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The Washington Post, August 09, 2002

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August 09, 2002, Friday, Final Edition

SECTION: EDITORIAL; Pg. A22

LENGTH: 563 words

HEADLINE: Judicial Nominations Scorecard

BODY:

SINCE SEN. Patrick **Leahy** took over the Senate Judiciary Committee last year, a war of words -- and numbers -- has broken out among the Vermont Democrat, the White House and Senate Republicans over judicial nominations. Mr. **Leahy** claims to have restored honor and fairness to the judicial nominations process, while his critics claim he has led the obstructionist charge against the president's nominees. We have reserved judgment until now; the committee simply had not been under his control long enough to permit a reasonable comparison with past years. Now that Mr. **Leahy** has been in control for more than a year, however, a fair comparison is becoming possible. The story is decidedly mixed. By recent measures, Mr. **Leahy** has not done badly. The Senate has confirmed 72 nominees so far, including 13 court of appeals **judges**. Vacant judgeships are down substantially, from 110 when Mr. **Leahy** took over the committee to 77 now. Assuming the current pace is maintained, the 107th Congress should confirm **judges** at a pace consistent with that of the three preceding congresses. And while the number of appeals court **judges** confirmed seems low, this too is in keeping with recent practice. The 104th Congress confirmed only 11 circuit **judges**; the 105th, 20, and the 106th, 15. Mr. **Leahy's** aggregate numbers, in other words, look pretty good -- particularly since he took over the committee in midstream.

Yet this is only part of the story, the rest of which is less favorable to Mr. **Leahy**. President Bush has been unusually prompt in making nominations, and in recent years, there has been a certain deference paid to a president's nominees in the first two years of his term. President Reagan, for example, saw all but one of his 88 nominees confirmed in his initial two years. The elder President Bush, in a period of divided government similar to this one, saw 70 of his 74 nominees confirmed. And President Clinton got 126 of his 140 nominees acted upon -- a reminder that the Senate is capable of far swifter action than recent practice has permitted. By contrast, President Bush has seen only 59 percent of his 123 nominees confirmed.

More disturbing, the pernicious practice of letting nominees hang indefinitely is not improving. Eleven of Mr. Bush's circuit court nominees have waited more than a year for a **hearing**; none of the past three presidents saw any circuit court nominees suffer this indignity during his first two years in office. In fact, the White House

points out that through the entirety of President Clinton's time in office, a total of 12 circuit court nominees were denied the courtesy of a **hearing** for more than a year -- only one more than Mr. **Leahy** has let dangle in just the first half of Mr. Bush's first term. This figure is a little tricky, because some Clinton nominees got **hearings** and then sat around endlessly afterward. Still, the picture it paints is not a pretty one. And while Senate Republicans are being enormously hypocritical in howling about obstructionism -- having refined the art themselves -- it would constitute an unfortunate escalation if this trend went uncorrected. Mr. **Leahy** still has time to fix the problem. All it would take is fidelity to his own insistence, back when Republicans were stalling President Clinton's **judges**, that all nominees get **hearings** and votes within reasonable periods of time.

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April 22, 2002, Monday, Final Edition

SECTION: EDITORIAL; Pg. A18

LENGTH: 460 words

HEADLINE: Give 'em Hearings

BODY:

IT HAS BEEN nearly a year since President Bush nominated his first batch of **judges**. Of the initial group of 11 appeals court nominees, eight have still not had hearings before the Senate Judiciary Committee. Two of these nominees are of particular local interest: John Roberts and Miguel Estrada. Both have been nominated to the D.C. Circuit Court of Appeals, which currently has four of its 12 seats vacant. Both, on the surface anyway, seem well qualified -- having done extensive appellate work in the solicitor general's office and in private practice. Both have high-profile bipartisan support. Yet neither has moved. And while Judiciary Committee Chairman Patrick **Leahy** (D-Vt.) has said that Mr. Estrada will receive a **hearing** this year, he has pointedly failed to promise the same for Mr. Roberts. Mr. Leahy is in a tough spot. He has taken a beating for his handling of judicial nominations, a beating that is largely unfair. The Senate has confirmed 45 **judges** since he took over the committee, which is a respectable pace. He certainly has not yet begun to match the obstructionism with which the same Senate Republicans who now criticize him managed the confirmation process while they were in charge of it. Neither, however, has he entirely restored dignity and fairness to it. Rather, like his predecessor Orrin Hatch (R-Utah), he is allowing individual nominees to sit around with no explanation for what are turning out to be long periods of time. These delays are hard to justify under any circumstances. Nominees should receive timely consideration out of deference to the president, out of respect for the institutional needs of the judiciary, and out of a sense of fairness to the individuals. But delays are particularly objectionable when nobody will even come forward to make a case against the nomination.

So far, anyway, nobody has made a serious case against Mr. Roberts or Mr. Estrada -- neither of whom has an extensive public record of statements or writings to criticize. Liberal groups have complained that Mr. Roberts, as a lawyer for the government, helped write briefs that argued against abortion rights. The more general anxiety seems to be that both men are young, talented conservatives who could upset the D.C. Circuit's ideological balance. It is true that President Clinton's nominees to the D.C. Circuit were held up also -- as, incidentally, was Mr. Roberts when he was initially nominated by the elder President Bush. But government by tit-for-tat is an ugly spectacle. If there is a case to be made against either nominee, the onus is on opponents to make it and its proper forum is a hearing. If there is no case, the Senate should move to a vote. Either way, further delay is not the answer.

