate has only confirmed two out of 27 nominees — not an impressive batting average. And finally, to make matters worse, recent newspaper articles have predicted that partisan wrangling may tie up the appointment process to the point of stalemate.

This expressed the serious concern of the chief justice a couple of weeks ago.

CONFIRMATION GRIDLOCK

At the present time, we have 95 vacancies nationwide. There were 101 vacancies up until last Friday. On Friday, the Senate confirmed three district judges. With the two earlier confirmations of judges in the D.C. Circuit, this makes a total of five confirmations in the first five months of this year. In all of last year, there were only 17 confirmations, none for any circuit judges.

The effect of this in the Ninth Circuit is that we currently have 13 district court vacancies with six nominations pending. Four of those vacancies are in the Central District of California; nominations for two of those seats have been pending for many months, one for over a year.

The situation in the Circuit Court of Appeals is extremely serious. It has nine vacancies out of 28 judgeships. That is over one-third of the court. This is exacerbated by the fact that the court has not been authorized a new judgeship since 1984, despite our request. The caseload was then 4,700 appeals. It has since nearly doubled to 8,600 appeals in 1996. It is impossible to expect 19 active judges to handle the increased caseload with the care each appeal deserves. Even with the generous help of the senior judges, this cannot be done. What the public doesn't realize is that, in effect, they are working for free, as they could retire on full salary.

Let me express our Circuit Court of Appeals' predicament another way. In 1978, right after I joined, the court was authorized 23 active judgeships to handle 3,100 appeals. Today, we have 19 active judges to handle 8,600 appeals. I have been in Washington, D.C., three times in recent months to emphasize

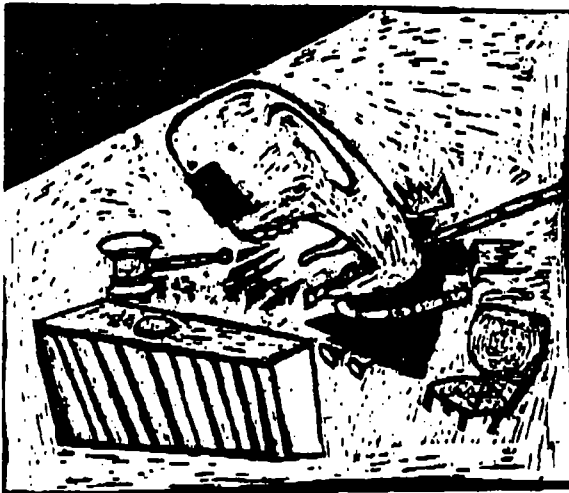
I was dismayed when Sen. Hatch said that he planned to conduct a hearing for only one circuit judge a month. There are now 26 circuit judge vacancies, nine of which are ours. This, to me, is intolerable.

the seriousness of the vacancy situation. I must say I am disappointed. The White House staff had sought to have 100 nominations by July 1. They will now have, at most, 50.

"INTOLERABLE" DELAY

Even more discouraging is the pace of the Senate Judiciary Committee. I was dismayed when Sen. Hatch said that he planned to conduct a hearing for

See HUG page 7



Comment

HUG: Congress Must Avoid Gridlock on the Bench

Continued from page 5
only one circuit judge a month. There are now 26 circuit judge vacancies, nine of which are ours. This, to me, is intolerable.

What does this mean to the litigants? Our court has attempted to adopt every efficiency measure we could devise that would help to keep us current. We have carefully examined the methods used by every other circuit to see if these would be helpful. We have adopted other measures that have, in turn, been used by other circuits. We have sought the extra help of our senior judges, our district court judges and visiting judges from other circuits. These are band-aid measures and not the way a federal Court of Appeals is intended to operate.

We have done all we can in the way of efficiency and seeking the help of others. In order to continue deciding the cases without over-delegation to law clerks or cursory review by the judges, we will simply have to let a backlog of appeals develop with the delay for litigants that ensues.

