I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, before we vote—and the vote will occur momentarily—I have spoken to the majority leader, and this will be the last vote tonight. I will also indicate the majority leader has indicated we will come in on Monday at 12 o'clock. We will have an hour of morning business, and at 1 o'clock we will vote on a judicial nomination, or if we do not work something out on the cloture motion that was filed today, we will vote on that on Monday. We will have a pro forma session in the morning, and that would ripen on Monday.

We are going to have to vote on Monday at 1 o'clock either on a judicial nomination or cloture on drought assistance.

I appreciate everyone's cooperation today. We have been able to move forward two very important amendments on this very important legislation. I have spoken with Senator THOMPSON. We have not cleared this with Senator BYRD and others. We want to make sure Senator THOMPSON has the first amendment when we come back on Monday, and following that, Senator BYRD will have the next amendment.

Mrs. BOXER. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 4492, as further modified. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Delaware (Mr. BIDEN), the Senator from Iowa (Mr. HARKIN), and the Senator from New Jersey (Mr. TORRICELLI), are necessarily absent.

Mr. NICKLES. I announce that the Senator from Kentucky (Mr. BUNNING), the Senator from Nevada (Mr. ENSIGN), and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

I further announce that if present and voting the Senator from Kentucky (Mr. BUNNING), would vote ''yea''

The result was announced—yeas 87, nays 6, as follows:

[Rollcall Vote No. 210 Leg.]

YEAS—87

Allard	Collins	Grassley
Allen	Conrad	Gregg
Baucus	Craig	Hagel
Bayh	Crapo	Hatch
Bennett	Daschle	Hollings
Bingaman	Dayton	Hutchinson
Bond	DeWine	Hutchison
Boxer	Dodd	Inhofe
Breaux	Domenici	Inouye
Brownback	Dorgan	Johnson
Burns	Durbin	Kerry
Byrd	Edwards	Kohl
Campbell	Enzi	Kyl
Cantwell	Feingold	Landrieu
Carnahan	Feinstein	Leahy
Carper	Fitzgerald	Levin
Cleland	Frist	Lieberman
Clinton	Graham	Lincoln
Cochran	Gramm	Lott
Lugar	Reid	Snowe
McCain	Roberts	Stabenow
McConnell	Rockefeller	Stevens
Mikulski	Santorum	Thomas
Miller	Sarbanes	Thompson
Murkowski	Schumer	Thurmond
Murray	Sessions	Voinovich
Nelson (FL)	Shelby	Warner
Nelson (NE)	Smith (NH)	Wellstone
Nickles	Smith (OR)	Wyden

NAYS—6

Chafee	Jeffords	Reed
Corzine	Kennedy	Specter

NOT VOTING—7

Akaka	Ensign	Torricelli
Biden	Harkin	
Bunning	Helms	

The amendment (No. 4492), as further modified, was agreed to.

Mr. SMITH of New Hampshire. I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4491, AS AMENDED

The PRESIDING OFFICER. Under the previous order, amendment No. 4491, as amended, is agreed to, and the motion to reconsider is laid on the table.

The amendment (No. 4491), as amended, was agreed to.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SHELBY. Mr. President, I am pleased to join with Senator BAYH in offering an amendment to the homeland security bill.

It is a straighforward amendment designed to improve and strengthen the protection of our Department of Defense installations which contain the storage and destruction facilities for our Nation's chemical agent and munitions stockpile.

Prior to September 11, no temporary flight restrictions existed for any of our Nation's chemical weapons stockpile sites. Secretary Rumsfeld took quick action after September 11 to establish temporary flight restrictions at each of these sites, but numerous violations of these flight restrictions have occurred.

In the case of the Anniston Chemical Destruction Facility and storage site, 22 violations have occurred since flight restrictions were implemented by the Department of Defense. The latest was just today when a Lear-type jet flew over the incineration facility at less than 1000 feet. Another violation that caused great concern was a night time over-flight which included 3 passes by an unidentified aircraft.

These incursions are serious matters. Current law provides for stiff penalties to be levied against those who violate restricted air space. In the case of our chemical weapons storage sites and weapons destruction facilities, we must be ever vigilant. That is what this amendment seeks to do by:

First, requiring the Secretary of Defense to review the current temporary flight restrictions to determine if they are sufficient to provide maximum protection to these facilities from potential airborne threats and to report his findings to Congress.

Second, the amendment would require the FAA to issue a report on each violation of the temporary flight restrictions which apply to these sites. Mr. President, as I have stated, very serious penalties already exist for those who violate these restrictions. Given the tremendous danger to the workers and local citizens associated with any unintentional crash or intentional act at any one of these storage sites, I believe this amendment is both reasonable and prudent in requiring the FAA to report on actions taken in response to a confirmed and properly investigated restricted airspace violation.

Lastly, in the amendment we ask the Secretary of Defense to assess the use of periodic air patrols and military flight training exercises in terms of their effectiveness as a deterrent to airspace violations or other potential airborne threats to these facilities.

While little, if anything, could be done to stop someone intent on attacking one of these storage sites from the air, we should take every step to make sure that these flight restrictions are respected and violators are punished. This amendment is about safety, enforcement of the law, and, ultimately, protection of our citizens who live in close proximity to these chemical weapons facilities.

MORNING BUSINESS

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I ask unanimous consent I be allowed to proceed as in morning business.

The PRESIDING OFFICER. The Senate is in morning business.

The Senator from Alabama.

THE NOMINATION OF PRISCILLA OWEN

Mr. SESSIONS. Mr. President, we had a very sad day today. The Senate

Judiciary Committee, on a party-line, partisan vote of 10 to 9, voted down the nomination of Priscilla Owen, a justice on the Texas Supreme Court, for a position on the Fifth Circuit Court of Appeals.

Having practiced many years in Federal court, 15 years full-time as a Federal prosecutor, I care about the Federal courts. I want it to be the very best it can be. I believe deeply in the rule of law in America. I believe it is a tradition we have to cherish and turn over to our children and our grandchildren, so that it has the same strength, moral coherence, and integrity that it has always had.

In fact, most of the nations around the world today that are struggling so badly—the Third World nations—are not struggling because their people will not work or because they do not have resources. Too often, it is generally because there is no legal system that can operate where people can make loans and expect them to be repaid, or where they can own property and not have it stolen from them. So the legal system is exceedingly important.

What happened this morning—and it was particularly tragic—represents a culmination of a decision, apparently reached a year or so ago, when President Bush was elected, and three liberal activist professors—Laurence Tribe, Cass Sunstein, and Marcia Greenberger—met with the Democratic Conference to discuss judicial nominations. And they asserted that President Bush had won by only a small margin and, therefore, he did not have the same authority that other Presidents had to nominate judges, forgetting, of course, that the total vote percentage received by President Clinton, I believe, was only about 44 percent. President Bush got a larger percentage of the American vote than Clinton did.

But at any rate, these professors set about to deliberately alter the confirmation ground rules. In fact, a newspaper—I believe the New York Times—reported that they had met to discuss changing the ground rules on the nominations of Federal judges. And it was a real serious thing.

So, well, that is politics. You hear those kinds of things.

You wouldn't think that the decisions we have used since the founding of this Republic, certainly in the last 60 years of anybody's recognition here of the normal way things are done, would be changed significantly, but I am afraid we may be wrong. We may be seeing significant change. I am hopeful that is not the case. Maybe we can turn it around. Maybe it is not too late. But today's vote was very disturbing because we had one of the finest nominees ever to come before this Senate, a nominee that clearly had the votes to pass on the floor of the Senate but was voted down in committee, blocked from coming to the floor of the Senate so we could have a full airing and a full vote.

We had some hearings in the Judiciary Committee and subcommittees on how to change the ground rules. Some liberals, including law professors alleged in one of the hearings that one out of every four Supreme Court nominees during the first 100 years of this country were voted down because of ideology. We have checked that in detail and researched those allegations, and that is just not true. They suggested that the burden should lie on the nominee to prove him or herself worthy. We demonstrated that history did not support that position. They asserted that the Supreme Court of the United States is a right-wing Court and that ideology drives what they do, undermining respect for the law. I reject that characterization of the Supreme Court.

They said that the ABA ratings need to be given consideration, except in this case the nominee got a unanimously well-qualified rating, the highest possible rating of the ABA.

They said that we don't want to have a judge that would vote to overrule Roe v. Wade. We can't have a right-wing activist. And they asserted that ideology or politics is a basis for rejecting a nominee.

We had hearings on that. Lloyd Cutler, who served as counsel for two different Democratic Presidents, flatly rejected that in the hearing, made a strong statement saying this would politicize the courts. So did Griffin Bell, former Attorney General under President Jimmy Carter. They rejected this ideological approach to the judiciary, something we have never done in this Senate's history.

One thing we noticed, all of these arguments don't meet the test of logic or history or facts except one, and that was the one chosen—raw political power to vote down a nominee of extraordinary capability submitted by President Bush. We have not seen that before.

We had at one of the hearings a Democratic justice, former justice retired from the Supreme Court of Texas. He was here to support Justice Owen from Texas. He said to me after the hearing: At least for some of these nominees there was a basis to vote against them, but they have no basis to oppose Owen. They put out nothing on her.

That is a fact. Nothing was said that would undermine her ability, even if you were highly suspect of a nominee. To me, there were just no facts there. She conducted her life not politically but professionally, as a lawyer, with integrity and outstanding ability.

They said that in the first 100 years so many Supreme Court Justices were voted down on ideology. That is an absolutely untrue statement. In fact, only a few were rejected for political reasons, and sometimes those battles were pretty tough in the days of the founding of this country.

We do know that they didn't even have hearings on most of them.

They say that the burden should be on the nominee. Well, if history is to serve as a guide, we would do well to think about what we have done here. During the first 130 years of our country's history, the Senate did not even ask a nominee to come before the Senate for a hearing. The first nominee to even appear before the Senate before confirmation was Justice Harlan Fisk Stone, in 1925. Nominees did not appear regularly before the Judiciary Committee until John Marshall Harlan in 1955. Occasionally the committees asked a few nominees questions in writing, but there wasn't the kind of examinations we have today.

So it would be difficult for anyone to argue that historically we have put the burden on the nominee to prove their worthiness.

What we have always done is that the President submits people. The Senators from that home State have to approve that nominee. If they don't approve, the nominee almost universally is not confirmed. But if the home State Senators approve, it comes up before the committee, and the committee looks to see if they are extreme, if they have good integrity, if they have basic legal skills, that they have a proven record of capability and respect within the bar that would make them worthy of the position of a lifetime appointment on the bench.

The Senate is not a rubber stamp. It should not vote for every nominee, just because the President submitted that nominee. But we ought to have a basis within that traditional realm of evaluation of a nominee to vote one down. That was lacking here today.

As Senator ORRIN HATCH said: Her testimony was perhaps the finest testimony ever received in his time as chairman and ranking Republican on that committee.

Those are the facts about our history. My Democrat colleagues assert somehow that the Supreme Court of the United States is a right-wing Court and that we need a balance. We need to make sure that moderate or liberal nominees get put on for every moderate or conservative or liberal that was on there, some sort of balancing out, some sort of moderate deal. That is not the way we have done nominations. The President submits nominees. We evaluate them and see if they are worthy.

