reaching the authorization of the funds available. Certainly that authorization is not totally enough to fill all the needs, but it is an improvement over the past.

This also gives an opportunity for those counties to create their own financial structure, much of which often is tourism, which, again, is costly. I thank the committee for what they have done with respect to payments in lieu of taxes to the counties. I hope we are able to include that. Our allocation is larger than the House and we need to bring that up so we have a satisfactory arrangement.

In the West we have had 3 years of very low rainfall, actual drought. It is very difficult. In Washington, it is normal to have 50 inches of rain a year. In Wyoming, it is more likely to be an average of 16 or 17 inches. It is a low precipitation area at best. Therefore, we irrigate. Irrigation water generally comes from reservoirs, from the runoff of snowfall that is captured in the mountains and let down during the summer. We have had relatively slow snowfall over the last several years and therefore our reservoirs are getting low and have been very low this year. We have had, certainly, a bona fide drought problem—not only in Wyoming but all through the area, including the Dakotas and down. There has been a great deal of discussion about it. On the Agriculture Committee we talked about that a great deal. The Agriculture Committee bill as prepared does not deal with drought. We think they will get support in the area of crops, but it is based primarily on loans after the product is sold. If you did not produce a product, there is nothing there. That is why we need to have disaster assistance. There will be less spending in the Agriculture bill because there will be less crops grown—with a higher price because there are less—but many farmers and ranchers will not produce a crop.

We should offset some of that to the farm bill spending. Whether we offset it or not, the fact is there will be less money spent in that area than could be spent. Therefore, what we spend here could replace what was there. I hope that is the approach we take.

We should have some limitation on how much we have there, but, indeed, it is a big issue and it will be a $5.5 billion issue to be able to deal with the losses that agriculture has suffered.

I hope, too, we do not simply focus on farm crops. Again, in my State, the biggest agricultural area is livestock. Livestock people have suffered as well. What has happened is there is no grass for grazing where the cattle are on private lands. In some cases where there has been grazing allowed, in the forests or BLM, Federal lands, there has not been a sufficient amount of grass. Ranchers have had to sell cattle because they have not had the feed and will not have the feed this winter.

When we do talk about agriculture, the idea often—particularly in some Midwestern States—is that just refers to farmers. I want to tell you it is farmers, but it is also those who raise livestock, cattle, and sheep. People who are in that business need to be recognized as well, in terms of what we do here to help the agricultural industry during the drought. We will be dealing with that. We will come back to it.

I say again I hope we can set some priorities for the relatively limited amount of time left of this Congress. I hope that we select those items that are timely, that need to be done. I understand when we come to the end of a session everybody has ideas of things that they would liked to have happened that did not happen, but we are not going to be able to do all those things. So what we have to do collectively is show some leadership as to which of those issues should be dealt with. Then we can do that.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. LINCOLN). Without objection, it is so ordered.

GRANDPARENTS DAY

Mr. LEAHY. Madam President, first, on a personal basis, earlier, at the opening of the session, it was noted that yesterday was Grandparents Day. I send my best to all those who are grandparents. The Presiding Officer, of course, is far too young to know the joys of that time in our lives. She does have the joy of two of the most beautiful children anybody has seen in the Senate family. But there will be a day when the other will come. The ranking member and I have the joy of being grandparents.

So I wish all grandparents the best and also extend special wishes to one growing, shameless Leahy.

After that outrageous usurpation of the podium, Madam President, probably, if my wife is watching, she is probably beginning to wonder if I took too much time off in August.

UNANIMOUS CONSENT AGREEMENT

Mr. LEAHY. Madam President, I ask unanimous consent regarding the time of the chairman and the ranking member of the Judiciary Committee that was originally set to be half an hour evenly divided, that we still have that half hour evenly divided, and the vote then begin after the expiration of that time.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF KENNETH A. MARRA, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA

The PRESIDING OFFICER. Under the previous order, the hour of 1 p.m. having arrived, the Senate will proceed to executive session and proceed with the consideration of Executive Calendar No. 889, which the clerk will report.

The legislative clerk read that nomination of Kenneth A. Marra, of Florida, to be United States District Judge for the Southern District of Florida.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I do believe that Judge Kenneth Marra will be confirmed to the U.S. District Court for the Southern District of Florida. I have heard of no opposition. This is a judge who got strong bipartisan support in the Senate Judiciary Committee, which usually guarantees a confirmation on the floor. When that happens, the Democratic-led Senate will confirm its 74th judicial nomination made by President George W. Bush. This will also be the 25th judicial emergency vacancy that we have filled since I became chairman last summer, and the 18th since the beginning of this year.

The confirmation of Judge Marra will bring additional resources to the U.S. District Court for the Southern District of Florida. Judge Marra was nominated to fill a new position Congress created by statute to address the large caseload, particularly the immigration and criminal cases, facing the Federal court in Florida. He is one of three Federal judicial nominations on the Senate Calendar for action.