We are this year having to cancel 100 days of hearings, involving over 600 cases, that we will be unable to hear. Criminal cases have statutory priority; thus, the burden will fall on those having civil appeals pending. These include disability pay-

ments under social security, claims for insurance payment of medical expenses, and personal injury claims. It is sad to see the uncertainty involved when a claim is ultimately denied, or to see the consequences of delay when the claim should have been paid. The delay will affect environmental claims where the environment should have been protected or a business venture that should have been allowed to proceed, with employees frequently being affected.

Civil rights appeals will be delayed with the uncertainty present for both parties. Commercial disputes need to be resolved so that the parties can proceed without the uncertainty of a pending case. Our whole society is dependent upon our court system operating fairly and promptly.

The federal judiciary is the third branch of government designated in the United States Constitution. We are dependent upon the other two branches of government — the executive and the legislative — to provide the resources we need to do our job right. We do not ask much. Most immediately, it is for the president to make the nominations and for the Senate to hold the hearings and to vote the nominations up or down. What cannot be tolerated is stalling in the process. The public is entitled to better than that. ■

MIKVA: Impeaching 'Activists' Would Bog Judges in Politics

Continued from page 5
adoptive parents for many years. It was one of those heart-rending cases, and the newspapers had a field day. One Chicago columnist devoted column after column to the wrongness of the decision.

QUIET LAWS, NOT JUDGES

From my distant vantage point, influenced mostly by what the newspapers wrote about the decision, I would venture that it probably was wrong. But wouldn't it make more sense to change the law that the state Supreme Court was interpreting than to remove the justice who simply wrote the opinion? Unfortunately, there is more politi-

against laws passed by Congress in response to popular demand. Judges are expected to protect defendants in criminal cases against even the most outraged citizenry who want to short-circuit due process, the privilege against self-incrimination and a host of other "technicalities" that distinguish our system of justice from that of the mobs who dispensed gallows justice during the French Revolution.

Around the turn of the century, Chicago had a famous political commentator named Peter Flaherty Duane, who wrote under the pen name of "Mr. Dooley," a fictitious Chicago saloon-keeper of great sagacity. When he was asked to analyze a Supreme Court decision that gave extra-territorial effect to a law banning the Philippines, Mr. Dooley replied (in Irish dialect), "No matter whether the Constitution follows the flag or not, the Supreme Court follows the election returns."

REMEMBER ROSE BIRD

I am afraid that elected judges may well remember the lesson that California voters taught Chief Justice Rose Bird of their state Supreme Court. She was denied a second term, even though her re-election was uncontested, because she was perceived to have decided some death penalty cases the wrong way.

And federal judges may well remember the ordeal of Harold Baer, the New York federal judge who became a campaign issue in 1996 because he decided a suppression motion in favor of the defendant in a criminal case. Then-Sen. Bob Dole cited Judge Baer as a perfect example of the kind of activist judges appointed by his opponent, President Bill Clinton. The president was purportedly considering asking for Baer's resignation. Fortunately or unfortunately, Baer changed his decision on rehearing. While he may have been justified in so doing, a lot of judges read more into his change of heart than appeared in the order.

It may well be that federal judges should continue to derive strength and fortitude in the face of criticism from the special judicial protections set forth in the Constitution. It may well be that federal judges should have "the Wisdom, Uprightness and Learning" to which their commissions to office exhort them. But all this talk of impeachment — even if nothing comes of it — has to impact the decisional process. Sometimes, judges follow the election returns. ■

ical mileage is threatening to impeach the judge.

Many observers of the legal-political scene are sanguine about the current rash of threatened impeachments. They point to the great crusade that attempted unsuccessfully to impeach Earl Warren when he was chief justice of the United States back in the 1950s. It is true that Warren was not impeached and probably paid little mind to his critics. But Warren had great confidence in what he was doing and where he was taking the Supreme Court. Not every judge, federal or otherwise, has that same inner strength.