I will just ask: What is moderation? What does that mean? Does that mean you enforce half the law? You analyze it halfway? You don't make anybody mad with your ruling? You try to carve your ruling so it satisfies everybody? If the statute of limitations is run and the person wants $10,000, do you give them $5,000? Is that justice? Is that moderation? I don't think so.

This Supreme Court has faced some tough decisions. It protected the burning of an American flag and said that the act of burning a flag is free speech. The act of burning a tangible object is covered by the first amendment protection of free speech. I don't think that is good, in my personal view. But you had

people such as Justice Scalia, supposedly a conservative, voting for that with others. I think it was a bad decision. But they ruled on that, this so-called right-wing Court.

They banned voluntary school prayer at high school football games. Former Judge Griffin Bell of the 11th Circuit Court of Appeals, actually originally from the Fifth Circuit Court of Appeals, and Attorney General of the United States under President Carter, once said—perhaps in jest; perhaps not—nobody ought to serve on the Supreme Court, on the Federal bench, that doesn't believe in prayer at football games.

I don't think that is a good opinion. I don't believe a voluntary prayer at a football game violates the establishment clause of the first amendment, but that is what the Supreme Court has ruled, and many other cases along that line.

They stopped the police from using heat sensors to search for marijuana-growing equipment in houses. That was pretty much considered a liberal opinion.

They struck down a law that bans virtual child pornography, which I was disappointed to see since, as a prosecutor, I know how difficult that is going to make it for prosecutors to be successful. And they reaffirmed and expanded abortion rights to include substantial protections for partial-birth abortion, this so-called right wing Supreme Court. That is a bogus argument also.

(Mr. DAYTON assumed the Chair.)

Mr. SESSIONS. Well, they said the ABA rating was the gold standard, but that didn't help them in this argument because the ABA unanimously voted that Priscilla Owen was well qualified for the Eleventh Circuit. They had seen her practice law, they had seen her as a justice of the Texas Supreme Court, and they found that she was well qualified, giving her the highest rating. The bar association, as I recall, has 15 members of the committee that actually does that vote. Heretofore, they didn't say anything about whether you were qualified, well qualified, or unqualified. Now they tell you whether or not it was unanimous. It is hard to get 15 of them to be unanimous. They select the committee that evaluates them, and it is a fairly sizable committee. Many are civil rights attorneys, some are big law firm attorneys, some are individual practitioners, and others are officials in the State bar. It is a big committee, and it is hard to get a unanimous vote of well qualified, but she was so rated.

They said: We don't want anybody who would reverse the right of a woman to have an abortion—reverse Roe v. Wade. Well, everybody knows a judge on the Fifth Circuit cannot overrule the Supreme Court's opinions on abortion. They cannot overrule any Supreme Court decision, including Roe v. Wade. In fact, the Fifth Circuit has explicitly adopted Roe v. Wade in Planned Parenthood v. Casey. Both of those are big-time, important abortion cases. They have already affirmed those.

Priscilla Owen has never voted on or opposed Roe v. Wade, as Justice Byron White did when he was on the Court. She never called Roe v. Wade a ''heavy handed judicial intervention,'' as Ruth Bader Ginsburg, President Clinton's nominee to the Supreme Court, did. She never voted for a statute to ban abortion, as Al Gore did, or never supported a constitutional amendment to ban abortion, as DICK GEPHARDT, the would-be Speaker of the House, has done in the past. Would all of these individuals be blackballed and fail to pass a lockstep test of the Democratic majority on the Senate Judiciary Committee if they were nominated for a Federal judgeship? I think this is going a bit far.

So we have heard that we cannot have a conservative judicial activist on the court. I agree with that. You can have people who are so conservative that they force their agenda by reinterpreting the words of statutes, as well as you can have a liberal do that. The traditional conservative theory of law is that you respect the laws passed by the legislature and enforce them as written, whether you like it or not.

Traditionally, the ideology of the left—as is dominating in our law schools today, unfortunately—is that—really, today they are getting awfully cynical—the law is truly a tool of one group to oppress another group, that words don't have any finite meaning and you can make them mean whatever you want to say, and that the law is a tool for social progress and not a protection of rights, as we have understood it.

Traditionally, in the last 30 years, most of the activism has come from the left. We have actual people who assert with quite a strong conviction that if the legislature didn't act, the court had to act. Have you ever heard that? I think we hear that pretty often. But think about it. Particularly in Federal Court when you have a lifetime-appointed judge. Well, let's see. The legislature didn't act, so now we can do whatever we want to as a judge, or as the court.

Well, if the legislature did not act, and they are the duly elected representatives of the people, then in fact they have acted, haven't they? They have decided not to act on whatever political agenda somebody has. And that does not justify a judge becoming a legislator because of that.

I think this is important also. This nominee, Priscilla Owen, has just been magnificent and disciplined in her view of the law. One of the things they complained about was her interpretation of a single Texas statute, passed by the legislature—the parental notification statute. She clearly followed the legitimate sources of law in interpreting that. She read the statute clearly. She interpreted the words of the statute using the pro-abortion cases of the U.S. Supreme Court upon which the statute was based, and it was not an act of activism. In fact, Senator DEWINE carefully analyzed these matters, and in the 12 cases under this statute—and this was the biggest point made against this fine nominee's record—in 3 of them she voted with a minority of the judges on the Texas Supreme Court. Most of the time, 9 cases, she voted with a majority.

By the way, in every case that reached the Supreme Court of Texas, the Texas law was vaguely written and difficult to interpret, and it involved a situation in which a trial judge and an intermediate court of criminal appeals had both ruled that notification of a parent had to occur before an abortion by a minor could be conducted. So she was, in each instance, voting on a case in which a trial judge saw the situation firsthand, and an intermediate court of appeals had ruled in the same way Justice Owen ruled. In each case that she ruled against the majority, she ruled in favor of the intermediate court of appeals and the trial judge—not an extreme record, trust me.

We looked at this hard. Senator DEWINE's analysis of it was very thoughtful and persuasive. Well, they say, that is bad, we don't want a parent to be notified. Some states have parental consent, where a parent has to consent to an abortion for a teenager. In some States, they have to have consent to get a tattoo, or an earring, or a nose ring, but they don't need to have consent to get an abortion. All it said was they had to tell at least one parent, unless there was an excuse not to. It did not require permission of that parent. And 82 percent of the people in this country, when polled, say they favor parental notification.

So who is extreme here? Is it the group smearing her for enforcing a rather modest Texas law, or is it the nominee herself?

Actually, her study of that was very carefully done, I thought, and actually utilized definitions in the U.S. Supreme Court opinion to help clarify the definitional tools of Texas law on the correct presumption that when Texas had the parental notification law, they tried to make it compatible with the Supreme Court ruling, which is what a great judge does.

Well, only the most extreme liberal groups such as NARAL, Planned Parenthood, and the ACLU, that have been active against her, could see anything wrong in this, in my opinion.

Well, they said you can't get into politics. That is something to discuss. This nominee hardly has any politics. Senator GRAMM from Texas said when people asked her to run for the Supreme Court of Texas, she could not remember, when asked, which primary she voted in last time, Republican or Democrat.

She finished third in her class at Baylor Law School and was one of the finest litigators in Texas, well respected. When she was approached to

run, she was a single mom. She gave up a highly lucrative law practice to take on the race for the supreme court. She won, and then won again, with 84 percent of the vote. She had the endorsement of every single newspaper in Texas of any size. She was an exceptional candidate in every way.

She is not a person who is a political warrior. As Senator GRAMM said, ''I am a political warrior, I know what one is.'' This lady is not. As Senator HUTCHISON of Texas, who knows her and supports her, assures us, this is a legal professional who goes about her day trying to do the right thing.

The danger in all this, to my way of thinking, is that we are sliding into a concept that the courts in America are inherently political and they cannot be trusted to enforce the law as written. Indeed, these professors assert and many of them are teaching in law school today—and it is quite a source of debate in law school—that they believe you cannot know anything, that nothing is really knowable, that there is really no truth, that character really does not count, that there are just winners and losers. If you do not get your judge on the court, you do not win.

That is a dangerous philosophy. In fact, I raised it with Professor Laurence Tribe, the brilliant activist liberal law professor. In his written statement to our Judiciary Committee when we had hearings, he flat out said, that we might as well reject the Olympian ideal of justice under law—that an Olympian ideal was an illusory concept.

That theory is a threat to the rule of law in America, and I think we saw it played out in Committee this morning because they basically said: This lady did not agree with parental notification; we heard she was a conservative; we cannot trust her to interpret the thousands and thousands of cases that come before her. That is not true.

I practiced as a Federal prosecutor before Federal judges and tried hundreds of cases. I was there for years. There may be a case every now and then that a judge's philosophy of life—you would expect one more likely to buy this argument than that argument. But if you had the cases, if you had the law, if you had the authority, whether the judges were Republican, Democrat, liberal, conservative, routinely, day after day in my court and every court in America, judges followed that. This is a dangerous concept to be selling around here.

Yes, we have politics in this body. There is nothing in the Senate that is not involved in politics. Of course, we are a political body. That is not true in courts, and if it is, we are in big trouble.

Why should you respect a court if you do not believe they are enforcing the law? We have people who believe that rules of property ownership are ways to oppress people who do not have property by people who have property and that the enforcement of a deed is somehow an act of class warfare against the poor. If you do not own the property, you do not own it in America. They want to say you ought to get a part of it anyway. It is a dangerous philosophy we are about.

Mr. President, I will conclude. I feel deeply about this issue because what was unique about this rejection of this superb nominee who testified brilliantly in addition to having a brilliant record, what was most disturbing about this process was that she was ignored. Her answers were ignored, and she was just voted down—Raw power.

Maybe that is supposed to send a message to the President, but this is a real person who has a real family, who has dedicated her life to the rule of law. She is popular in her home State. She had the confidence of the President of the United States who was Governor of the State of Texas, and he knows the people in Texas. She has the support of KAY BAILEY HUTCHISON and PHIL GRAMM, the Senators from Texas, and she should have been confirmed.

The failure to do so troubles me because I am afraid we may be adopting this postmodernism view that nothing is knowable, that there is no truth, that there is no objectivity, and that there is no such a thing as a rule of law because it is all just a manipulation; that whoever has the power writes the laws to benefit themselves and oppress everybody else.

If that is what we are heading to, I think we have a problem. Maybe that is not so. Some have said: Are we going to retaliate? I have been asked a lot about that. Is that the way Republicans are going to do the Democrats if we get a Democratic President and he submits nominees?

Let me just say it this way: I do not give up. I am hoping that a number of the members of the Judiciary Committee maybe made premature commitments on this case, maybe did not realize the full consequences of their votes, and that we will not continue to see this kind of overt politicalization of the process. I think that should avert a historic alteration in the process by which we have dealt with judges in confirmation.

We have to maybe take a deep breath. I am very upset and most of the Republican members of our committee are very upset and wonder what happened.

Under President Clinton, only one nominee in 8 years was voted down in committee or on the floor of the Senate. We have already had two voted down in committee on a party-line vote, and in both cases, the nominee would have passed had they been on the floor of the Senate. In both cases, there was a majority vote on the floor of the Senate to pass them had they gotten out of committee.

