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APPOINTMENT OF FEDERAL JUDGES: STATUS REPORT
(March 4, 2002)

1. The President has nominated judges at a record pace.

- President Bush has nominated 92 Article III judges: 29 circuit, 62 district, and 1 Int'l Trade. None of the previous six Presidents submitted more than 47 judicial nominations in the first year.

2. There is a vacancy crisis in the federal judiciary.

- In 1998, at a time when there were 50 judicial vacancies, Senator Leahy stated that the number of vacancies represented a "judicial vacancy crisis." (The Associated Press, October 22, 1998)
- There are 94 vacancies out of 853 authorized circuit and district court judgeships, an 11% vacancy rate. The crisis has worsened substantially.
 - The Chief Justice's year-end report on the judiciary labeled the current situation as an "alarming number of judicial vacancies."
 - The Judicial Conference of the United States has classified 35 of the current vacancies as "judicial emergencies."
- The 12 regional circuit courts of appeals, the courts of last resort in the vast majority of federal cases, face a particular crisis with 30 vacancies out of 167 authorized judgeships, an extraordinary 18% vacancy rate. The vacancy rate is an especially serious problem in light of the enormous caseload: According to the Chief Justice's recent year-end report, filings in the 12 regional courts of appeals reached an all-time high last year and have increased 22% since 1992.
- The Sixth Circuit Court of Appeals (covering Kentucky, Michigan, Ohio, and Tennessee) is operating at only half strength, with 8 vacancies on a 16-judge court.
 - In March 2000, at a time there were 4 vacancies on that court, Chief Judge Merritt of the Sixth Circuit wrote to the Senate Judiciary Committee about the crisis: "The Court is hurting badly and will not be able to keep up with its work load. . . . Our Court should not be treated in this fashion. The public's business should not be treated this way. The litigants in the federal courts should not be treated this way. . . . The situation in our Court is rapidly deteriorating due to the fact that 25% of the judgeships are vacant."

- The D.C. Circuit Court of Appeals is operating with 1/3 of its judgeships vacant (4 vacancies on a 12-judge court).
- The caseload in the federal courts may increase further as a result of the war on terrorism, as well as other criminal and civil matters that arise out of the September 11 attacks.

3. The President has acted decisively in response to the vacancy crisis, but the Senate has not yet done so.

- The President has submitted 92 judicial nominations, which is a record pace. But the Senate has voted on only 39 of the President's 92 nominees.
- Despite the President's record pace of nomination, the number of vacancies has actually increased since the President took office due to the Senate's pace of confirmation (which has not kept up with judicial retirements). When the President took office, there were 84 vacancies. Now, there are 94 vacancies.
- Notwithstanding the especially serious vacancy crisis in the circuit courts of appeals, the Senate has voted on only 7 of the President's 29 circuit nominees (24%).
- In the President's first year, the Senate voted on 24 of the 44 nominees who were nominated before the August recess. That was a sharp departure from the Senate's traditional practice with respect to nominees of a new President.
 - In the first year of the past three Administrations, all but one of the nominees who were nominated before the August recess were voted on and confirmed in the first year of the Presidency.

4. The Senate's treatment of the President's first 11 nominees illustrates the Senate's delay.

- On May 9, 2001, at an event in the East Room, the President announced the nomination of 11 judges -- including 8 nominees for judicial vacancies classified as "emergencies" by the Judicial Conference of the United States.
 - All 11 nominees subsequently received a "well qualified" or "qualified" ABA rating. In March 2001, Senator Leahy referred to the ABA rating as the "gold standard" for evaluating judicial nominees.
- Nearly 10 months have now elapsed since those nominations, yet the Senate Judiciary Committee has held hearings for only 3 of the 11 nominees.

- The *Washington Post* editorial page stated that “[t]he Judiciary Committee chairman, Democratic Sen. Patrick Leahy, has offered no reasonable justification for stalling on these nominations.” (*Give Them Hearings*, November 30, 2001)

5. Judicial nominees deserve a prompt hearing and vote in the Senate.

- On May 9, 2001, the President made the following request of the Senate: “I urge Senators of both parties to rise above the bitterness of the past, to provide a fair hearing and a prompt vote to every nominee. That should be the case for no matter who lives in this house, and no matter who controls the Senate. I ask for the return of civility and dignity to the confirmation process.”
- In his year-end report on the judiciary, the Chief Justice of the United States emphasized the same principle: “On behalf of the Judiciary, . . . I ask the Senate to schedule up or down votes on judicial nominees within a reasonable time after receiving the nomination.”
- On June 24, 1998, at a time when there were many fewer vacancies than today, Senator Daschle stated: “We cannot wait for the judicial system to collapse before the Senate acts.” He asked for the Senate to “significantly accelerate the pace of scheduled judicial confirmations.” (144 Cong. Rec. S 7008)
- On July 7, 1998, at a time when there were 68 vacancies, Senator Leahy stated: “Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. Courts cannot try cases, incarcerate the guilty or resolve civil disputes without judges.” (144 Cong. Rec. S 7535)
- The *Washington Post* editorial page, which has written often and consistently on the judicial confirmation process, has stated: “Failing to hold [hearings] in a timely fashion damages the judiciary, disrespects the president’s power to name judges and is grossly unfair to often well-qualified nominees.” (*Give Them Hearings*, November 30, 2001)