The U.S. Constitution gives federal judges an anti-majoritarian role to play in our political system. It is the judges who are expected to protect our liberties, even

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Ms. Supanich is a public law partner in his twentieth year with *Richards Watson & Gershon*, representing municipalities and other public entities. He currently serves as city attorney for Agoura Hills and Beverly Hills. In his service to public agencies, Ms. Supanich has obtained expertise in a wide range of government law issues including land use, environmental, telecommunications, local tax, elections, public works, and charter city law. He earned his law degree in 1977, graduating Order of the Coif from Hastings College of the Law, where he served as Associate Articles Editor of the *Hastings Law Journal*. He received his undergraduate degree with Highest Honors from the University of California, Riverside in 1973. A frequent speaker on public and municipal law topics, he is a member of the Urban Land Institute and National Association of Telecommunications Officers and Advisors (NATOA).

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Too Many Federal Court Vacancies

The backlog of pending cases in the Federal court system continues to grow as aggressive partisan tactics by Senate Republicans and neglect by the Clinton Administration have nearly paralyzed the confirmation process for new Federal judges. The result is delayed justice for litigants and an unreasonable burden on the courts.

During the second session of the 104th Congress, only 17 district court judges were confirmed by the Senate. For the first time in 40 years, the Senate failed to confirm any judges for the Court of Appeals. There are now 93 vacancies on the Federal bench, a number that grows monthly as more judges retire.

Judiciary appointments tend to slow during election years, but the Republican refusal to act on the Administration's choices exceeded any reasonable standard of review. In 22 cases, some involving slots vacant since 1992, the Senate failed to complete the confirmation process, giving no indication that the nominees in question were controversial or unqualified for the bench. The Administration, for its part, has been slow in putting forward names in recent months and timid in supporting qualified nominees who may be considered liberal by the Senate Republicans.

The President has the power to appoint judges, with the advice and consent of the Senate. Some conservative senators, led by Jon Kyl of Arizona and Slade Gorton of Washington, would radically alter this arrangement. They believe that the Republican majority should have a direct say in appointments to the bench. They have discussed various ways to assert more control, including having the President allot half the slots to Republican nominees. Presumably, they would then give the White House freer rein on the other half.

There are few indications that the Senate majority will take its confirmation duties any more seriously this year. The White House says it may send up to 100 nominations to the Senate in the next few months. President Clinton may have the chance in his current term to fill more than half the seats on the Federal bench, as the Republicans were able to do during the Reagan and Bush Administrations.

Although politics is always part of the process, the Senate's responsibility is to evaluate nominees on their professional qualifications. By neglecting that role and turning the confirmation process into a purely partisan battle, the Republicans have clogged the court dockets and done the nation a disservice.

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IN OUR OPINION

TMC
3-24-97

FEDERAL JUDGES

Clinton must move more forcefully to fill vacancies

The attack by conservative Republicans on the process of confirming federal judges is appalling. The silence from the White House is just as worrisome.

GOP partisans seek to undermine President Bill Clinton's constitutional authority to nominate judges. The president's lack of response suggests he either does not care to expend political capital on such battles or has not crafted an effective strategy. Either way, he is allowing the judicial process to be poisoned.

By the end of his second term, the president may have the opportunity to have appointed nearly half of all federal judges. To prevent this, Republicans senators, with help from right-wing lobbies, are engaging in obstructionist tactics and extra-constitutional efforts.

Last year, the GOP-controlled Senate Judiciary Committee approved only 17 of the president's 45 nominees to the federal bench. No judges were confirmed for the U.S. Court of Appeals — the court of last resort for most plaintiffs. In 1992, the last year of the Bush administration, the Democrat-majority Senate confirmed 66 of the Republican president's judicial nominees.

Some Republican senators propose eliminating judgeships or leaving permanent vacancies, to prevent the president from appointing more judges. Others demand that the president cede half his judicial appointments to the GOP Senate ma-

jority. Meanwhile, House Republican Whip Tom DeLay of Texas is calling for the impeachment of "liberal judges."

Those who cherish democracy and the Constitution must vigorously resist these efforts. The approval of judicial nominations traditionally has relied on a bipartisan commitment to move them along, even when strong ideological disagreements exist.