This is not healthy. I respect the talent and ability and commitment of my Democratic colleagues on the Judiciary Committee, but they are very much a Northeast-West Coast group. They do not represent the legal thinking of a majority of Americans, much less a majority of the Senate.

This little group, by sticking together in lockstep fashion, have asserted and demonstrated a power to kill nominees before they even get a full vote, superb nominees such as Judge Pickering. He had been on the Federal bench for 12 years. He was No. 1 in his class in law school. He was well qualified by the American Bar Association for the Court of Appeals, and he was voted down.

I think it is a big deal. I am very frustrated about it. There is a lot of unease. I do not know of anything to do but to continue to go forward, continue to talk to my colleagues, ask them to back off; let's go back to the traditional respect given to Presidential nominees, and I think we can make progress there.

Some said a lot of nominees who received well-qualified ratings did not get voted on. True, most of those overwhelmingly had objections from home State Senators. As soon as the Democratic Members of Congress got the majority and Senator LEAHY became chairman, they asserted not only did they want to maintain that power, but they wanted to strengthen it further than they have in the past. I do not see how anybody can complain on the senatorial courtesy rule if they, in fact, are asserting not only should it be maintained but strengthened.

If President Bush nominates a judge from New York and Senator SCHUMER objects to that judge, that judge will not move and will not be confirmed even though that judge is voted well qualified. That is just the way it has been here. Sometimes it is unfair, but that is how it has been.

As Senator HATCH, who just came into the Chamber, who so ably chaired the Judiciary Committee, knows, that is just the way it has been. I do not see any call for weakening of that rule.

I would say we have a long way to go in the future to work through this unfortunate event. I hope we can. It would be a tragic event, indeed, if this Senate were to abandon its historical system of evaluating judges.

I thank the Presiding Officer, and I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I want to congratulate my colleague Senator SESSIONS and thank him for his kind remarks today. As usual, he is one of the most articulate and eloquent spokespeople in this country with regard to the Federal Judiciary and, of course, with regard to the law in general and the rule of law. I want him to know I have a tremendous amount of respect for him and how much I enjoy working with him on the Judiciary Committee. The Senator from Alabama adds much to the Judiciary Committee. He is a terrific addition to the Committee and will leave his mark decades from now for his service in the Senate.

Mr. President, the Senator from Alabama has made a lot of points on what happened in the Judiciary Committee today, but I wanted to take a little time, as well, to address the injustice dispensed by the Judiciary Committee against Priscilla Owen of Texas. President Bush's nominee to the Fifth Circuit Court of Appeals.

The Committee defeated her nomination today. Although I am afraid it was a deal cut long before Justice Owen's hearing occurred, in defeating Justice Owen's nomination I regret that my friends on the Committee and the Senate Democrat leadership chose the path of partisanship over friendship and fairness.

The justice my colleagues dispensed is like no other the Judiciary Committee has ever inflicted. It is incomparable to any controversy raised against any nominee, Democrat or Republican. My Democrat colleagues rejected a nominee who is unblemished in every respect but for the smears of her opponents, smears which go beyond the pale of decency, distortions which are outside the bounds of cynicism and deceptions which fall below any standard of fairness, even for Washington politics and the left-wing professional lobbyists in this town.

For the first time in history, my colleagues rejected a nominee that has received the American Bar Association's unanimous rating of well-qualified, a rating that earlier this year my friends on the other side announced to be the gold standard for judicial nominees and which, of course, they now criticize because the independent body of the American Bar Association has rated President Bush's nominees as highly qualified as any we have ever seen.

I think this vote will be long remembered and regretted on both sides of the aisle.

One sample smear against Priscilla Owen of Texas came this week in one of the most outrageously false editorials I have ever read in The New York Times, but that editorial said nothing new. The editorialists apparently used only the talking points supplied by the usual suspects in Washington. Among other falsehoods, the New York Times editorial said:

In abortion cases, Justice Owen has been resourceful about finding reasons that, despite the United States Supreme Court holdings and Texas case law, women should be denied the right to choose.

The New York Times should be ashamed of themselves—or whoever the editorial writer is who wrote this. Under the parental notice cases of which they speak, no one is denied a right to an abortion. They are absolutely wrong. Abortion rights are not implicated in the parents' right to know and to be involved in their children's most painful decision, an abortion.

Even with parental notice, every minor has a right to abortion in Texas, and no decision of Justice Priscilla Owen denies that. In fact, in Texas, minors cannot get a tattoo without parental consent, but they have an unhindered right to obtain an abortion.

Last year most members of the Judiciary Committee voted to require parental consent for 18- to 21-year-olds to get credit cards.

Such is our world, Mr. President.

This willful error by The New York Times is one example of the deceptions and distortions perpetrated on Justice Owen's exemplary record. Of course, The New York Times again repeats the falsehood that Judge Alberto Gonzalez, now our White House Counsel, called Justice Owen an activist while he was serving on the same court, when in fact the truth is that a careful review of the full record of the particular case shows he was referring to another judge who wrote another dissenting opinion. He was not referring to Justice Owen. Yet we have heard time after time the same arguments used against Justice Owen.

The New York Times was not alone in addressing Justice Owen's nomination. I am heartened to know that beyond the overwhelming support from her own home State of Texas and the scores of op-ed pieces written across the country in support of this nomination, Justice Owen's nomination to the Fifth Circuit has received editorial support from over 24 newspapers published across the Nation and across the political spectrum, including the Washington Post, the Wisconsin State Journal, the Wall Street Journal, Amarillo Globe-News, Richmond Times Dispatch, Akron Beacon Journal, The Florida Times-Union, The Philadelphia Inquirer, The Tampa Tribune, The Detroit News, The Dallas Morning News, The Denver Post, The Daily Oklahoman and the Chicago Tribune, to mention a few.

Only three newspapers, in fact, in New York, Los Angeles and San Francisco, have come out firmly against this nomination.

I ask unanimous consent that a selection of these 24 editorials in support of Justice Owen be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 24, 2002]

THE OWEN NOMINATION

The nomination of Priscilla Owen to the 5th Circuit Court of Appeals creates understandable anxiety among many liberal activists and senators. The Texas Supreme Court justice, who had a hearing yesterday before the Senate Judiciary Committee, is part of the right flank of the conservative court on which she serves. Her opinions have a certain ideological consistency that might cause some senators to vote against her on those grounds. But our own sense is that the case against her is not strong enough to warrant her rejection by the Senate. Justice Owen's nomination may be a close call, but she should be confirmed.

Justice Owen is indisputably well qualified, having served on a state supreme court for seven years and, prior to her election, having had a well-regarded law practice. So rather than attacking her qualifications, opponents have sought to portray her as a conservative judicial activist—that is, to accuse her of substituting her own views for those of policymakers and legislators. In support of this charge, they cite cases in which other Texas justices, including then-Justice Alberto Gonzales—now President Bush's White House Counsel—appear to suggest as much. But the cases they cite, by and large, posed legitimately difficult questions. While some of Justice Owen's opinions—particularly on matters related to abortion—seem rather aggressive, none seems to us beyond the range of reasonable judicial disagreement. And Mr. Gonzales, whatever disagreements they might have had, supports her nomination enthusiastically. Liberals will no doubt disagree with some opinions she would write on the 5th Circuit, but this is not the standard by which a president's lower-court nominees should be judged.

Nor is it reasonable to reject her because of campaign contributions she accepted, including those from people associated with Enron Corp. Texas has a particularly ugly system of judicial elections that taints all who participate in it. State rules permit judges to sit on cases in which parties or lawyers have also been donors—as Justice Owen did with Enron. Judicial elections are a bad idea, and letting judges hear cases from people who have given them money is wrong. But Justice Owen didn't write the rules and has supported a more reasonable system.

Justice Owen was one of President Bush's initial crop of 11 appeals court nominees, sent to the Senate in May of last year. Of these, only three have been confirmed so far, and six have not even had the courtesy of a hearing. The fact that President Clinton's nominees were subjected to similar mistreatment does not excuse it. In Justice Owen's case, the long wait has produced no great surprise. She is still a conservative. And that is still not a good reason to vote her down.

[From the Dallas Morning News, July 25, 2002]

OWEN NOMINATION; CRITICS ARE DISTORTING TEXAN'S RECORD

After hearing U.S. Court of Appeals candidate Priscilla Owen vilified in recent weeks—called everything from racist to anti-abortion to (gasp!) pro-business—the members of the Senate Judiciary Committee got the chance Tuesday to see for themselves what all the fuss is about. And, after a year in the deep freeze, the 47-year-old Texas Supreme Court justice finally got the chance to defend herself against liberal critics who have distorted her record and character in a bare-knuckled attempt to keep her off the 5th Circuit Court of Appeals.

One of the biggest distortions is that Justice Owen is a ''Judicial activist'' intent on bending and twisting statutes to fit a rigid political agenda. That is the view of Sen. Richard Durbin, a Democrat from Illinois, who tore into Justice Owen for what he said was a tendency to ''expand and embellish'' in her written opinions. Democratic Sen. Dianne Feinstein of California was more polite but just as direct when she asked Justice Owen point-blank if she was, in fact, a ''judicial activist.'' Justice Owen's response suggests that the Baylor Law School graduate is absolutely clear on what position she is applying for. She has no desire to legislate from the bench, she told Sen. Feinstein. If confirmed, she said, she would do only what the job calls for: interpret the law as written.

Justice Owen can be trusted to do exactly that, say those in Texas legal circles who know her best. Her supporters include Republicans and Democrats alike, and their

vote of confidence should count for something—especially when weighed against the smear campaign engaged by the lobbies of the left.

As for Justice Owen's personal views on abortion, or on any issue, they remain totally irrelevant. By all accounts, she has spend the last eight years on the Texas high court doing precisely what she this week promised the Judiciary Committee she would continue to do at the federal level.

Those who oppose a judicial nominee have every right to challenge the nominee. But they do not have the right to—in legal terms—''assume facts not in evidence.'' For all their political games, grandstanding and name-calling, the assembled critics of Priscilla Owen have presented nothing to discredit her.

The committee should do its best to rectify this situation by scheduling a vote without further delay and approving Justice Owen's nomination.

[From the Florida Times-Union, July 26, 2000]

A FINE CHOICE

Using legitimate criteria—judicial expertise, temperament and reputation—there is no finer candidate for a spot on a federal appeals court than Priscilla Owen, whose nomination was the subject of committee hearings this week.

Owen, an honors graduate who earned the highest grade on the bar exam, has served with distinction on the Texas Supreme Court since 1994—and is so respected that every major newspaper in Texas endorsed her successful campaign for reelection in 2000.

After she was nominated for the 5th Circuit Court of Appeals, the American Bar Association unanimously gave her the highest possible rating for the job—no small matter since the Senate Judicial Committee chairman said previously that the ABA's rating is 'the gold standard by which judicial candidates are judged.' A bipartisan group of 15 past Texas Bar presidents endorsed her nomination, as have Democratic former justices.

Still, her nomination is in trouble because she is deemed insufficiently liberal by a few fringe special-interest groups that have considerable influence with the Senate's Democratic leadership.