I recall during the past administration, the Clinton administration, we all worked very hard in cooperation with Senator GRAHAM and Senator MACK to ensure that the Federal court in Florida had its vacancies filled promptly with consensus nominees. Due to the bipartisan cooperation between one Democrat Senator and one Republican Senator and a Democratic President, the Senate was able to confirm 22 judicial nominees from Florida, including 3 nominees to the Eleventh Circuit. But it is unfortunate that this tradition of cooperation, coordination, and consultation has not continued with the current administration.

By my recollection, it was only the nomination of Judge Rosemary Barkett of the Florida Supreme Court to the Eleventh Circuit that generated any significant controversy or opposition. I do recall that she was strongly

opposed by a number of Republican Senators because they did not agree with her judicial philosophy. Those voting against her included Senators HATCH, GRASSLEY, MCCONNELL, SPECTER, and THURMOND, as well as Senators LOTT, NICKLES, and HUTCHISON of Texas. They have an absolute right to do that, of course. I respect that right. Judge Barkett received the highest rating of the ABA, ''well qualified,'' and yet 36 Republicans voted against her confirmation, even though she had the strong bipartisan support of her home State Senators. Recent claims by some that it is unprecedented to vote against a judicial nominee with a ''well qualified'' rating and to vote against her based on her judicial philosophy thus ring hollow.

Unfortunately, that is not the way the administration has dealt with Senators GRAHAM and NELSON now. But it is a tribute to Senator GRAHAM and Senator NELSON that we have made the progress we have had. They could very easily have exercised their right as Senators and refused to accept the nominees of President Bush. Of course, they would go no further under the blue-slip policy that both Republicans and Democrats strongly support. But they have been more than gracious in their willingness to support these nominees. That is why they have gone through.

This Democratic-led Senate has expeditiously moved President Bush's judicial nominees. We have worked hard to provide bipartisan support for the White House's nominations in spite of an almost unprecedented lack of willingness on the part of the White House to work with us.

In fact, I have been here 26 years: During the terms of President Ford, President Carter, President Reagan, President George Herbert Walker Bush, President Clinton, and now President George W. Bush. This administration is the least willing of any White House during all that time—Republican or Democrat—to work with the Senate on judicial nominations. But even without that cooperation, even with the unprecedented lack of cooperation, we are making progress.

I would like to discuss the progress we have made. This chart shows what has happened in the 15 months the Democrats have controlled the Senate. Contrast that to the Republicans' first 15 months when they controlled the Senate. In less than 15 months of Democratic control of the committee, we have held more hearings for more nominees, voted on more nominees in committee, and confirmed more nominees than the Republicans did in their first 15 months of control of the committee in 1995 and 1996.

We have confirmed more of President George W. Bush's Federal trial court nominees in less than 15 months than were confirmed in the first 2 years of his father's Presidency. In fact, we confirmed more in the first 15 months than the Republicans were willing to confirm in their last 30 months.

I mention this because there seems to be some idea that somehow the Democratic-led Senate is holding up judges. I think most of the Presidents with whom I have served would have been delighted to have had a Senate as cooperative as we have been.

Let me repeat that. In 15 months, Democrats have done more on judicial confirmations than Republicans did in 30 months.

They, on the other side, do not want to compare our record of accomplishment in evaluating judicial nominees with theirs in their prior 6½ years of control. They do not want to own up to their delay and defeat through inaction of scores of judicial nominees during the last administration.

All too often the only defense of their record we hear is the claim that President Clinton ultimately appointed 377 judicial nominees, 5 fewer than President Reagan. This statement overlooks the fact that the Republicans only allowed 245 of President Clinton's judicial nominees to be confirmed. That averages, incidentally, to about 38 confirmations per year during their 6½ years of control. We confirmed 74 judicial nominees in less than 15 months, including 13 to the circuit courts. I believe we have reported 80 out of the Judiciary Committee.

I mention this because of the persistence of the myth of inaction in face of such in the face of such a clear record of progress by Democrats. After a while, if someone keeps distorting the facts, if someone keeps stating things that are not true, people actually come to believe it is true. I am reminded of what Adlai Stevenson once said. I will quote him:

> I have been thinking that I would make a proposition to my Republican friends . . . that if they will stop telling lies about the Democrats, we will stop telling the truth about them.

The truth is, of course, as these charts show, that we have a pretty good record of accomplishment despite the lack of cooperation from the administration.

With today's vote, the Democratic-led Senate will confirm its 74th judge—exceeding the number of circuit and district court nominees confirmed in the last 30 months of Republican control of the Senate. We have done more than Republicans did, and we have done it in less than half the time.

