secure our borders and would have a guest worker program going forward and then follow up by dealing with the illegals who are in our country now. Perhaps there would even be a safe harbor—no commitments about what would happen if Congress but not to cause people to lose jobs that are not being filled.

Perhaps, there could be something along that line as we decide how to deal with those people who are here. I do believe there will be more acceptance of a responsible, legalization process of people who are here illegally if the American people see border security and a guest worker program that puts the people in the front of the line who we come legally into our country to work.

Mr. President, it is so important that we not give up. It is so important that we not turn another blind eye to the problem facing this country of more and more illegal aliens coming in. We must secure our borders from terrorists, drug dealers, and human traffickers. But it is not the same as people who are coming to our country for economic help for themselves and their families. We must provide a way to attract those people to jobs that are not being filled by Americans. So, yes, it is disappointing today.

I applaud the people who have worked so hard. I want to say that they did make progress, and it is something from which we can all learn and do better as we move forward. But, mostly, we cannot shirk the responsibility of our United States Senate and our United States Congress, working with the President, to do the right thing for our country.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

IMMIGRATION

Mr. KENNEDY. Mr. President, it is now clear that we are not going to complete our work on immigration reform. That is enormously disappointing for Congress and for the country. But we will be back and we will prevail. The American people sent us here to act on our most urgent problems, and they will not accept inaction. I have seen this happen time and time again. America always finds a way to solve its problems, expand its frontiers, and move closer to its ideals. It is not always easy, but it is the American way.

I learned this first as a child at my grandfather's knee. He taught me that in America progress is always possible. His generation moved past the cruel signs in the windows in Boston saying "Irish Need Not Apply" and elected that son of an Irish immigrant as mayor of Boston.

I learned that lesson firsthand when I came to the Senate in 1962. Our Nation has struggled through the Civil Rights Act of 1964 and the Voting Rights Act of 1965. But we didn't give up and we ultimately prevailed.

The same was true in our battles for fair housing and for an end to discrimination against persons with disabilities. Or, inasmuch as these, a minority in the Senate was often able to create stalemate and delay for a time. But they had never been able to stop the march.

Throughout all of those battles, we faced critics who loudly warned that we were changing America forever. In the end, they were right. Our history of civil rights legislation did change America forever. It made America stronger, fairer, and a better nation.

Immigration is another issue like that. We know the high price of continuing inaction. Raids and other enforcement actions will escalate, terrorizing our communities and businesses. The 12 million undocumented immigrants will continue to come. Sweatshops will grow and undermine American workers and wages. State and local governments will take matters into their own hands and pass a maze of conflicting laws that hurt our country. We will have the kind of open border that is unacceptable in our post-9/11 world.

Immigration reform is an opportunity to be true to our ideals as a nation. Our Declaration of Independence announces that all of us are created equal. Today, we failed to live up to that declaration for millions of men and women who live, work, and worship beside us. But our ideals are too strong to be held back for long.

Martin Luther King had a dream that children would be judged solely by "the content of their character." Today, we failed to make that dream come true for the children of immigrants. But that dream will never die. It has the power to overcome the most bitter opposition.

I believe we will soon succeed where we failed today, and that we will enact the kind of comprehensive reform that our ideals and national security demand. Soon, word will echo across the country about the consequences of today's vote. The American people will know that a minority of the Senate blocked a record investment in border security.

H.L. Mencken said that for every complex problem, there is a simple solution—and it is wrong. A minority in the Senate has employed a simple label against this bill—amnesty—and they were wrong, too.

A minority in the Senate rejected a stronger economy that is fairer to our taxpayers and our workers. A minority in the Senate has employed our own extraordinary immigrant history and ignored our Nation's most urgent needs.

But we are in this struggle for the long haul. True defeat will not stand. As we continue the battle, we will have ample inspiration in the lives of the immigrants all around us.
to a solution. But I think the one message I would take away from what we saw happen earlier today is the American people, our constituents in Texas, are profoundly skeptical of big Government solutions with a lot of moving parts based on big, grandiose promises, when our history has been one of not delivering consistent with what we promised. Let me mention what I mean by that.