The main complaint revolves around cases in which young girls wanted to have an abortion without either parent's knowledge.

Under Texas law, a parent must be told unless a judge rules a girl is sufficiently mature and informed to make the decision alone.

Owen contended some youngsters were not informed sufficiently.

That, extremist, pro-abortion groups say, proves Owen is a 'judicial activist' who makes rulings based on ideology instead of what the law actually says. Never mind that they have enthusiastically supported judicial activism in the past and that Roe vs. Wade, the decision legalizing abortion, was in itself a blatant act of judicial activism.

Owen is under fire not because she is a judicial activist but because she is perceived as a conservative activist.

The facts are, however, that Owen based her opinion on U.S. Supreme court guidelines—and the author of the law said she had interpreted it the way the legislature intended.

Parental notification laws are designed not just to protect children but also to keep pedophiles from coercing their young victims into destroying the evidence before they can be arrested, tried and locked up. They are not something that the courts should routinely circumvent, except under rather limited conditions prescribed by law.

Critics complain, less vociferously, about other Owen opinions—that a person shouldn't collect insurance benefits on a house a spouse destroyed by arson, for example. That, critics insist, proves she is too pro-business. But why should an arsonist be allowed to profit from his own crime?

The appointment is being scandalously politicized. Owen deserves better. More importantly, the American people deserve better.

[From the Wisconsin State Journal, July 29, 2002]

OWEN IS QUALIFIED FOR FEDERAL BENCH

Feingold and Kohl should stop their Senate Colleagues from ''borking'' Priscilla Owen. Why should Wisconsinites care about Texas Supreme Court Justice Priscilla Owen, nominated by President Bush to the 5th U.S. Circuit Court of Appeals?

Because ''borking''—judging a judicial nominee on political and ideological grounds rather than qualifications—is ugly no matter which party is doing it and must be stopped.

Because Wisconsin's two senators, Herb Kohl and Russ Feingold, sit on the Senate Judiciary Committee, where the ''borking'' of Owen is under way. If these two Democrats take the high road and approve Owen even though (horrors!) she is a conservative, their courage could persuade their Senate colleagues to give up this nasty practice. The charge against Owen is being led by the extremist wing of the abortion-on-demand crowd, who are incensed that Owen voted several times to uphold a Texas law that allows teens to get abortions without notifying their parents only in extreme circumstances.

Polls show that a majority of Americans support parental notification laws, and the U.S. Supreme Court has ruled that such laws do not violate the terms established by Roe vs. Wade. Nonetheless, National Abortion Rights Action League President Kate Michelman called Owen ''someone who exemplifies the most extreme hostility to reproductive rights of any of the nominees that President Bush has named.'' My, my.

Other groups complain that Owen's rulings show her to be anti-consumer, anti-worker and pro-business. They say she too often voted to overturn huge jury verdicts in malpractice and product-liability cases. Considering that Texas juries' propensity for handing down outrageous verdicts makes the state a favorite filing-ground for trial attorneys pursuing dubious liability cases, Owen should be applauded for attempting to apply the brakes.

They say she is a ''judicial activist'' who will try to legislate from the bench. But when U.S. Sen. Dianne Feinstein, D-California, asked her about that charge, Owen responded ''If I am confirmed, I will do my utmost to apply the statutes you have written as you have written them, not as I would have written them or others might want me to interpret them.''

But none of this should matter much to the Senate Judiciary Committee, which is supposed to examine a nominee's qualifications, fitness for office, and temperament. No one has questioned (yet) her temperament; her qualifications include graduating cum laude from Baylor Law School, getting the top score on the Texas Bar Exam, practicing commercial litigation for 17 years before winning election to the Texas Supreme Court, and getting a unanimous ''well-qualified'' rating from the American Bar Association's Committee on the Federal Judiciary.

Every president has the right to nominate whomever he wants to the federal judiciary. The Senate has the right to grill the nominees over their qualifications, temperament, and fitness for office. Presumably it's that latter term that some senators believe justifies ''borking'' Owen on abortion rights, etc.

But it's still wrong.

Feingold knows it. That's why he made his courageous vote to confirm John Ashcroft as U.S. attorney general. Feingold didn't like Ashcroft's right-wing politics, but he believed in a president's right to choose his own nominees. Feingold was right.

Feingold and Kohl should both vote to confirm Owen, and should try to convince their colleagues to do likewise. She is well qualified, and that's all that should count.

[From the Chicago Tribune, Aug. 20, 2002]

IDEOLOGUES VS. JUSTICE OWEN

At least since the 1987 battle over Robert Bork's nomination to the Supreme Court, judicial appointments have been a major arena for conflict in Washington. It doesn't matter if the White House is in Republican hands and the Senate under Democratic control, or the other way around: Whenever a nominee can be tarred as extreme, unethical or incompetent, ideologues paint the most appalling picture in the hope of killing the appointment.

It's not a good way to find the truth or to select good judges. Instead, it fosters irresponsible distortion and discourages strong-minded individuals from accepting judicial posts, while rewarding lawyers whose chief talent is never doing anything, good or bad, to make enemies. The latest fight is over Priscilla Owen, a Texas Supreme Court justice chosen by President Bush for the 5th Circuit court of Appeals. She got the highest rating from the American Bar Association. To get that endorsement, says the ABA, a nominee ''must be at the top of the legal profession in his or her legal community, have outstanding legal ability, breadth of experience, the highest reputation for integrity and either have demonstrated, or exhibited the capacity for, judicial temperament.''

You'd never guess any of these qualities from the attacks on Owen. Senate Democrats and liberal activists have denounced her as a right-wing ideologue and a lap dog for big corporations, particularly Enron. Their favorite evidence is a quotation from fellow Justice Alberto Gonzales, now White House counsel, accusing her of ''an unconscionable act of judicial activism'' in voting to deny a minor permission to get an abortion without her parents' knowledge.

But judges accuse each other of judicial activism all the time. It's safe to assume that if Gonzales distrusted Owen's instincts, he would have lobbied his boss not to choose her. Today, he says, ''She will exercise judicial restraint and understands the limited role of the judiciary.''

In the abortion case they disagreed about the application of a Texas law that generally requires parents to be notified. Owen, dissenting from the court's decision to grant permission, made a perfectly rational case that the majority was reading the law too liberally.

As for her views about corporations, it's not surprising that a candidate picked by a conservative president has not been hostile to private business. It's true that, in running for the office, she got campaign contributions from Enron employees and then sat on cases involving the company. But people associated with Enron gave to lots of political candidates, and Owen didn't violate any ethics rules.

Owen is just one of many Bush nominees who have been inexcusably blocked from filling vacant seats on the bench—something that also happened, with equal lack of justification, to many of President Clinton's appointees.

But the only real argument against her is that she's not the sort of choice a Democratic president would make. That's no reason Bush shouldn't have picked her, or that the Senate shouldn't confirm her.

[From the Boston Globe, July 28, 2002]

THE REAL EXTREMISTS

(By Jeff Jacoby)

Why do professional abortion-rights advocates anathematize as ''antichoice'' anyone who favors even minimal regulation of abortion? Their absolutism would seen as ridiculous in almost any other area of law.

For example: Americans have a fundamental right to own and use land, but no one believes that land use should be entirely untrammeled. A great body of law has developed to regulate what people do with their land—from local zoning ordinances to common law nuisance remedies to federal wetlands and endangered-species statutes. Reasonable people can and do debate the wisdom of particular regulations. But nearly everyone agrees that there must be some restrictions on an owner's right to make use of his property. Only a crank would argue that to favor any sort of limitation at all is to be ''anti-ownership'' or an enemy of landholders.

To take another example, Americans have the constitutional freedom to express their views in public. But no one takes the First Amendment to mean that self-expression may never be restricted. Your right to free speech does not authorize you to utter slander, to threaten the life of the president, to falsely shout ''fire!'' in a crowed theater, or to give perjured testimony in court.

Yet when it comes to abortion, there is no such thing as a reasonable restriction—not to the abortion-right spokeswomen whom we invariably hear from whenever the issue comes up. A 24-hour waiting period? Preabortion counseling to discuss possible risks or alternatives? Parental notification when a minor wants an abortion? A ban on partial-birth abortions? The politician who calls for such limits or the judge who upholds them can count on being slammed as a threat to ''reproductive rights'' and a foe of ''choice.''

Just ask Priscilla Owen, the Texas Supreme Court justice nominated by President Bush to the Fifth Circuit US Court of Appeals. She is by most accounts a restrained and thoughtful judge; the American Bar Association unanimously pronounced her ''well qualified.'' But because in several teen-abortion cases she ruled that parental notification was required, she is being excoriated. Planned Parenthood calls her an ''anti-choice extremist.'' The National Organization for Women accuses her of ''disdaining women's rights.'' The National Abortion Rights Action League says she ''exemplifies the most extreme hostility to reproductive rights.''

But who are the real extremists here? In a new analysis, the Gallup News Service reports that ''in general, polling shows wide public support for parental consent laws—policies that are even more restrictive than parental notification.'' In 1996, a Gallup survey found 74 percent of Americans in favor of requiring parental consent for a minor's abortion. Since then, the level of support has gone even higher. In a 1998 CBS/New York Times poll, 78 percent wanted parental consent. And in a Los Angeles Times survey two years after that, the figure was 82 percent.

Justice Owen insists her rulings are based on Texas law, not her own personal views. But if they do reflect her personal views, she clearly has lots of company. Are more than four Americans in five ''anti-choice extremists?'' Or is it NARAL, NOW, and Planned Parenthood that are far outside the mainstream?

In poll after poll, a majority of respondents say that, as a general rule, abortion should remain legal and the government should not interfere with a woman's right to end her pregnancy. But when asked about restricting abortion in specific ways or circumstances, they often say yes.

Thus, 86 percent of Americans would make abortion illegal in the third trimester (Gallup, 2000), and 63 percent would vote to ban partial-birth abortions. Mandatory pre-abortion counseling is favored by 86 percent of the public (Gallup 1996); a 24-hour waiting period by 79 percent (CBS/New York Times, 1998). (These all presuppose a healthy mother and child; Americans overwhelming support legal abortion when the mother's health is seriously threatened or when there is likely to be a serious defect in the baby.)

It makes sense that the public does not regard these limitations as unreasonable. Americans recognize that abortion is too serious and tragic to be undertaken lightly. They know that the pro-life slogan ''Abortion stops a beating heart'' is a statement of fact. So while they support reproductive rights, they do not support unfettered abortion on demand, for any reason at any time.

But that is largely what organizations like NARAL, NOW, and Planned Parenthood do support, which is why they vigorously oppose the kinds of abortion regulations that most Americans would endorse. That is their right, of course. But why should their radical viewpoint be the standard for defining ''pro-choice?'' Prochoice is what most Americans are: In favor of the right to choose, but also in favor of common-sense limits on that right. For NARAL & Co. we need a more accurate term. I'd suggest ''pro-abortion.''