We have confirmed more of this President's nominees, both circuit and district court nominees, in less than 15 months, than were confirmed in the comparable 15 months of the first term of former President Reagan, the first President Bush, and President Clinton.

Let's take a look at what has happened in the first 15 months. With today's vote, the Democratic-led Senate has confirmed 74 of this Republican President's judicial nominees in less than 15 months.

Under President Reagan—and incidently, I might point out, he had a Senate of his own party—there were 54 confirmation in the first 15 months. Under George H. W. Bush, there were 23; for the first 15 months of President Clinton, 45. Incidentally, that is with a Senate under the control of his own party. And now, in 15 months, under President George W. Bush, we have had 74 judicial confirmations—74. By any standard you want, here is a case where a different party than the President has controlled the Senate, and we have done more than was done for President Reagan when his own party controlled the Senate, for President Bush when another party controlled the Senate, for President Clinton when we, the Democrats, controlled the Senate.

It shows we can move and will move, and we have been doing that notwithstanding the fact that there has been less cooperation from the White House than I have seen with either Democratic or Republican Presidents in 26 years in the Senate. It is unfortunate.

President Bush will probably get a record number of his judges through at the current pace of confirmations. But I have to think how much better it could be done with less rancor and with even a modicum of cooperation. We have acted fairly and expeditiously notwithstanding the fact that Democrats have felt very concerned that for year after year after year after year in many of the circuit courts of this country, Republicans refused to even hold hearings for the nominees, even though they had the highest ratings of the American Bar Association. They would not even hold hearings, to say nothing about having a vote.

Then when the Republicans came in, suddenly there was an emergency; they had to fill the vacancies in those circuits. Their obstruction created the problem. But notwithstanding that, in many of those cases where Democrats were not allowed to even have a hearing year after year after year, we have in the last 15 months moved forward with hearings and votes, and positive votes, on the vast majority of his judicial nominees.

I have no idea what political game is being played at the White House. I know the people are very nice. Judge Gonzalez is a very nice, very polite person. He is charming to be with. But the cooperation is not there. The President is very nice, very charming. But the cooperation is not there. We could do far better if they would just pick up the phone and call the last three people from the last three Republican administrations—they do not even have to call a Democratic administration—and see how well this could be done.

As the distinguished ranking member, my good friend from Utah, knows, I went down several times and worked with the Clinton White House so they could have cooperation with, and they did cooperate with, Republican Senators in moving through judges. I would hope that with that precedent in mind, some might do the same.

Democrats have reformed the process for considering judicial nominees to

ensure bipartisan cooperation and greater fairness. For example, we have ended the practice of secretive, anonymous holds that plagued the period of Republican control, when any Republican Senator could hold any nominee from his or her home state, his or her own circuit or any part of the country for any reason, or no reason, without any accountability. We have returned to the Democratic tradition of regularly holding hearings, every few weeks, rather than going for months without a single hearing. In fact, we have held 23 judicial nominations hearings in our first 13 months, an average of almost two per month.

In contrast, during the six and one-half years of Republican control, they went 30 months without holding a single judicial nominations hearing. By holding 23 hearings for 84 of this President's judicial nominees, we have held hearings for more circuit and district court nominees than in 20 of the last 22 years during the Reagan, first Bush, and Clinton Administrations.

As this chart shows, we have held more hearings for President Bush's judicial nominees in less than 15 months than were held in 15 months for any of the past three Presidents. In the first 15 months of the first term of President Reagan, 17 judicial nominations hearings were held. In the first 15 months of President George H.W. Bush's term, 11 hearings were held. And, in the first 15 months of President Clinton's first term, 14 judicial nominations hearings were held. In contrast, we have held 23 hearings in less than 15 months. That is almost as many as were held in the first 15 months of the terms of the first President Bush and President Clinton combined. We have more than exceeded the number of hearings held in the last 30 months of Republican control of the Senate, when they held only 15 hearings.

While some complain that a handful of circuit court nominees have not yet had hearings, they fail to acknowledge that Democrats have held hearings for more of President Bush's circuit court nominees, 18, than in any of the six and one-half years in which the Republicans controlled the Committee before the change in majority last summer. Republicans have utterly failed to acknowledge this fairness and progress under the Democratic majority. The myth of obstruction of judicial nominees fits their political strategy better than the truth.