In 1986, we had a big immigration bill, supposedly one to fix all the problems. President Ronald Reagan signed that bill. I remember Ed Meese, his Attorney General, wrote a piece in which he believed we had to deliver consistent with what we said we would deliver. One of the problems, President Reagan told us here in 1986 that if you do this amnesty one time, that will be the end of it; you will never have to do another one, as long as we have enforcement of our laws, and that we cannot do that. I think that unfortunately too often characterizes our activities in Washington. But we work for the constituents. We need to talk to them and explain to them what the problem is. We need to have a transparent process that is an interactive process where we can listen to them and try to work toward a solution. One of the lessons may be that big, multifaceted, complex programs such as this bill offered, particularly on something where the Federal Government doesn’t have a whole lot of credibility when it comes to actually enforcing the law or securing the border, the American people are not going to accept it, and I think that was reflected in the vote we had today. That is not as saying as saying give up, because we can’t give up. This problem is not going away. As somebody who represents a border State with about 1,600 miles of common border with Mexico, I say we have to find a rational solution to this problem. I know that passions have run high, but I, for one, am very pleased with the level of the debate in the Senate because, as we all know, sometimes this topic is susceptible to some pretty irresponsible language that I don’t think is helpful.

This was not a rejection of our heritage as a nation of immigrants. We are also a nation of laws. And I think what the American people saw—certainly my constituents in Texas saw—is the status quo of a kind of lawlessness and a lack of commitment to simple law and order which they wanted to see restored. I think if we demonstrate that we have heard the message they have sent us, that yes, we are serious about border security; yes, we are serious about enforcing the law—then I think we can continue that conversation and talk about the other aspects of this legislation that we need to continue to work on.

What are the legitimate needs of American employers for legal workers? Certainly, we would prefer that they get legal workers rather than workers who are not respecting our laws. Certainly, we need to know on which side they stand. I would think, to have a system whereby someone can show up at a workplace and present a tamper-proof, secure identification card and virtually guarantee that they are legally eligible to work in the United States. That is an important part of what I thought we would provide.

Certainly, we would all want, I would think, to deliver little. So this is a big issue, one that is worthy of the greatest deliberative body in the world—the U.S. Senate—and it is also one on which I assure each of my colleagues that I intend to do my part to try to solve.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. I ask unanimous consent that the order for the quorum be rescinded.

The PRESIDING OFFICER (Mr. Nelson of Nebraska). Without objection, it is so ordered.
NOMINATION OF LESLIE SOUTHWICK

Mr. HATCH. Mr. President, as the discussion over immigration reform demonstrates, this body confronts tough issues and can find itself embroiled in some contentious debates.

Over the years, it has not been uncommon for judges to participate in contentious debates at the top of the list of contentious debates. And during those debates, we have seen a lot of tactics and methods used. But some tactics are simply wrong. Some methods are simply inappropriate.

There are some means which no ends can justify. Some of these wrong tactics, inappropriate methods, and illegitimate means have been used to attack the nomination of Judge Southwick to the U.S. Court of Appeals for the Fifth Circuit.

If we care about the integrity of this body and the good of the judicial branch, if we really believe that there is something more important than raw ideological politics, we should reject this attack on this good man and confirm his nomination.

Judge Southwick, who served for a dozen years on the Mississippi Court of Appeals, has received a unanimous well-qualified rating from the American Bar Association.

He has the strong support of his home State Senators, both of whom are Senior Members. He would fill a judicial emergency vacancy. And though it has been obscured by all the hyperbolic, vitriolic, and over-the-top rhetoric now thrown about, the Judiciary Committee just months ago approved without objection Judge Southwick's nomination. Now, for whatever reason, the nomination is in limbo—first it is on the committee agenda without action and now not on the committee agenda at all.

The committee looked at the same qualifications, the same record, the same man with the same character, and found no objection whatsoever.

The only difference—which is really a distinction without a difference—is that Judge Southwick was then nominated to the U.S. District Court but now has been nominated to the U.S. Court of Appeals.

The disturbing tactics being used against this nominee are certainly not new, and they are more legitimate or persuasive now than they have been used against other nominees in the past.

Frankly, I am amazed that anyone finds them credible, let alone persuasive.

Judge Southwick served on the Mississippi Court of Appeals for 12 years. It is not credible to focus only on a few cases among the 7,000 in which he participated and the nearly 1,000 opinions that he did not write.