[From the Chicago Tribune, Aug. 22, 2002]

A CONSERVATIVE JUDGE'S 'JUDICIAL ACTIVISM'

Priscilla Owen is not a household name across America, but she has achieved an amazing level of notoriety among left-leaning interest groups, who regard her much as Dalmatian owners view Cruella De Vil. The Texas Supreme Court justice became their Public Enemy of the Month by doing two things: 1) compiling a judicial record that can fairly be described as conservative, and 2) being nominated to the 5th Circuit Court of Appeals by President Bush.

Those offenses were all it took to unleash a torrent of invective against Owen, whose nomination is awaiting Senate action. Ralph Neas, president of People for the American Way, denounced her as an ''ultraconservative.'' The National Abortion and Reproductive Rights Action League said she's possessed by ''a strong personal bias against the right to choose that renders her unable to follow the law.'' The most frequently heard criticism is not from liberals but from a conservative—White House counsel and former Texas Supreme Court Justice Alberto Gonzales, who is quoted as having accused Owen of ''an unconscionable act of judicial activism'' in how she handled one abortion case. That charge is supposed to prove that she's not only too conservative for liberals, but too conservative for conservatives.

What her opponents don't publicize is that from all evidence, Owen is an excellent lawyer and judge. Fifteen former presidents of the Texas State Bar wrote the Senate Judiciary Committee to announce that though ''we profess different party affiliations and span the spectrum of views of legal and political issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate.''

The American Bar Association, which is not regarded as a dear friend by conservatives agrees. Its Standing Committee on the Federal Judiciary unanimously rated Owen ''well-qualified.'' That's the highest score the ABA evaluators give, and they don't hand it out to just anybody who can pass the bar exam and tie her own shoes.

''To merit a rating of 'well-qualified,' '' the ABA explains, ''the nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, breadth of experience, the highest reputation for integrity and either have demonstrated, or exhibited the capacity for, judicial temperament.'' This portrait of Owen doesn't quite match the drooling Neanderthal depicted by her critics.

The judicial activist charge is also hard to square with reality. In the case cited by critics, where Gonzales affixed the label on three dissenting justices, he was clearly beholding the mote in his brother' eye while ignoring the beam in his own.

The dispute involved a 17-year-old high school student who wanted to get an abortion without notifying either of her parents, as required under Texas law. A minor may get a judge to waive the requirement if she can show that she is ''mature and sufficiently well-informed'' to make the decision alone (or to prevent abuse, which was not an issue).

''Mature'' and ''well-informed'' are not terms of mathematical precision, leaving some room for interpretation. But after hearing her testify, a trial court judge ruled that the girl was not sufficiently well-informed. An appeals court reached the same conclusion. Without the benefit of face-to-face contact with the girl, the Texas Supreme Court overruled them.

There is no ''judicial activism'' in respecting the findings of a trial court judge, as Owen did. Nor is there anything startling in her view that the law was not supposed to make waivers automatic. In fact, during the legislative debate back in 1999, supporters of the proposal envisioned the bypass mainly for instances of incest and physical abuse.

Critics insisted then that the bill made it too hard to get around the notification rule. One opposing legislator predicted that if the measure passed, not a single waiver would be granted. The legislators who originally sponsored the measure filed a brief in this case, arguing that the whole point of their legislation was to ''restore parents'' natural authority to act as chief advisors to their minor daughters who become pregnant and seek abortions'' and to assure that parents would be excluded only in ''exceptional circumstances.''

The Texas legislature, a conservative one, passed a restrictive law aimed mainly at assuring the involvement of parents, not preventing it. So how is it ''judicial activism'' for a judge to read it the way that even its critics read it during the debate? More plausibly, the activism was on the other side. Owen was not giving into the temptation to legislate from the bench, but resisting it.

If Owen had gone along with a more relaxed reading of the law, she might indeed be accused of judicial activism. But not by the people attacking her today.

[From the Wall Street Journal, September 5, 2002]

TOO SMART FOR THE SENATE

Priscilla Owen isn't exactly a household name. But what happens to her today in the Senate Judiciary Committee will say a lot about President Bush's legacy in the federal courts—to wit, whether the 10 liberal Democrats who form the majority will allow him to have one.

The Gang of Ten is scheduled to vote on Judge Owen's nomination to the Fifth Circuit Court of Appeals, and she ought to be an easy sale. Currently on the Texas Supreme

Court, she is one of the best legal minds of her generation and at age 47 is potential Supreme Court material. She's a conservative, but the liberal American Bar Association gave her its highest rating—a unanimous well-qualified.

There was a time that jurists of her intellectual caliber were welcomed by Senators of both parties, but no more. Barring a last-minute bout of conscience, Democrats seem ready to pull a Pickering—that is, kill Judge Owen's nomination in committee and deny her a vote of the full Senate. This was the treatment meted out to Charles Pickering Sr. last March, when the Mississippi judge's nomination was stopped before moderate Democrats got a chance to vote for him. If Judge Owen were to reach the Senate floor, she too would be confirmed with Democratic support.

Political war over judges isn't new, but the Judiciary Democrats are taking it to an entirely new level. Chairman Pat Leahy won't even schedule hearing dates for the best appeals-court nominees; six of Mr. Bush's first 11 picks are still waiting, 16 months after being nominated. That includes legal luminaries Miguel Estrada, Jeff Sutton, John Roberts and Michael McConnell, who, like Judge Owen, are potential Supreme Court candidates—which is their real sin in liberal Democratic eyes.

But maybe they're the lucky ones. Judge Pickering had to endure race-baiting that African-Americans in his home state deplored. D. Brooks Smith was confirmed, amid phony charges of sexism, only because Senator Arlen Specter called in chits for his fellow Pennsylvanian.

Judge Owen's fate is to be called ''anti-abortion'' because she's upheld Texas's parental-notification law—a view supported by more than two-thirds of Americans and the U.S. Supreme Court. Her critics also make the dishonest charge that even the President's own lawyer, Alberto Gonzales, who served with her on the Texas Supreme Court, thinks she's a judicial ''activist,'' Mr. Gonzales has denied this repeatedly, and as White House counsel had a big say in her nomination.

There's more at stake here than the fate of one accomplished jurist. There's also the Constitutional ''advise and consent'' process that throughout U.S. history has meant that the entire Senate should work its will. The liberal Judiciary 10 are denying to this President a Constitutional right that Presidents Reagan, Clinton and George H.W. Bush were all granted by Senates controlled by the opposite party. We hope those Senate Democrats who want to be President understand that the same thing could happen to them.

Mr. HATCH. I am heartened not just for the sake of Justice Owen, but because at her hearing I expressed alarm at the efforts by some to introduce ideology into the confirmation process. I am heartened that editorial and op-ed writers across the country reflect not only support for Justice Owen but also the near universal rejection of this misguided effort to make the independent Federal Judiciary a mere extension of the Congress, and less than the independent, coequal branch it was intended to be.

It is important to place this vote against Justice Owen's nomination in context for the American people because I know there are those who seem to justify this wrong in childlike fashion with the intellectual crutch of ''they did it, too.''

Let me say that we Republicans have never done what was done today. I voted against only one Clinton nominee, as I recall, but I did it standing on the Senate floor where the American people could see me, where I could be counted, not sitting in the shadows of the Judiciary Committee room.

Allow me to place this vote further in context, Mr. President. In this session so far, the Senate has confirmed 73 judges. There is much eagerness in asserting that this number now compares to the last three sessions of Congress during which I was Chairman. Although I am flattered to hear my record used as the benchmark for fairness, I am afraid this does not make for a correct comparison because I was never Chairman of the Judiciary Committee during any of the President's first 2 years in office.

I am glad to say that the proper comparison is not, as they say, about me. During the first 2 years of President Clinton's first term, when Senator BIDEN was chairman of the Judiciary Committee, the Senate confirmed 127 judicial nominees. Senator BIDEN achieved this record despite not receiving any nominee for the first 6 months. In fact, Senator BIDEN's first hearing was held on July 20 of that year, more than a week later than the first hearing this session, which occurred on July 11, 2001.

Clearly, getting started in July of year one is no barrier to the confirmation of 127 judges by the end of year two, but we have confirmed only 73 nominees in this session.

Senator BIDEN's track record during the first President Bush's first 2 years also demonstrates how a Democrat-led Senate treated a Republican President. Then-Chairman BIDEN presided over the confirmation of all but five of President Bush's 75 nominees in that first 2-year session. Chairman THURMOND's record is quite similar. The contrast to the present could hardly be more stark.

We are about to close President Bush's first 2 years in office having failed the standards set by Chairmen BIDEN and THURMOND, and that is nothing over which to be proud.

Some discredit Justice Owen's nomination by pointing to the few Clinton judges who did not get hearings when I was chairman, especially Jorge Rangel and Enrique Moreno from Texas. But that is not fair to me, and not truthful, and it has nothing to do with Justice Owen. Neither of those nominees had support of their home State Senators, and there were good reasons. This prevented me from scheduling a hearing for them and would have prevented any chairman, including Chairman LEAHY presently, from holding hearings.

In fact, these nominees lacked home senator in part because President Clinton ignored the Texas Senators and the Texas nominating commission in making their nominations. It was a legitimate complaint and one that my Democrat colleagues repeat now. Our process is when both State senators are against a judgeship nominee from their State, that judgeship nominee will not go anywhere.

This practice is not one I put in place. It was put in place under the Democrat leadership of this Judiciary Committee. Today, Democrat Senators from the State of North Carolina, California, and Michigan have prevented the Judiciary Committee presently from holding hearings on six of President Bush's nominees.

One final point on Rangel and Moreno and, for that matter, any of the Clinton judges confirmed or not: I am not a betting person, but if I were, I would bet that neither would trade places with Charles Pickering.

As important as anything we do is the way the Committee has treated the so-called controversial nominees. Their records have not only been damaged and distorted, they have been turned completely upside down, 180 degrees from the truth.

Charles Pickering came to this committee with a four-decades-old record of working in favor of civil rights. He testified against the Imperial Wizard of the Ku Klux Klan in the 1960s, at a time when doing so put him, his wife, and his children smack in the crosshairs of a violent and unforgiving terrorist organization. That was an act of real bravery motivated by his belief in doing right.

But what happened? The hearing room and the subsequent fundraising letters echoed with the word ''racist.'' Charles Pickering's record was completely turned upside down.

Judge Brooks Smith's true history fared no better. Judge Smith had a reputation for going out his way to assist women in the legal profession. Judge Smith received the Susan B. Anthony Award because of ''his commitment to eradicating gender bias in the court system.'' But Judge Smith's opponents did not talk about that. In fact, they worked hard to create an impression exactly opposite by focusing not on his work as a judge but on his previous membership in a small men's fishing club. Never mind that Susan B. Anthony Award.

I might add, Mr. President, that we are pleased that Judge Smith won the approval of the vast majority of the Senators when he was given a chance to be heard on the floor after long delay. I think it would be fair to give that same chance to Priscilla Owen, and I think she would fare just as well as Judge Brooks Smith.

Today, we decided the fate of another so-called controversial nominee, and once again there is a 180-degree disconnect from the truth of Priscilla Owen's record and the yarn being woven around it. We heard today about the same handful of cases—a very few of Owen cases out of thousands. And, by the way, not only have Owen opponents selected only a few cases, ignoring many, they have distorted the cases they do cite.