The years of Republican inaction on a number of circuit court vacancies has made it possible for Democrats to have several ''firsts,'' or astounding accomplishments in addressing judicial vacancies. For example, we held the first hearing for a nominee to the Sixth Circuit in almost five years (that is more than one full presidential term) and confirmed her, even though three of President Clinton's nominees to the Sixth Circuit never received a hearing or a vote. We held the first hearing on a Fifth Circuit nominee in seven years (including the entire period of Republican control of the Senate) and confirmed her last year, while three of President Clinton's Fifth Circuit nominees never received hearings or votes on their nominations. We held the first hearing on a Tenth Circuit nominee in six years, and we have confirmed two of President Bush's nominees to the Tenth Circuit, while two of President Clinton's nominees to that circuit never received hearings or votes. We held the first hearing for a Fourth Circuit nominee in three years, for Judge Roger Gregory, and the first hearing for an African American nominee to that court in United States history, even though Judge Gregory and four other nominees to that circuit (including three other African Americans) never received hearings or votes during Republican control of the Senate. These are just a few examples of the historic accomplishments of the Democratic-led Senate which debunk Republican myths that Democrats caused the vacancy crisis, are delaying judicial appointments or have been retaliating for years of obstruction on circuit court vacancies by Republicans.

There were only 16 circuit court vacancies when Republicans took over the Senate in January 1995. Unfortunately, from January 1995 until Republicans relinquished control and allowed the Judiciary Committee to be reorganized in the summer of 2001, circuit court vacancies more than doubled from 16 to 33. Republicans executed a partisan political strategy to hold vacancies open on the circuits for a Republican president to fill. It would certainly have been easier and less work for Democrats to retaliate for the unfair treatment of the last President's circuit court nominees. We did not. We have been, and will continue to be, more fair than the Republican majority was to President Clinton's judicial nominees.

Here is another chart that shows that more of President Bush's judicial nominees have been given committee votes than the nominees of prior presidents. Unlike my Republican predecessor, I have scheduled hearings and votes on district and circuit court nominees whom I do not support. The Judiciary Committee has voted on 82 judicial nominees and favorably reported 80. In less than 15 months, we have voted on more of President Bush's district and circuit court nominees than were voted on in the first 15 months of any of the past three Presidents. Moreover, we have voted on more nominees in less than 15 months than were voted on in the first 15 months of Presidents Reagan and George H.W. Bush combined, or Presidents George H.W. Bush and Clinton combined. We have even voted on more nominees in less than 15 months than were voted on in the last 30 months of Republican control of the Senate, when 73 nominees were voted on by the Committee.

Because we have moved quickly and responsibly, the number of vacancies is not at the 153 mark it would be had we taken no action. Vacancies have been reduced to 79 and are headed in the right direction. On July 10, 2001, with the reorganization of the Senate, we began with 110 vacancies. When Republican gained control of the Senate in 1995 the federal judicial vacancies numbered 65. The vacancies increased during their six and one-half years to more than 110. Under the Democratic majority, by contrast, the number of vacancies is being significantly reduced. Despite the large number of additional vacancies that have arisen in the past year, with the 61 district court confirmations we have as of today, we have reduced district court vacancies to 50, almost to the level it was at when Republicans took over the Senate in 1995.

In fact, when we adjourned for the August recess we had given hearings to 91 percent of this President's judicial nominees who had completed their paperwork and who had the consent of both of their home-State Senators. That is, 84 of the 92 judicial nominees with completed files had received hearings.

When we held our most recent hearing on August 1, we had given hearings to 66 district court nominees and we had run out of district court nominees with completed paperwork and home-State consent. Only two district court nominees were eligible for that hearing. This is because the White House changed the process of allowing the ABA to begin its evaluation prior to nomination. This change has cost the federal judiciary the chance over the last year to have 12 to 15 more district court nominees on the bench and hearing cases, because now the ABA can only begin its evaluation once the nomination is submitted to the Senate. The ABA also must wait until the Administration provides the Senate with the nominee's public questionnaire, and lately the nominees' documents have been arriving on a delayed basis, as well. Indeed, many of the two dozen nominations most recently received will likely not get hearings before adjournment this year in large measure because the White House unilaterally changed the process for consideration and has built additional delays into it.

In January I had proposed a simple procedural adjustment to allow the ABA evaluation to begin at the same time as the FBI investigation, as was the practice in past Republican and Democratic Administrations over 50 years. Had this proposal been accepted, I am confident there would be more than a dozen fewer vacancies in the federal courts. Instead, our efforts to increase cooperation with the White House have been rebuffed. We continue to get the least cooperation from any White House I can recall during my nearly three decades in the Senate. Yet, even with such lack of cooperation from the White House, the Senate has set an impressive rate of confirming judicial nominees.

Here is another chart that shows how Democrats have dramatically reduced the time between nomination and confirmation of circuit court nominees. Since the Democrats assumed the majority last July, the average time to confirm circuit court nominees has been drastically reduced to 147 days, from a high during the most recent years of Republican control of 374 days. We have reduced the average time from nomination to confirmation to two-and-a-half times less than the average time to confirmation during Republican control during the 106th and 105th Congresses when it took an average of 374 and 314 days, respectively, to confirm President Clinton's circuit court nominees.

