

# STARE INDECISIS: OBAMA'S INACTION ON JUDICIAL NOMINATIONS

Michael Fletcher has an article in Friday's Washington Post entitled "*Obama Criticized as Too Cautious, Slow on Judicial Posts*".

President Obama has not made significant progress in his plan to infuse federal courts with a new cadre of judges, and liberal activists are beginning to blame his administration for moving too tentatively on what they considered a key priority.

During his first nine months in office, Obama has won confirmation in the Democratic-controlled Senate for just three of his 23 nominations for federal judgeships, largely because Republicans have used anonymous holds and filibuster threats to slow the proceedings to a crawl.

But some Democrats attribute that GOP success partly to the administration's reluctance to fight, arguing that Obama's emphasis on easing partisan rancor over judgeships has backfired and only emboldened Senate Republicans.

Well, yeah, that is about right. In fairness, and Fletcher, despite the gist of his title, does point this out in the body of his article, the GOP is acting in bad faith with the obstructionistic filibustering and holds. So, it isn't *all* Obama. But there sure is a problem here.

Three out of 23, with a popular President possessing a real electoral mandate and the supposed holy grail of a 60 seat caucus majority in the Senate, is a batting average that screams lame. But the real eye opener painting the full

color of the context is that George W. Bush sent 95 nominees to the Senate for confirmation by this point in his first term. Whatever happened to the big push Greg Craig (he of two first names) was spearheading on this? And make no mistake, it is not as if there are not plenty of judicial seats to fill – there are currently at least 90 waiting to be filled – and it is having a deleterious impact on the ability of Federal courts across the country to function.

The delays are having a ripple effect in federal courts, where caseloads continue to back up, said Senate Judiciary Chairman Patrick J. Leahy (D-Vt.). Currently, about 90 judicial seats – about 10 percent of the total – remain vacant in appeals and district courts.

The part of Fletcher's article that is most distressing, however, is the description of the namby pamby attitude and philosophy Obama has on his judicial nomination policy.

Eric Posner, a professor at the University of Chicago Law School, said that Republicans consider the federal courts crucial to furthering their policy aims by overturning current law, but that Obama is among Democrats who view court appointments mainly as a means of defending the legal status quo.

Obama has said he wants to appoint empathetic judges, but "beyond that, he hasn't said much. So it is hard to know exactly what he has in mind," Posner said.

Empathy. Hate to agree with the Republican talking points; but they are right, empathy is a bogus and impertinent concept to frame a Presidential judicial nomination policy around. Posner is absolutely right though, non-controversial empathetic centrists is about the sum total of the game plan for the Obama

Administration. And he is not even making headway on that weak agenda.

Obama's first nominee was David Hamilton, a centrist milquetoast from Indiana. Hamilton has a (despite the nitpicking claims of the GOP) bland and clean record, is Lee Hamilton's nephew and has the ardent backing of home state GOP Senator Richard Lugar. Yet Hamilton languishes without a vote. Just like the other forgotten nominee from Indiana, Dawn Johnsen. And that is the way it is going to be with the current Republican minority; and it isn't going to get any better after healthcare has been passed against their will.

Time is wasting, there is no reason not to put up big blocks of nominees. Get on with it, make the Republicans vote in good faith or expose them as unprincipled obstructionists. Fight for your nominees and use the 60 seat majority. You can bet your family farm that is exactly what the Republicans would do; *it is what they do* when in the Presidency.