Today, we heard again the stale rhetoric that Justice Owen fails plaintiffs, from those who are more interested in being more just to plaintiffs—to make it more to the point, the plaintiff's trial lawyers who are their strong supporters.

In fact, there are several leading cases that Justice Owen's detractors ignore in which she ruled for plaintiffs and against manufacturers and physicians. Think about it. Sometimes a company or employer may be right, under the law. Now, I know there are those on the other side of the aisle who think that just cannot be, as they are adamantly work on behalf of the plaintiff's trial lawyers. Sometimes businesses are right.

Of course, much of the opposition of Justice Owen has been driven by interest groups that advocate for the right to abortion. And this is becoming tremendously dominant on the Democratic side because of these outside special interest groups that have immense power. Millions and millions of dollars are put into People for the American Way and other pro-abortion groups to advocate just this cause. It is terrifying to have these groups against you, but it is the right thing to stand up against them when they are wrong. In this case, they have been wrong.

These groups have said they want judges on the bench who will read and apply and follow the Supreme Court cases in the area of the right of privacy, especially in the landmark cases of Griswold, Roe, and Casey. Yet here we have Justice Owen, the first nominee we have considered in this session who as a judge read those cases, cited them, quoted them, applied them, has followed them. Yet her record was so distorted as to make it seem she was against abortion when, to this day, I don't know where she stands on that particular issue.

Justice Owen researched the case law of abortion and has faithfully incorporated Supreme Court rulings into her decisions on a related topic in an inferior court. This shows the application of precedence that should satisfy anyone interested in upholding the Supreme Court's abortion decisions or any other decision. It was the right thing for her to do because she was bound by the law of the land. Frankly, as much as some pro-life people may not like that, she upheld the law, which is what she should have done.

Yet here she was defeated this morning, primarily on that single issue, when it really was not an issue. But it was distorted, and it was manipulated, and it was used against her in, frankly, a very despicable way.

Of course, Justice Owen's critics are not praising her for following the Supreme Court law. They are attempting to portray her as a judicial activist. The truth is, she is a judicious judge who never digresses from the rules of precedence and legal construction. She always grounds her decisions in binding authority or judicial rules of decision.

Of course, the charge that she is a judicial activist is a cynical trick of words from Washington special interest lobbyists, liberal special interest lobbyists, as well as their well-funded allies in Texas who have made their careers taking positions without letting the words of the Constitution stand between them and their political objectives.

The people of Texas, almost 84 percent of them, voted for Priscilla Owen to be reelected to the State supreme court. So she has the vast majority of the people of Texas who know what a high quality person she is. Yet these people today, the people on the committee, ignored all of that.

Why are they doing so? Ironically enough, they are doing so because they do not like the Texas statute requiring parental notice in cases of abortions for children. Justice Owen voted to give the statute some meaning. It was a poorly drafted statute where they tried to please everybody, and that is always a bad statute. As she explains in brilliant fashion in her written responses to the questions of Senators, Justice Owen sought to find that meaning in Supreme Court cases that informed the Texas legislators in adopting the notice law.

This is what any good lawyer would try to do or would know to do, let alone a good judge. She sought to give the lower courts in her State that were reaching diverse results, county to county, Supreme Court guidance.

Even Planned Parenthood's lawyer understood this. She said in a 2000 interview:

> A lot of what the Supreme Court is doing is giving guidelines to the lower courts on how to interpret the parental notification law.

Justice Owen's opponents think a minor should always be able to avoid the Texas legislators' standards. It is the groups allied against Justice Owen who are the judicial activists here, the ones who are looking to achieve in the courts an outcome that is at odds with the law passed by the duly elected legislators of the State of Texas.

The Texas legislature did not pass a judicial bypass law with some exceptions. They passed a parental notice law, and they stated that they intended the court-granted exceptions to be rare. And, in fact, in practice they are rare.

This is what Justice Owen's opponents cannot stomach. So here they are in our midst. But why? The truth is that while my colleagues' vote are entirely about an abortion litmus test, I fear the opposition to Justice Owen from the abortion lobby is not at all about abortion rights, because abortion rights are affected by a mere notice statute. The opposition to Justice Owen is not really about abortion rights, it is about abortion profits.

Simply put, the abortion industry is opposed to parental notice laws because parental notice laws place a hurdle between them and the profits from the abortion clients—not the girls who come to them but the adult men who pay for these abortions. These adult men, whose average age rises the younger the girl is, are eager not to be disclosed to parents, sometimes living down the street.

At $1,000 per abortion and nearly 1 million abortions per year, the abortion industry is as big as any corporate interest that lobbies in Washington. They not only ignore the rights of parents, they also protect sexual offenders and statutory rapists.

And who are the lobbyists for the abortion industry? They are exactly the same cast that launched an attack on Justice Owen. One wonders, as columnist Jeff Jacoby did in the Boston Globe:

> Who are the extremists on this issue?

Who is out of the mainstream? It is certainly not Justice Owen. Eighty-two percent of the American people favor consent and notice laws such as Justice Owen interpreted. In fact, 86 percent in the State of Illinois favor these laws.

I will say it again. While my colleagues are applying an abortion litmus test, the assault against Justice Owen from the outside groups was not about abortion rights, it was about abortion profits. It is not about a woman's right to an abortion. It is about assailing parental laws that threaten the men who pay for abortions. It is whether parents should at least know—not even consent to, but just know when a minor child is having an abortion paid for by an adult.

But there is another interest at play here. Justice Owen was also opposed by the trial lawyers—I should say the plaintiff's trial lawyers. It is they who keep score over judges and how they rule on consumer, environmental, and personal injury cases, all of the areas of the law from which they most profit. And it is the trial lawyers, who most fund the special interest groups, who oppose all of President Bush's nominees.

I have to say, I know a number of these great plaintiff's lawyers, and a number of them are very upstanding people. But unfortunately, the vast majority are more interested in making sure they can continue to get big verdicts than they are in doing what is just.

I do not want to malign those who are decent, honorable plaintiff's lawyers. I was one of those myself, as well as a defense lawyer. But I could not stomach this type of attitude towards the law that some of them are pushing.

In almost infantile fashion, they would portray Justice Owen as pro-this or anti-that. Professor Victor Schwartz, a leading authority on torts in this country, addresses this in a letter he sent the Judiciary Committee. After reviewing Justice Owen's record, this tort law expert concludes that Justice Owen cannot be described as pro-defendant or pro-plaintiff.

The truth is that Justice Owen functions as any judge should, as an unbiased umpire. As an umpire, Justice

Owen calls the balls and the strikes as they are, not as she alone sees them and not as she wants them to be. It is silly to suggest she is pro-bat or pro-ball, pro-pitcher, or pro-batter. Of course, trial lawyers and those who shill for them have an interest in Justice Owen's score.

As she said in her hearing, she is blind to rich or poor without turning a blind eye to equity. Any Senator who met her or who attended her hearing or who read the letters from those who know her would not question her compassion and fairness.

I hoped that no Senator would cast a vote who did not meet her or who did not attend the hearing. But unfortunately I know some did.

Let's speak truth to power. Justice Owen was picked to be opposed because she is a friend of President Bush from Texas. She was opposed by an axis of profits. This axis of profits combines the money of trial lawyers and the abortion industry to fund these Washington special interest groups and spreads its influence to the halls of power in Washington and in State courts across this country.

As an aside, some estimate that one of these lobbying groups rakes in somewhere between $12 million and $15 million a year from the Hollywood crowd and others, especially the trial lawyers in this country. There is nothing on our side that even comes close to that to be able to correct the record.

The opposition against Justice Owen is intended not only to have a chilling effect on women jurists that will keep them from weighing in on exactly the sorts of cases that most invite their participation in their perspectives as women, but also on all judges in all State courts who rule on cases that trial lawyers want to win and cash in on.

Today's vote besmirched a model young woman from Texas who grew up, worked hard, and did all the right things, including repeatedly answering the call of public service at a sacrifice of personal wealth and family. I might add, she was one of the top lawyers in the country. She worked for one of the top law firms in the country. She was doing very well financially many times over what she makes as a Texas Supreme Court justice. She was a single mother who was raising her child. She goes to a church. She is in the choir in her church and helps to lead the choir. She is a decent, honorable person, and she is about as nonpolitical as anybody I have ever seen come before the Senate Judiciary Committee. Yet she has been treated very poorly indeed.

Today my Democrat colleagues voted against the American promise—the promise that anyone who works hard can serve the public trust. Such a vote, in my opinion, should not have taken place anywhere but in the light of the Senate floor, where 100 Senators would have the right to determine whether this fine woman should or should not sit on the Fifth Circuit Court of Appeals. I have to say it should have taken place in the light of the Senate floor and not in the shadows of the Judiciary Committee.

I fear, as a result of the Owen vote, a sword of Damocles has fallen on the Senate in its role of advice and consent. I hope the American people will repair the damage done to the Constitution when they vote in November.

Let me just say that when I ran for President, and I was one of those who was in the race with President Bush—whom I grew to love and respect as I was running with him or against at the time. I thought he was terrific throughout the process. I raised the issue of the importance of keeping the Federal judiciary independent, how important it is that we get the best people for these judgeship positions.

I have been on this Senate Judiciary Committee for 26 years, and I have to tell you I have not seen a better nominee come before the Judiciary Committee than Priscilla Owen. Of all the sitting judges that President Bush has nominated she is the clearly the best.

Not only is she an honorable person, but she handled herself very well at her hearing. She took a litany of bad comments from some Democrats with aplomb. She was very judicious in her approach. I have to tell you, she is one of the best people I have met in my whole time in the Senate. Yet she was treated in a shabby fashion—I think just to hurt the President, in some ways.

But, even more important than that, it was to satisfy these despicable—in this case, outside special interest groups that are extreme and far to the left of the American people. They want only people who agree with them on the courts, and do not abide with anybody who doesn't agree with them, and they have immense wealth behind them to be able to distort the wonderful record of a person such as Priscilla Owen.

I ask unanimous consent to have printed in the RECORD a statement of Senator ZELL MILLER, a Dear Colleague letter by myself concerning the New York Times editorial that I mentioned, and my published letter to the New York Times published today.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MILLER VOICES SUPPORT FOR TEXAS NOMINEE

WASHINGTON, DC.—U.S. Senator Zell Miller (D–GA) today issued the following statement on judicial nominee Priscilla Owen, whose nomination is expected to be voted on by the Senate Judiciary Committee on Thursday.

''Justice Owen enjoys bipartisan support in her home state of Texas, and she is a qualified jurist. I will support her nomination and I believe she deserves a vote by the full Senate. I really hope we will not begin the trend of rejecting nominees over narrow, single-issue litmus tests.''

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 4, 2002.

DEAR COLLEAGUE: I am taking the unusual step of writing to the entire Congress because I am outraged about an untruthful and misleading attack on Justice Priscilla Owen that appeared on today's New York Times editorial page. I am deeply concerned that such misinformation, if given serious weight by the country's decisionmakers, could undermine the integrity both of the judiciary and the branch of government in which we are privileged to serve.