The Judiciary Committee has reported two more circuit court nominees favorably to the Senate. We have held hearings on 18 circuit court nominees and the Judiciary Committee has already voted on 17 of those 18 nominees.

In spite of the obstacles the White House has put in the way of their own nominees through their lack of consultation and cooperation, we have been able to have a productive year while restoring fairness to the judicial confirmation process. I regret that the White House has chosen the strident path that it has with respect to judicial nominations, especially to the circuit courts. As several Senators noted last week, the Administration does not have carte blanche to insist on an ideological takeover of the Courts of Appeals with activist ultra-conservative nominees intended to tip the balance in circuits around the country. The total number of district and circuit court confirmations now stands at 74, and there remain a few weeks left in this session. So while we have been working hard and productive, the Judiciary Committee and the Senate have not become a rubber stamp.

I am proud of the efforts of the Senate to restore fairness to the judicial confirmation process over this time. The Senate Judiciary Committee is working hard to schedule hearings and votes on additional judicial nominees, but it takes time to deal with a mess of the magnitude we inherited. I think we have done well by the federal courts and the American people, and we will continue to do our best to ensure that all Americans have access to federal judges who are unbiased, fair-minded individuals with appropriate judicial temperament and who are committed to upholding the Constitution and following precedent.

When the President sends judicial candidates who embody these principles, they will move quickly, but when he sends controversial nominees whose records demonstrate that they lack these qualities and whose records are lacking we will take the time needed to evaluate their merits and to vote them up or down.

I would like to thank the Members of the Judiciary Committee who have labored long and hard to evaluate the records of the individuals chosen by this President for lifetime seats on the federal courts. The decisions we make after reviewing their records will last well beyond the term of this President and will affect the lives of the individuals whose cases will be heard by these judges and maybe millions of others affected by the precedents of these decisions of these judges.

Before anyone takes for granted how fairly Democrats have treated this President's judicial nominees, receiving up or down votes, they should take a look at how poorly judicial nominees were treated during the 6½ years of Republican control of the Senate. In all, several dozen judicial nominees of President Clinton never received a hearing or a vote.

When confronted with this, Republicans often lament that about 50 of the first President Bush's judicial nominees did not get a hearing before the end of the session in Congress in 1992. What they consistently fail to mention about this, however, is quite revealing. That year, the Senate confirmed more of President George H.W. Bush's judicial nominees than in any year of his presidency. He had 66 judicial nominees confirmed that year, but the Senate simply could not get to the other 53 nominees he submitted in response to the creation of dozens of new judgeships. So, even though some of his nominees were returned, the Senate confirmed a substantial number, 66, of his judicial nominees in the 10 months they were in session that year, which was an election year, by the way.

Perhaps coincidentally, 66 is the highest number of judicial confirmations in one year that Republicans ever allowed President Clinton to reach. They averaged 38 judicial confirmations per year. In the last two years of the Clinton Administration, Republicans allowed only 33 and 39 judges to be confirmed, respectively in 1999 and 2000. President George H.W. Bush had 66 confirmations in his last year of office, an election year. In President Clinton's last year in office only 39 judges were confirmed, during Republicans control. In 1996, Republican allowed only 17 judges to be confirmed, none to the circuit courts. In those two election years combined Republicans allowed only 56 confirmations. In 1992, an election year, Chairman BIDEN pushed through 66 confirmations.

Unlike Democrats in 1992, Republicans cannot honestly claim that they moved a substantial number through but could not get to them all. Confirming only 39 judicial nominees in 2000 and returning more than that, 41, in that year alone, simply does not compare with what happened in 1992 when Democrats worked hard to move through 66 of the first President Bush's judicial nominees in the space of 10 months. If 66 was such an easy number to reach, why did Republicans reach that level only once in six years of control? The answer is easy. They did not want to do so. I think Republicans wanted to ensure that they never treated President Clinton better than the best year of former President Bush (his last year) and they wanted to ensure that President Clinton did not beat President Reagan's number of confirmations, as a matter of partisan pride.

Had Republicans kept up the pace of confirmation set by Democrats in the first President Bush's last year and the first two years of the Clinton Administration, President Clinton would have appointed substantially more than the 377 judges who were ultimately confirmed in his two terms as president, and the Democratic-led Senate Judiciary Committee would not have begun last July with 110 vacancies. Ironically, perhaps, Democrats have been so fair to President George W. Bush, despite the past unfairness of Republicans, that if we continue at the current pace of confirmation and vacancies continue to arise at the same rate, then Bush will appoint 227 judges by the end of his term. If he were elected to a second term, at the current pace, he would amass 454 judicial confirmations, dramatically more than President Reagan, who Senator HATCH often calls the all-time champ. This, too, demonstrates how fair Democrats have been. Perhaps some may say we have been foolishly fair, given how Democrats were treated in the past. We have exceeded the pace set in 1992, 1993 and 1994, with 74 confirmations to date in little more than a year.