As the majority party in the Senate, Republicans have a legitimate role in advising on, and consenting to, the president's nominees. But the cynical strategy of obstruction and nullification practiced by too many GOP senators subverts the confirmation process and weakens the integrity of the courts.

Michigan Republican Sen. Spencer Abraham has not engaged in these disgraceful tactics. Last year, he shepherded through the confirmation process the nomination of Eric Clay, a prominent African-American attorney from Detroit, to succeed the legendary Judge Damon Keith on the U.S. 6th Circuit Court of Appeals. The Judiciary Committee has approved Mr. Clay's nomination, but he still awaits confirmation by the full Senate.

President Clinton properly promised to make government institutions, including the federal bench, "look like America." To fulfill this pledge, he must move aggressively to rescue the judicial confirmation process and his future nominees from extremists who seek to destroy both.

Clinton judges: Appoint defenders of the little guy

By Nan Aron

He was a superb criminal defense lawyer, a constitutional theorist, a staunch advocate of free speech. He represented the underdog against powerful interests. He defended accused murderers and other clients regardless of ability to pay. He would have made a compassionate and distinguished federal judge.

Instead, Abraham Lincoln was the best trial lawyer ever to be president. Sadly, today a lawyer of modest means who defends the defenseless probably would not be appointed, much less confirmed, to the federal bench.

The Clinton administration is reluctant to tap the nation's vast resource of public-interest lawyers and to fight for appointees who are attacked as "liberal" by conservative organizations. And if such a lawyer did scale those walls, he or she would probably be blocked by the highly partisan Republican majority in the Senate.

Today the federal judiciary is dominated by former corporate lawyers, conservative ideologues and criminal prosecutors. Justice demands that there also be a substantial number of judges who have defended the weak and vulnerable, American workers and ordinary citizens. A judge who has represented coal miners, migrant workers or civil rights plaintiffs is likely to bring an empathy and concern about injustice that is central to the judicial process. A judge who views the court as a means to protect the rights of individuals will ensure that the Bill of Rights remains enshrined in the Constitution.

By this measure, President Clinton falls short. In 1995, for example, only two of the

president's judges had experience as public defenders representing indigent defendants. Thirty-eight had experience as prosecutors.

And Clinton's first term was marked as much by the men and women who did not end up on the bench as the ones who did. When controversy arose, the White House folded.

The president, for example, backed away from Sam Paz, a Los Angeles civil rights lawyer, after a controversy erupted over his representation of victims in police abuse cases. Paz said he sued police officers who violated the law out of his respect for the badge; his two uncles were lifetime members of the Los Angeles Police Department. Clinton should have stood behind this capable man.

To Clinton's credit, he has fulfilled his pledge to nominate judges "who look like America" in one significant way: Nearly 60% of his appointees have been women and minorities. But the cause of justice is served by diversity of experience and background as well as diversity of gender and race.

In the Senate, the Republican majority has spurned a tradition of bipartisan cooperation to block an unprecedented number of judicial nominees. In the past, Senate leaders of both parties have worked together to carry out their constitutional duty to confirm judges. Disagreements were the exception rather than the rule.

Last year, only 17 judges were confirmed in the second session of the 104th Congress, the lowest number for an election year in two decades. Moreover, the Senate majority erected higher barricades for appointees who were women and minorities than for white males. Of the 28 nominees blocked by the Senate, 43% were women and 33% minorities. Such obstruction is not only discriminatory, but it also increases the backlog of cases in the courts with empty seats, delaying justice.

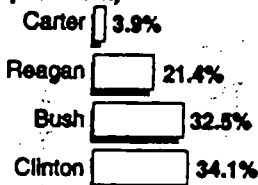
It is time for the Senate to end gridlock over judicial appointments. And it is time for Clinton to nominate lawyers who have combated injustice and fought for individual and civil rights. Justice for all — and a significant part of history's verdict on the Clinton presidency — hangs in the balance.

Nan Aron is the president of the Alliance for Justice, a liberal judicial watchdog group which releases a report on Clinton's judges today.

Big-bucks judges

The Alliance for Justice found that more and more new federal judges have a net worth of over \$1 million.