As you know, Justice Owen is a Texas Supreme Court Justice whose nomination to the Fifth Circuit Court of Appeals is currently pending before the Senate Committee on the Judiciary. The editorial, entitled ''The Wrong Judge,'' wrongly accuses Justice Priscilla Owen of being ''far from the mainstream.'' No doubt that charge will stun Texas voters, who have twice elected her overwhelmingly to statewide office. It should also shock all of us who serve in Congress and who therefore know that Justice Owen, whom the American Bar Association has unanimously rated ''well qualified'' (its highest rating), undoubtedly fits well in the mainstream of American thought. If defeated, Justice Owen will become the first judicial nominee with the ABA's highest rating to suffer that fate.

The editorial also falsely claims that Justice Owen has ''ignored statutory language and substituted her own views.'' In truth, her record of applying the law as written is among the very best of any judicial nominee ever presented to the Senate. This is particularly true in her decisions concerning the Texas law requiring parental notification when their minor children obtain abortions. Contrary to the editorial, no one's right to choose was implicated, only the right of parents to have knowledge of, and an opportunity for involvement in, one of the most important decisions of their children's lives. In those cases, Justice Owen did exactly what any restrained judge should do: She applied the Texas statutory law as directed by the Supreme Court's cases including Roe v. Wade. Ironically, it is Justice Owen's opponents—the ones who accuse her of being an activist—who would have her ignore the legislature and the Supreme Court in order to reach a political result.

The New York Times uses similarly flawed analysis when it accuses Justice Owen of ''reflexively'' deciding cases in favor of ''manufacturers over consumers, employers over workers and insurers over sick people.'' This charge is not only factually without basis, but also belies the accusation of ''activism.'' Only someone obsessed with outcomes—rather than the law governing the particular cases—would be compelled by a mere counting up wins and losses among parties who have appeared before a judge. Working as a judge is like being an umpire; Justice Owen cannot be characterized as pro-this or pro-that any more than an umpire can be analyzed as pro-bat or pro-ball. A judge's job is to apply the law to the case at hand, not to mechanistically ensure that court victories go 50/50 for plaintiffs and defendants, consumers and corporations.

I endorse the words of my friend Senator Biden, a former Chairman of the Judiciary Committee, who said some years ago that: ''[Judicial confirmation] is not about pro-life or pro-choice, conservative or liberal, it is not about Democrat or Republican. It is about intellectual and professional competence to serve as a member of the third coequal branch of the Government.''

The New York Times' attack on Justice Owen's ''lack of sensitivity to judicial ethics'' is also contrary to the facts. Justice Owen went above and beyond the Texas ethics rules in her last election, voluntarily setting her own stricter guidelines for fundraising. She has also advocated reforming the Texas judicial elections process in order to protect the integrity of the courts.

Ironically, the editorial attempts to deploy against Justice Owen the words of one of her biggest supporters, Alberto Gonzales, President Bush's White House Counsel. Judge Gonzales served with Justice Owen on the Texas Supreme Court and has written publicly that she is ''extraordinarily well qualified to serve as a judge on the federal appeals court.'' Rather than focus on his ringing endorsement, however, the New York Times instead sensationalizes a disagreement that Judge Gonzales had not with Justice Owen, but rather with a whole group of judges who filed a dissenting opinion in a case involving the Texas parental consent law.

Last but not least, the editor5ial blames the Bush Administration for not getting the message ostensibly sent by the defeat of Judge Charles Pickering that it should not nominate any ''conservatives.'' It seems to imply some connection between Pickering defeat and the nomination of Justice Owen. If the editorial board would have done its homework, however, it would have learned that Justice Owen was nominated two weeks before Judge Pickering was nominated and ten months before he was defeated by a party-line vote in the Judiciary Committee.

Justice Owen is an excellent judge. Her opinions, whether majority, concurrences or dissents, could be used as a law school text book that illustrates exactly how an appellate judge should think, write, and do the people justice by effecting their will through the laws adopted by their elected legislatures. Justice Owen clearly approaches these tasks with both scholarship and mainstream American common sense. If the Congress of the United States cannot, in all its power and wisdom, detect these qualities and disentangle them from the ill-considered assertions of a powerful newspaper—inspired not by facts but by left-wing Washington special interest groups—then our institution is in trouble.

I hope you will join me in informing the American people of the truth surrounding the nomination of Justice Owen and in warning them of the grave danger posed by an uninformed politicization of the federal judiciary.

Sincerely,

ORRIN G. HATCH.

[From the New York Times, Sept. 5, 2002]

THE RIGHT JUDGE

WASHINGTON, DC,
September 4, 2002.

TO THE EDITOR: ''The Wrong Judge'' (editorial, Sept. 4) accuses Justice Priscilla R. Owen, President Bush's nominee to the United States Court of Appeals for the Fifth Circuit, of being ''far from the mainstream.'' No doubt that charge amuses Texas voters, who have twice elected her overwhelming to statewide office.

You also assert that Justice Owen has ''substituted her own views'' for the law. In fact, her record of applying the law as written is among the best of any judicial nominee ever presented to the Senate. This is particularly so in her decisions concerning the Texas law requiring parental notification when minors obtain abortions. In these cases, the right to choose was not implicated, only the right of parents to know. Justice Owen applied the Texas law as directed by the Supreme Court's cases, including Roe v. Wade.

You also attack Justice Owen's ''lack of sensitivity to judicial ethics.'' Justice Owen went above and beyond the Texas ethics rules in her last election, voluntarily setting her own stricter guidelines for fund-raising. She has advocated reforming the Texas judicial elections process.

ORRIN G. HATCH,
Senator.

Mr. HATCH. Mr. President, it is really starting to get to me that because of special interest control of this body, abortion is becoming a single litmus test issue on the part of a number of Senators in this body—not all, thank goodness, on either side, but a number of Senators. It is an important issue. There are very sincere people on the pro-choice side. There are very sincere people on the pro-life side. Both sides deserve consideration and respect.

When we get to where one single issue will determine whether a person can serve in a position in this country, such as a Federal judgeship, we know this country is in trouble; that is, whether it comes on this side or it comes on that side.

I can remember when Reagan was the President and we had control of the committees. There was a constant berating of us because they thought we might have abortion as a single litmus test issue. The fact of the matter is, we didn't. I know the question was never even asked because I know who did the betting. He happened to be a former staff member of mine. He never asked that question. They might have thought they had somebody who was pro-life, but they never asked that question. That was not even a consideration in the questions. They found out that a number of their people whom they nominated and who were confirmed were pro-choice.

During the Clinton years when I was chairman of the committee, I would not allow that single litmus test to be used on our side because I don't believe any single litmus test should be used in any way with regard to the Federal judiciary. The fact that I might disagree with a nominee on an issue that is important to me is somewhat irrelevant unless there are other really justifiable reasons for voting against the person.

I am finding that basically justifiable reasons depend an awful lot on how much force is brought to bear by outside interest groups who are basically supportive of the pro-abortion side. I have had folks on other side say it is a litmus test. Thank goodness, not many.

But that is why they wanted to keep Priscilla Owen from coming to the Senate floor—because Priscilla Owen would have passed on the Senate floor, would serve very well on the Fifth Circuit Court of Appeals, I think would please both sides of this body because of the very decent person she really is, because of the great legal scholar she is, and because of the honest and upright person she is.

We have lost that opportunity for this year. But I can tell the American people that if they will support President Bush, and if we can get control of the Senate, Priscilla Owen will make it through because she will at least have a vote. I believe she will make it through.

In that regard, I am very appreciative of the endorsement of the Senator from Georgia, Senator ZELL MILLER, of her right to have a vote on the floor and his statement that he would vote for her—a Democrat Senator. I think he recognizes that this body is becoming very polarized. It is becoming a body that may not be a great body anymore, if we keep going this way, because we are polarizing ourselves to where single litmus test issues can determine whether or not we vote and do what is right.

Frankly, we ought to be doing what is right regardless of any single litmus test issue. I know there are some on both sides who believed otherwise. But I think they are a distinct minority. But on the Judiciary Committee on this issue of abortion, I have to admit that it is coming down to the point where it is a prime issue.

My colleagues on the other side of the aisle will say they voted for people who are pro-life. That is true, because you can only do this so many times to a President's nominee. You can't get away with it very often. I hope they don't get away with it with regard to Justice Priscilla Owen. She deserves a vote on the floor.

I have to say I am reaching a point in my tenure here where I am so sick and tired of the politics of this body on judicial nominations. I am so sick and tired of the way people are treated here. That is on both sides from time to time. I really believe, barring just cause, that every President's nominee for the Federal judiciary—at least for the Circuit Courts—ought to be given a vote on the Senate floor regardless of what the Senate Judiciary Committee does. If the committee votes a person down, that should be given tremendous weight; no question about it—in this case as well. But the fact of matter is that at least the Constitution says we should have a right to consent. And it doesn't mean 10 Senators, it means 100 Senators. I believe that would be only the fair way to do it. I really believe it ought to be done whether a President is Republican or Democrat.

I wish I had made that suggestion. I did allude to it on more than one occasion on the floor during the last 6 years of President Clinton's tenure.

I have heard nothing but badmouthing about what Republicans did to President Clinton's nominees, even though half of the Federal judiciary today are Clinton judges and President Clinton himself told me that I treated him fairly. Let me tell you, there is no reason for that. President Reagan got 382 Federal judges through and confirmed. That is the most in history. He had 6 years of a Republican Senate—his own party—to help him to do that. President Clinton got 377 through—virtually the same number—and he had 6 years of a Republican Senate, an opposition party Senate which helped him to do that. I know. I was chairman during those 6 years. He was treated very fairly.

There are always those who do not make it, I have to admit. There is always a complaint about that. But that

is true whether it is Republican control of the committee or Democrat control of the committee. I would stack up our record on getting Clinton judges through against any record of the Democrats with regard to Reagan or Bush nominees.

Frankly, we are talking about circuit court nominees here who have been sitting on the nominations list now for over a year and half, some of the finest nominees in history—just to mention a few, John Roberts is being considered as a Supreme Court Justice—whether they are Democrats or Republicans. He is one of the two or three top appellate lawyers in the country who I don't think has an ideological bent.

How about Miguel Estrada, the first Hispanic to ever be put on the Circuit Court of Appeals for the District of Columbia? I don't believe he would be anything but one of the finest judges in the country; Michael McConnell, who is considered one of the two or three greatest constitutional experts in the country—a law professor.

You could go right on down the line. Deborah Cook; Jeffrey Sutton. They have all been sitting there for a year and a half because the Senate Judiciary Committee will not act on them.

I have a commitment from Senator LEAHY, and I am going to rely on that commitment, that he would get McConnell and Estrada through not only the committee but through the floor before the end of this session. We are running out of time. If he did that, certainly I would be very pleased. I take him at his word that he will try to do that. Those are two of the finest people we could possibly have as judges in this country.

I am hopeful that we will have that done before the end of this year. It is the right thing to do. I hope we can get John Roberts, Sutton, Cook, and others who have been sitting there for a year and half who I think have been very badly treated. There is no reason not, other than they know how brave all these people are.

I suspect they think they can ascertain how they are going to rule on the bench once they get there. Frankly, nobody knows how that is going to work once the person gets a lifetime appointment.