In fact, when we adjourned for the August recess we had given hearings to 91 percent of this President's judicial nominees who had completed their paperwork and who had the consent of both of their home-State Senators. That is, 84 of the 92 judicial nominees with completed files had received hearings.

Any way you look at the numbers, raw numbers or percentages, comparisons with the prior six years of Republican control or with prior Congresses and Republican presidents, the Democrats have done more in less time. We have been more fair by far. Yet we have been unfairly labeled as obstructionist because we have not been able to have hearings for every single judicial nominee in the short period we have been in the majority. This President still has over two years left in his term.

I withhold the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I rise today to respond to some of the amazing assertions made by my distinguished colleague and friend from Vermont. Of course, I do so with some trepidation because each time we have a back and forth like this one, I help my colleague further the impression that he is out to create and that he has done a good job of creating, especially with the press.

The impression my colleague is seeking to create is that both sides come to

the table with unclean hands in the matter of confirmations. It is a false impression and it provides a smokescreen of the stark reality of the poor performance of the Judiciary Committee this past year and during this session.

Naturally, my friend takes pride in his accomplishments this year, but not all of them. Let me list a few he misses. President Reagan took pride in nominating the first woman to the Supreme Court. My Democrat colleagues have now presided over the ''Borking'' of the first woman in history, and one of the leading women jurists in this country, Priscilla Owen.

My colleague has also set a new record for a Judiciary Committee chairman. He has voted in 1 year against more judicial nominees than any chairman in the 212 years of the Republic. Moreover, most of my Democrat colleagues on the Judiciary Committee have voted against more judicial nominees in this last one year than I have in my 26 years on the Judiciary Committee. I voted against only one Clinton nominee, only one, but as painful as that was, I did it standing straight for all to see in the disinfectant light of the Senate floor, not in the shadows of a committee vote.

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

In other words, Priscilla Owen, who had the support of both home State Senators, which is a requisite for consideration by the Committee, who had the highest rating given by the American Bar Association for a judicial nominee, who is a supreme court justice in Texas, and who, by anybody's measurement who is fair, is in the mainstream of American jurisprudence, was dumped unceremoniously in the committee by a 10-to-9 party vote, a partisan party vote at that, and without giving her nomination the chance of being brought up on the floor of the Senate where I believe she would have passed, if not overwhelmingly, certainly comfortably.

I have heard my colleague from Vermont defend against that by listing the 42 judicial nominees who did not get confirmed by the end of the Clinton administration. He doesn't point out that there were 54 nominees left hanging at the end of the first Bush administration when they were in charge. And he does not explain that most, if not all, of the nominees left hanging at the end of the Clinton administration, however qualified, did not progress because either they were nominated too late or did not have their home state Senators' support or had other problems that we cannot address.

In an attempt to cloud up the rejection of Justice Owen's nomination, I have also heard my colleagues point to the Clinton judges from Texas in particular who never got a hearing. One said at the Owen hearing that I did not give them a hearing. It was a very unfair characterization, and I will respond to it now.

As my friend knows well enough, neither of those nominees had the support of their home state Senators. This prevented me, and would have prevented the distinguished Senator from Vermont, if he were in my shoes, from scheduling a hearing for them. In part, this was because President Clinton ignored the Texas Senators and the Texas nominating commission in making those nominations. The practice of honoring the home State Senators is not one I put in place; it was put in place under Democrat leadership of the committee, and appears agreeable to both parties.

Today, Democrat Senators from the States of North Carolina, California, and Michigan have prevented the Judiciary Committee from holding hearings on six of President Bush's original Circuit Court of Appeals nominees who were nominated a year and a half ago, some of the greatest nominees I have seen in the whole time I have been in the Senate and on the Judiciary Committee, now 26 years.

I know there are those who seem to justify 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 to Justice Owen. I can't think of anything in history that compares to that. Some Democrats have attempted to leave the impression that Republicans have unclean hands so as to soften the scrutiny of what was done to Justice Owen. The American people will see through this.

But let me assure you, none of those nominees who did not get hearings would trade places with Charles Pickering of Mississippi or Priscilla Owen of Texas. It is beyond peradventure that they would prefer to be ghosts of nominations past than called racists, unjustly called racists, and have their fine records of public service soiled by the Judiciary Committee.

I am heartened to know that beyond the overwhelming support from her home State of Texas and scores of op-eds written across the country in support of the Owen 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. I have previously submitted these for the RECORD.

Prior to the vote in Committee, only three newspapers, in fact—in New York, Los Angeles, and San Francisco—had come out firmly against the nomination.