It is not credible to focus only on the results of those few cases, ignoring the facts and the law.

It is not credible to demand that judges render decisions that serve certain political interests, whether or not the law actually requires that result.

It is not credible to attack Judge Southwick for phrases or language in opinions he did not write.

It is not credible to ignore the limitations imposed on appeals court judges by the standard of review they must follow.

It is not credible to say that a judicial ruling against a particular party amounts to a judge's personal hostility against a group to which that party might belong.

These are some of the misleading tactics that we have seen used against judicial nominees in the past and are being used against Judge Southwick now.

These tactics are simply not credible, and I am amazed that my Democratic colleagues seem to be going along with them.

One of the sure signs that such illegitimate tactics are in play is that they result in a distorted, twisted caricature of a nominee that those who have long known and worked with him simply do not recognize.

Richard Roberts, former president of the Mississippi bar, for example, says that no other lawyer in the State is as qualified as Judge Southwick to serve on the Fifth Circuit.

According to Phillip McIntosh, associate dean at the Mississippi College School of Law where Judge Southwick now teaches, a politically and racially diverse faculty unanimously approved Judge Southwick for a faculty position with no question about his integrity, fairness, or impartiality.

A. LaVerne Edney, an African-American partner at Judge Southwick's former law firm, clerked for him on the Mississippi Court of Appeals.

He says that Judge Southwick applied the law fairly without regard to the parties' affiliation, color, or stature.

These and other colleagues and partners of Judge Southwick know him best.

I can only imagine their shock and confusion over the wildly derogatory and extreme descriptions offered by Judge Southwick's Washington-based critics.

I can only imagine the reaction by those who know Judge Southwick when those who do not know him make such claims without knowing what they are talking about.

I think my colleagues would agree that the American Bar Association has never been accused of a conservative bias.

And I think we would all agree that the ABA conducts perhaps the most exhaustive and thorough evaluation of judicial nominees.

The ABA looks at the whole record; the ABA interviews dozens of people in each case.

Let me remind everyone that the previous nominee to this very same Fifth Circuit position ran into trouble when the ABA rated him not qualified.

My Democratic colleagues thought that was the most insightful, thorough, accurate, and definitive evaluation ever done on any nominee to any position anywhere.

The same ABA has unanimously given Judge Southwick its highest well-qualified rating.

That means, according to the ABA's own description of its rating criteria, that Judge Southwick gets the highest marks for such things as compassion, open-mindedness, freedom from bias and commitment to equal justice.

So here is the choice we face. On the one side, critics who do not know and have not worked with Judge Southwick look only at the results of just a few cases and claim Judge Southwick has hostile views on issues such as race, when there is no indication that anybody in Mississippi or otherwise that he has any such hostility.

On the other side, the ABA and those who do know and have worked with Judge Southwick look at his entire record and gave him the highest marks for compassion, open-mindedness, freedom from bias and commitment to equal justice under the law.

These two radically different pictures of this nominee cannot both be true. I think the tactics and standards used by Judge Southwick's critics are wrong and illegitimate, and the conclusions about him based on those tactics are simply not credible. I think they know that.

And they certainly do not justify doing an about-face and voting against a nominee who, just months ago, received the Judiciary Committee's unanimous support.

Illegitimate tactics leading to less credible conclusions do not justify disregarding the judgment of our colleagues, the Senators from Mississippi, who are this nominee's home State Senators.

Let me close with one more point.

In their opposition letter, the Congressional Black Caucus says that we "should be impressed by the frequency with which Southwick's opinions and concurrences have been overruled." That is pure, unadulterated hogwash.

Judge Southwick authored 927 opinions and concurrences while on the Mississippi Court of Appeals and only 21 of them have been either reversed or even criticized by the Mississippi Supreme Court in 12 years. I don't know of many judges who have such an unblemished record.

I must say that I am indeed impressed by the frequency with which Judge Southwick's opinions and concurrences have been overruled.

I am very impressed with such a low reversal rate over such a long period of distinguished judicial service.

And I note that Kay Cobb, former presiding justice of the Mississippi Supreme Court, the court that reviewed Judge Southwick's decisions, has written with enthusiastic support of his nomination.