Let me just say again that one-half the Federal judiciary are Clinton judges. There is little or no reason for any complaint on the other side, even though, yes, there were some who didn't make it at the end, just as there are always 50 or more who didn't make it who were Republican nominees at the end of the first Bush administration.

By the way, John Roberts was nominated by the first President Bush. He is still sitting there. He is one of the two best appellate lawyers in the country just sitting there for a year and a half.

I might add that others, as well, have been nominated twice now and are just still sitting there after more than 10 years.

So it is time to get this out of the realm of politics and start doing what is right; and that is, the President has a right to nominate, which is the greater power. We have a right to confirm or not confirm, but that ought to be done on the Senate floor, not by 10 people who basically are, in my opinion, by and large, doing the bidding of these outside groups who have tremendous sway because of their money.

Mr. President, I yield the floor.

Mr. LEAHY. In less than 15 months the Judiciary Committee has favorably reported 80 judicial nominees and voted not to report 2.

Four conservative, Republican women have already been reported and three have been confirmed by the Senate: Sharon Prost to the Federal Circuit; Edith Brown Clement to the 5th Circuit, who was the first nominee to the 5th Circuit to get a hearing in seven years, since 1994; Julia Smith Gibbons to the 6th Circuit, who was the first nominee to the 6th Circuit to get a hearing in almost 5 years; and today the Committee voted unanimously to report Judge Reena Raggi, who is nominated to a vacancy on the 2d Circuit.

In addition, approximately a dozen more conservative, Republican women have already been confirmed to the Federal District Courts, including: Karen Caldwell, E.D. KY; Laurie Smith Camp, D.C. NE; Karon Bowdre, N.D. AL; Julie Robinson, D.C. KS; Marcia Krieger, D.C. CO; Callie Granade, S.D. AL; Cindy Jorgenson, D.C. AZ; Joan Lancaster, D.C. MN; Cynthia Rufe, E.D. PA; Joy Flowers Conti, W.D. PA; and Amy St. Eve, N.D. IL.

I appreciate that the Administration and Republicans are disappointed with the outcome of the vote on the nomination of Priscilla Owen. I want to accord other Senators respect and, in these circumstances, some leeway in their comments—even as those comments are directed personally at me and other Senators on the Judiciary Committee.

In response to their protestations, as if there were anything improper in the Judiciary Committee's consideration of the nomination of Priscilla Owen, I note that the salient difference between the vote on Justice Owen and the six and one-half years that preceded the change in majority is that Justice Owen was given a thorough and fair hearing, the Committee had a public, open and extensive debate and the nomination was then voted upon in public session. That was not true for more than a dozen nominees to vacancies on our Courts of Appeals over the last several years—several of which were left pending without a hearing or a vote for months and years. Here are just a few of those circuit court nominees with ''Well Qualified'' peer review ratings from the ABA that the Republican-controlled Judiciary Committee never accorded a vote:

James Duffy, nominated to the Ninth Circuit; Kathleen McCree-Lewis, nominated to the Sixth Circuit; Enrique Moreno, nominated to the Fifth Circuit; James Lyons, nominated to the Tenth Circuit; and Robert Cindrich, nominated to the Third Circuit. Others, like Allen Snyder, nominated to the DC Circuit, were given a hearing but was never given a Committee vote, up or down. These and scores of other nominees of the past President were defeated by the Republican decision to deny them Committee votes.

Republicans' preferred method for ''defeating'' more than 50 circuit and district court nominees rated ''highly qualified'' and ''qualified'' by the ABA and those with significant professional credentials was to deny them hearings and, for some who had hearings, to deny them Committee consideration.

To those Senators who are now contending that the ideology and possible activism of judicial nominees should have no place in Senators' consideration, I ask them to start by reviewing their own records of opposition to President Clinton's nominees, including their own votes against nominees professionally qualified. Those who voted against Margaret McKeown, Marsha Berzon, Sonia Sotomayor, Rosemary Barkett and Merrick Garland, Ray Fisher, Richard Paez, William Fletcher and Timothy Dyk to the Courts of Appeals, as well as those who held up any vote on Allen Snyder, Bonnie Campbell and the others, could ask themselves what standards they applied in so doing. The same question can be asked with respect to those who opposed and voted against Margaret Morrow, Gerry Lynch, Mary McLaughlin, Ronnie White, Ann Aiken and those who held up any consideration of Clarence Sundram or Fred Woocher and the scores of nominees never allowed a hearing.

I do not wish to embarrass other Senators, but I am struck by how the statements I have heard today are wholly inconsistent with votes and actions in the years in which they were delaying, opposing and voting against the moderate judicial nominations of a President on another political party.

I raise this consideration not as a matter of tit for tat, for we have assiduously avoided payback, but because it is Republicans who are trying to change their history and pretend that they did not oppose nominees based on what they perceived to be the ideological outlook of the nominees.

I am reluctant to quote my colleagues on the other side of the aisle who are saying something very different now than they said in the prior six years when they were blocking judicial nominees, but in light of the attacks on the Committee, some context is necessary to understand the hollowness of the charge that Committee members acted unfairly, inappropriately or in some unprecedented fashion in their consideration of the nomination of Justice Priscilla Owen.

For example, in 1996, one Republican said that he ''led the fight to oppose the confirmation of [two judges] because their judicial records indicated

that they would be activists who would legislate from the bench.'' While we may differ on whether a judge's record evidences judicial activism, Republicans can hardly now be saying that such inquiry is inappropriate.

Another Republican Senator argued in 2000 in defense of his record of stalling Senate consideration of judicial nominees voted out of the Judiciary Committee that having ''strong qualifications and personal attributes,'' being ''fine lawyers [who] are technically competent'' was not the test. He said then: ''My concern is with their judicial philosophies and their likely activism on the court. . . . Judicial activism is a fundamental challenge to our system of government, and it represents a danger that requires constant vigilance.'' He went on to say that the Senate should not defer to the President ''if there is a problem with a series of decisions or positions [judicial nominees] have taken.''

Another Republican Senator said in 1998 that the Republicans were ''not abusing our advise and consent power. As a matter of fact, I don't think we have been aggressive enough in utilizing it to ensure that the nominees to the Federal Bench are mainstream nominees.''

Yet another Republican said in 1994: ''My decision on a judicial nominee's fitness is based on my evaluation of three criteria: character, competence and judicial philosophy—that is, how the nominee views the duty of the court and its scope of authority.''

There are numerous other examples, of course, but these suffice to make the point.

I ask that my full statement in opposition to the nomination of Justice Owen from the Judiciary Committee consideration be included in the RECORD at the end of these remarks. It focuses on the merits of the nomination, as did Senator FEINSTEIN, Senator KENNEDY, Senator SCHUMER, Senator DURBIN and Senator DEWINE. A few of the statements in the two-hour debate before the Committee were not helpful to a reasoned debate, but by and large the Committee debate was on the merits. That followed an extensive hearing, that lasted six hours, which Senator FEINSTEIN chaired fairly and patiently. A thorough hearing and a fair vote is what Justice Owen's nomination received from the Committee.

The name-calling, threats, tactics of intimidation and retaliation are not helpful to the process. Holding up important legislative initiatives is harmful. Holding up ''the comma bill'' and threatening Democrats that they will be barred from Air Force One are silly.

Today the Senator Judiciary Committee reported a conservative Republican nominee to the Senate for a vacancy on a Court of Appeals. This nominee, Judge Reena Raggi, was first appointed by President Reagan and she came before the Committee with strong bipartisan support and without the divisive controversy that accompanies so many of President Bush's circuit court nominees. Judge Raggi was reported out unanimously today. Indeed, since the change in majority less than 15 months ago, the Committee has worked hard to report 80 judicial nominees to the Senate. They include a number of very conservative judges.

I have made suggestions to the White House for improving the nominations and confirmations processes but those suggestions continue to be rebuffed. I wish the White House would work with us rather than stridently insist on seeking to skew the federal courts ideologically.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in August 2001 in St. Paul, MN. Two men leaving a Ku Klux Klan rally attacked a four year old boy of mixed race. The attackers pushed the boy off his bicycle, yelled racial epithets, and punched the child in the side of the head.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

SITTING DUCKS

Mr. LEVIN. Mr. President, last week the Violence Policy Center, VPC, released a report entitled Sitting Ducks detailing the danger of the .50 caliber sniper rifle as a terrorist threat to, among other things, refineries and hazardous-chemical facilities. According to the VPC's report, the .50 caliber sniper rifle, equipped with explosive or armor-piercing ammunition, is capable of hitting a target accurately from more than a thousand yards away making it well suited to attack fuel tanks and other high-value targets from a distance.

The VPC report highlights the danger of a .50 caliber sniper rifle being used in a simple conventional attack with potentially disastrous results. The weapon is not only readily available, ''low technology'', but a .50 caliber sniper rifle is so powerful that it has been said to be able to wreck several million dollars' worth of jet aircraft with one or two dollars' worth of ammunition.

Despite its obvious power, under current law .50 caliber sniper rifles are no more regulated than hunting rifles. That is why I cosponsored Senator FEINSTEIN's ''Military Sniper Weapon Regulation Act,'' S. 505. This bill would change the way .50 caliber guns are regulated by placing them under the requirements of the National Firearms Act. This action would subject these weapons to the same regimen of registration and background checks to which other weapons of war, such as machine guns, are currently subjected. This is a necessary step to assuring the safety of Americans.

Mr. President, .50 caliber weapons are too powerful and too accessible to be ignored. Tighter regulations are needed. I urge my colleagues to support Senator FEINSTEIN's bill.

COMMEMORATING SGT. FIRST CLASS CHRISTOPHER JAMES SPEER

Mr. DOMENICI. Mr. President, as we meet here just days from the anniversary of the terrorist attacks on our country, it is my sad duty to report that another of my statesmen has lost his life in the war on terror. Sergeant First Class Christopher James Speer, a former resident of Albuquerque, NM, died on August 7, 2002 as a result of wounds he sustained during a firefight with suspected terrorists in Afghanistan. Today, I want to take a few moments to convey my condolences to the Speer family, and to talk a little bit about who this special young man was.

Christopher Speer was a 1992 graduate of Sandia High School in Albuquerque. Upon graduation, he enlisted in the United States Army and became a medical specialist. In 1994, he volunteered for and was selected for Special Forces training. After completing this training, he was assigned to the 3rd Special Forces Airborne Group at Fort Bragg, North Carolina where he served as a medical sergeant. Last spring, Christopher was sent to Afghanistan as part of a Joint Special Operations task force.

On July 27th of this year, Christopher took part in a U.S. operation aimed at confirming intelligence about enemy activities in one of the most dangerous parts of Afghanistan. During that operation, our troops were ambushed and a four-hour gunbattle ensued. During this battle, five American personnel were wounded, and one of them—Christopher Speer—lost his life. For his valor and ten years of dedicated service to country Christopher received the Soldier's Medal, the Bronze Star with ''V'' device, the Purple Heart, the Defense Meritorious Service Medal, the Meritorious Service Medal, the Army Commendation Medal and two Army Achievement Medals.

In addition to patriot, Christopher was very much a family man, as well. And for those family members who knew him best and loved him most, this September 9th will be especially difficult. Because on that day, Christopher was to have turned 29 years old. To Tabitha, his wife; to Taryn and