I am heartened by this national support not just for the sake of Justice Owen, but because at her hearing I expressed alarm at the efforts of 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 Congress and less than the independent, coequal branch it was intended to be.

Let me respond further to my good friend from Vermont. He is right that in this session so far the Senate has confirmed 73 judges. There is much eagerness in my friend's voice asserting that this number compares favorably 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 fair comparison because I was never chairman during any of President Clinton's first 2 years in office.

Let me repeat that. I was never chairman of the Judiciary Committee during any President's first 2 years in office. I am glad to say, therefore, that the proper comparison is not, as they say, about me.

My colleague speaks of the last 15 months when I was chairman, but this compares apples to oranges.

During President Clinton's first Congress, when Senator BIDEN was the chairman of the Judiciary Committee, the Senate confirmed 127 judicial nominees. And Senator BIDEN achieved this record despite not receiving any nominees 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 of 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 two years also demonstrates how a Democrat-led Senate treated a Republican President. Then-Chairman BIDEN presided over the confirmation of all but 5 of the first President Bush's 75 nominees in that first two-year session. Chairman THURMOND's record is similar. The contrast to the present could hardly be starker.

Mr. President, we are about to close President Bush's first 2 years in office having failed the standards set by Chairmen BIDEN and THURMOND. That is nothing over which to be proud. We still have 80 vacancies on the courts, and 32 emergency vacancies.

Mr. President, one final point about Justice Owen. Much of the opposition against her was driven by interest groups that advocate for the right to abortion. Yet in Justice Owen we had the first nominee we have considered this session who has, as a judge, read those cases, cited them, quoted them, applied them and followed them. She did, however, interpret the new Texas parental notice law and sought in one

particular case to make it rarer to bypass than some of her colleagues on the court, although the Texas Supreme Court agreed in most all other respects.

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

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

Let's be clear that the opposition to Justice Owen was all about abortion. But in Justice Owen's case, it was not that she opposed abortion rights—no decision of hers ever denied that right. I fear that the opposition to Justice Owen is not about abortion rights exactly, but something much more insidious—it was not about abortion rights exactly but about abortion profits.

Simply put, the abortion industry is opposed to parental notice laws because they place a hurdle between them and their clients—not the girls who come to them, but the adult men who pay for the 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 to hide their young daughters' abortions, they also protect sexual offenders and statutory rapists.

And who are the lobbyists for the abortion industry? Exactly the same cast that has 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? Not Justice Owen—82 percent of the American people favor consent and notice laws such as Justice Owen interpreted—86 percent in Illinois.

I will say it again, while my colleagues continue in general to apply an abortion litmus test, the assault against Justice Owen 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.

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 the Washington special interest groups, and spreads its influence to the halls of power in Washington and in State courts across this country.

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

When my colleagues voted against her, they chose to besmirch 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 sacrifice of personal wealth and family. My Democrat colleagues voted, in effect, against the American promise of fairness.

This is a young woman who gave up a lucrative career to give public service on the Texas Supreme Court, and who deserves to be on the Fifth Circuit Court of Appeals.

Such a vote should have taken place in the light of this Senate floor, but the American people will hear of the result notwithstanding the shadows.

I only hope the American people will repair the damage done to the Constitution when they vote in November.

I have reviewed Mr. Marra's distinguished career and I can say, without hesitation, that he will be an excellent addition to the prestigious Southern District of Florida.

Mr. Marra comes to the federal bench with a unique and extremely useful qualification: Judge Marra is a former Social Studies teacher at Elmont Memorial High School in Elmont, New York. After teaching high school for several years, Judge Marra inexplicably decided to change career paths and went to law school, graduating from Stetson University College of Law in 1977. He then went to work for the United States Department of Justice as part of its honor law graduates program. While at the Department of Justice, he was involved in litigation which sought to protect the land, water and mineral rights of Native Americans from encroachment and to regain such resources that had been wrongfully lost over the years.

After three years with the Department of Justice, Judge Marra joined the law firm of Wender, Murase & White of Washington, D.C., where he was involved in patent and trademark litigation, corporate law and litigation in the area of federal Indian law. In 1984 Judge Marra joined the law firm of Nason, Gildan, Yeager, Gerson & White. He worked at that firm for the next twelve years focusing on commercial litigation and representing clients at both the trial and appellate levels. Judge Marra gained experience in a variety of matters, including antitrust, contracts, construction defects, condominium and homeowner association disputes, and employment and housing discrimination.

In 1996 Judge Marra was appointed to the Fifteenth Judicial Circuit in Palm Beach County, Florida. He has served in the civil, family and criminal divisions.

Judge Marra will make a fine member of the Federal bench.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I am sure it was inadvertent that when the distinguished Senator from Utah was talking about the editorials against the nominee, Priscilla Owen, he said there were only three against.

I refer, for example, to the Atlanta Journal-Constitution, and I will quote from it and then put the whole editorial in the RECORD.