Percent of judges appointed who are millionaires (by president)



By Dave Merrill, USA TODAY

A history of judicial impeachment

By Thomas L. Jipping

On March 11, House Majority Whip Tom DeLay announced that the GOP will consider using impeachment to check the excessive power of activist federal judges. Activist judges take statutes and the Constitution, laws enacted by the only legitimate lawmakers, and re-make them by giving them new and changing meanings. Judicial activism, then, is literally the exercise of power judges do not legitimately possess.

Democrats and their leftist interest group allies have made the unusual claim that public officials cannot be impeached for acts they could not be indicted and prosecuted for in a court of law. They also claim, in a variation on that theme, that judges cannot be impeached for anything they do as judges.

Consider the implications of this novel theory. Judges would be free to re-write statutes and the Constitution at will, compromising self-government and democracy, undercutting liberty, and throwing our constitutional system of separation of powers completely out of balance. Judges could run the country so long as they did not violate some statute. This claim is patently false, contradicted by 600 years of legal history, the Constitution's framers and ratifiers, and American political history.

The Constitution allows impeachment of public officials for "high crimes and misdemeanors." Yanking this phrase from its constitutional moorings and giving it a desired modern meaning would be the same interpretive sin as the activist judges who are today undermining the Constitution. The legal and historical evidence contradicts the modern theory that impeachable acts are limited to indictable acts or that judges cannot be impeached for their judicial behavior.

First, as Professor Raoul Berger writes, "impeachment itself was conceived because the objects of impeachment, for one reason or another, were beyond the reach of ordinary criminal redress." Impeachment, by definition, is a tool for removing public officials for non-indictable offenses.

Second, impeachment for "high crimes and misdemeanors" already had a 400-year history in English common law before America's founding fathers put that phrase in the U.S. Constitution. Judges have been impeached at least since 1388, often for their judicial decisions and

actions. John Feerick examined more than 100 impeachments of English judges and found that 75 percent were for "high crimes and misdemeanors" that included "grave misuse of one's official position."

Blackstone argued that "mal-administration" by public officials was impeachable. His successor counted among impeachable offenses when "judges mislead their sovereign by unconstitutional opinions."



English judges were impeached for extrajudicial opinions and misinterpreting the law. Mr. Berger's examples include impeachment for "abuse of official power" and "encroachment on or contempt of Parliament's prerogatives."

Third, the American system of written law rests on the foundation of English common law. The common view during the convention that drafted the Constitution was that the category of impeachable acts is considerably larger than the category of indictable acts. The single proposal limiting impeachments to a narrow category of crimes met immediate opposition. James Madison thought George Mason's suggestion of including "mal-administration" among impeachable offenses was too vague and they settled instead on the familiar "high crimes and misdemeanor" language. Both Mason and Madison, however, believed this phrase would include such things as attempts to subvert the Constitution.

Fourth, scholars have long agreed that impeachable acts are not limited to indictable acts. One commentator wrote in 1916 that "the word 'misdemeanor' was used to negate the thought that only 'crimes' were impeachable." Another concluded in 1937 that "it is settled that the stipulated grounds for impeachment . . . include more than the indictable offenses technically covered by these classifications." A 1973 analysis found "an intent on the part of the framers to include non-criminal misconduct within the catalog of impeachable offenses."

Professor Michael Gerhardt concluded last year that impeachable offenses are not limited to indictable offenses and that "the critical element of injury in an impeachable offense was injury to the state."

Fifth, American impeachments have nearly all involved non-indictable offenses. Thirteen of the 16 officials impeached since America's founding have been judges; all seven convicted by the Senate and removed from office have been judges.

John Pickering was impeached in 1803 for, among other things, errors in his conduct of a case. His "high crimes and misdemeanors" included ignoring the requirements of an act of Congress. During the debate over impeachment of Judge James Peck in 1830, Rep. (later president) Buchanan argued that usurpation of authority was an impeachable offense.

None of the articles on which the House impeached Judge Robert Archbald in 1912 constituted an indictable offense. The House manager of the Archbald case argued that impeachable acts by judges included usurpation of power and "the entering and enforcement of orders beyond his jurisdiction." When the Senate convicted and removed Judge Halsted Ritter in 1936, several Senators said that a judge could be impeached for conduct that undermines confidence in the courts.

In the Federalist No. 78, Alexander Hamilton wrote that judges can exercise judgment, but cannot exercise will. The evidence from English and American legal and political history shows that many actions for which judges have long been impeached fit within this framework. Judges may be impeached for actions that usurp authority, invade the prerogatives of the legislature, exceed their proper jurisdiction, unconstitutional opinions, misinterpretation of law, and subverting the Constitution.

All of these are also features of today's judicial activism. These acts go beyond mere mistakes of judgment; rather they involve a willful disregard of a judge's proper role and authority and an attempt to exercise power he does not legitimately possess.

The House must decide which individual cases meet these standards. They should not be deterred, however, by the chorus singing this strange tune that judges may not be impeached for non-indictable judicial behavior. In the long run, impeaching judges who refuse to stay within their proper role and try to usurp the prerogatives of the legislature may be the only way to keep the American system in balance.

Thomas L. Jipping, is director of the Free Congress Foundation's Center for Law & Democracy.

SPEECH BY ATTORNEY GENERAL JANET RENO TO AMERICAN BAR ASSOCIATION MEMBERS
SAN FRANCISCO

12:14 P.M. EDT
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THIS IS A RUSH TRANSCRIPT.

ATTY GEN. RENO: (Applause.) I thank you all for that warm welcome.

In the four years that I have been attorney general, I have been
privileged to meet and to work with so many of the members of the ABA and
so many lawyers across the country. I have observed firsthand all that you
do to protect the rights of so many Americans, to help others less
fortunate, and to build stronger communities to serve this nation and to
make this world a better place. I salute you, and I thank you.

Today, I would like to address the hard work and the dedication of a
special group of lawyers, those who serve as members of the federal
judiciary. I would like to talk about their very important role and about
the importance of preserving their independence. I would also like to
discuss the impact of the growing number of federal judicial vacancies and
the slowdown of the confirmation process.

Much of the current debate appears to ignore the fundamental role that an independent judiciary plays in our constitutional system of government, and it risks undermining respect for and compliance with the law.

I, too, oppose judicial action that ignores the law for the purpose of advancing a particular political or social agenda. Judges are obliged to follow the law. The Clinton administration takes great care to ensure that its nominees understand the role of the federal courts, the role of stare decisis, and the need to put aside personal views when applying the law. Indeed, our only criteria are professional excellence and an understanding of the proper role of a judge in the federal system.

Our work in this regard has been greatly enhanced by the work of the ABA. I appreciate the efforts of the ABA Standing Committee on the Federal Judiciary in independently evaluating the professional qualifications of the administration's nominees. I am also pleased that the president's nominees have garnered such a high percentage of well-qualified evaluations from the ABA, the highest percentage of any group in the last 20 years. (Applause.)

We must all work to ensure that these judges' and all federal judges' independence is not chilled by threats of impeachment. Respect for our system of government is critical to its continued legitimacy. Ongoing challenges to the judiciary's independence has the potential not only to undermine citizens' respect for the judicial branch but, even more broadly, to undermine their respect for our government as a whole.

Clearly, we must be free to debate all issues, but we must keep this debate on a level that will not do harm to our underlying institutions so vital to our form of government and which we hold so very dear.

I am also very concerned about the current vacancy crisis that has left so many Americans waiting for justice. As the chief justice said in last year's year-end report on the judiciary, "Filling judicial vacancies is crucial to the fair and effective administration of justice." We are, of course, pleased that the Senate confirmed three judges last Thursday, bringing the total for the year to nine. We now have new judges on the Sixth Circuit, the Federal Circuit, and the Northern District of Georgia.

But one out of every eight judgeships remains vacant. Today there are 101 vacancies on the federal bench -- almost 12 percent of the judiciary. That includes 76 court vacancies and 25 vacancies on the Circuit Court. Of those 101 vacancies, 33 are what the Administrative Office of the U.S. Courts call "judicial emergencies," which means they have gone unfilled for at least 18 months. The vacancies are increasing at a time when the workload of the federal courts is also growing. District Court filings climbed nearly 8 percent last year, and filings in the Courts of Appeal rose as well.

During most of President Clinton's first term, this administration had a productive record of judicial appointments, working first with Senator Biden and then with Senator Hatch. During the first three years of the president's first term, we filled 107 of the 115 vacancies that existed in the 844-seat judiciary when President Clinton took office. Another 80 of the 120 vacancies that arose during that three-year period were also filled.

That progress toward a full federal bench was derailed, however, during 1996, the second session of the 104th Congress. We have seen an unprecedented slowdown of the Senate confirmation machinery. Although the administration had 46 nominations pending in the Senate last year, only 17 district-court judges, and no court of appeal nominees, were affirmed by the end of the session. This was the first time in 40 years that not even one pending circuit-court nomination was approved.

This year the pace has been even slower. This pace cannot be justified by the criticism of the administration's record of sending some of the pending nominations to the Senate, as some have suggested. The administration has submitted a plentiful and a steady supply of nominees for the Senate to consider from day one of this session. Twenty-two went up in January, four in February, three in March, one in April, two in May, eight in June, and 22 in July; a total of 62. That is more than one-half of the vacancies.

But despite the ample number of superbly qualified nominees and the growing number of judicial emergency vacancies, the Judiciary Committee has held only four hearings and sent only 13 nominees to the full Senate. The Senate has thus far confirmed only nine of those, barely more than one per month. At this rate, it would take almost seven years just to fill the existing vacancies.

This unprecedented slowdown in the confirmation process has a very real and very detrimental impact on all parts of our justice system. Litigants, judges, the quality of justice that our system is able to deliver -- all are impacted.

One district judge in Texas likened his heavy workload to a tidal wave. The chief judge here in the Ninth Circuit called the vacancy situation "urgent" and has had to cancel oral arguments for about 500 cases this year. The Second Circuit too has had to cancel sittings. One district court in Illinois was so overburdened that one of its judges recently went an entire year hearing only criminal cases. The district court in San Diego is holding only about 10 civil trials a year. Some judges have even raised concerns about the quality of justice that they are able to dispense with their caseloads.

We need to put any partisan differences aside and work together to resolve this situation, as has been done in the past and as I know we can do again. During the 100th Congress, when President Reagan was in the White House and the Democrats controlled the Senate, 86 judges were confirmed. That's nearly four judges every month. And in 1992, with President Bush running for reelection and Democrats in the majority in Congress, the Senate confirmed a total of 66 judges. That is more than seven times the number confirmed so far this year.

The Senate, of course, has a constitutional duty to advise and consent, but surely the framers did not intend Congress to obstruct the appointment of much-needed judges, but rather simply to ensure that well-qualified individuals were appointed to the federal bench.

We should not lose sight of what this is finally all about. This is fundamentally about how the judicial system serves the people of America. The federal courts may not always reach people in their day-to-day lives, as local courts do, but the federal courts do affect a worker seeking justice for employment discrimination, a small-business person seeking trademark protection for her company, major corporations litigating takeover suits, a criminal defendant receiving the full protection of the Constitution, and the government being able to fully prosecute criminal cases or bringing cases to protect the environment.

And of course, people look to the federal courts for the protection of so many rights -- right to religious freedom, privacy rights, property rights, and free speech, whose daily impact may be harder to measure, but it is nevertheless so critically important to the form of government we prize so much.

Quite simply, without enough judges, our laws will become empty promises, and swift justice will become a meaningless phrase. And without the independence they need to uphold these laws, our judges will become hostages to politics instead of being the guardians of our principles.

So I urge the Congress to remember the people and the very real issues they bring to the federal courts for timely justice as we move forward with greater expedition to fill the far too many vacant seats on the federal bench, and as we seek to safeguard the crucial independence of those judges who work so hard for this nation.

Thank you for this opportunity to be with you. (Applause.)

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END