I ask unanimous consent that articles in opposition to her be printed in the RECORD.

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

[From the New York Times, Sept. 4, 2002]

THE WRONG JUDGE

Priscilla Owen, President Bush's latest nominee to the United States Court of Appeals for the Fifth Circuit, has been at times so eager to issue conservative rulings in cases before her on the Texas Supreme Court that she has ignored statutory language and substituted her own views. This criticism comes not from the ''special interest groups'' she has charged with misstating her record, but from Alberto Gonzales, President Bush's own White House counsel. Mr. Gonzales, who served with Justice Owen on the Texas high court, once lambasted her dissent in an abortion case for engaging in ''unconscionable . . . judicial activism.'' Mr. Gonzales says today that he nonetheless supports the elevation of Justice Owen. We do not.

In choosing a nominee for the Fifth Circuit—the powerful federal appeals court for Texas, Mississippi and Louisiana—President Bush has looked to the extreme right wing of the legal profession. Even on Texas' conservative Supreme Court, Justice Owen has distinguished herself as one of the most conservative members. A former lawyer for the oil and gas industry, she reflexively favors manufacturers over consumers, employers over workers and insurers over sick people. In abortion cases Justice Owen has been resourceful about finding reasons that, despite United States Supreme Court holdings and Texas case law, women should be denied the right to choose.

Justice Owen's views are so far from the mainstream that, on those grounds alone, the Senate should be reluctant to confirm her. But what is particularly disturbing about her approach to judging is, as Mr. Gonzales has identified, her willingness to ignore that text and intent of laws that stand in her way. In an important age discrimination case, Justice Owen dissented to argue that the plaintiff should have to meet a higher standard than Texas law requires.

Justice Owen has also shown a disturbing lack of sensitivity to judicial ethics. She has raised large amounts of campaign contributions from corporations and law firms, and

then declined to recuse herself when those contributors have had cases before her. And as a judicial candidate, she publicly endorsed a pro-business political action committee that was raising money to influence the rulings of the Texas Supreme Court.

After the Senate Judiciary Committee rejected Judge Charles Pickering, another far-right choice, for a seat on the Fifth Circuit earlier this year, the Bush administration declared that it would not be intimidated into choosing more centrist nominees. Sadly, the administration has lived up to its threat. In this dispute the Senate is right: the administration should stop trying to use the judiciary to advance a political agenda that is out of step with the views of most Americans.

Justice Owen is a choice that makes sense for Justice Department ideologues who want to turn the courts into a champion of big business, insurance companies and the religious right. But the American people deserve better. Justice Owen's nomination should be rejected.

[From the Los Angeles Times, July 23, 2002]

IDEOLOGUES ALL IN A ROW

Last year President Bush eliminated the American Bar Assn. from the process of vetting potential judicial nominees, a role it performed ably and in a nonpartisan way for the nine presidents before him. Now he relies on the ideological tests of the very conservative Federalist Society.

Not surprisingly, the men and women who pass this rigid test look remarkably alike on the bench. They often side with business in disputes involving employee rights, consumers and the environment. They strongly oppose abortion, and their opinions reveal a strong streak of judicial activism dressed up as traditional principle.

Priscilla Owen is among them. A protege of Bush confident Karl Rove, who engineered her 1994 election to the Texas Supreme Court, Owen is a nominee to a seat on the U.S. 5th Circuit Court of Appeals. She comes before the Senate Judiciary Committee today to defend a record of indifference to the problems of most Americans.

Senators should ask her why, for example, she voted to reverse a jury verdict in favor of a woman who had sued her health insurance company for refusing necessary surgery to remove her spleen and gallbladder. Her colleague on the Texas high court, Alberto Gonzales, now Bush's top legal advisor, dissented, writing that Owen's decision turned the legal standard in that case ''on its head.''

Gonzales, a solid conservative himself, also took issue with Owen in an abortion case that should draw tough questions from Sen. Dianne Feinstein (D–Calif.), chairwoman of today's hearing. Texas law allows pregnant teenagers in some instances to seek permission from a judge to have an abortion without their parents' consent. Owen has staunchly opposed such ''judicial bypasses.'' In one case, Gonzales, wrote, Owen's opinion would have ''create[d] hurdles that simply are not found in the . . . statute'' and would be ''an unconscionable act of judicial activism.'' in other cases, her colleagues have accused her of ''inflammatory rhetoric.''

For all this, Owen's nomination puts Feinstein in a tough spot. She was chairwoman last March when the Judiciary Committee rejected Charles Pickering, another Bush pick for the 5th Circuit. She is anxious to avoid being labeled obstructionist. But given her repeated calls for mainstream nominees, not to mention her long support for abortion rights, Feinstein should vote no, and so should her colleagues.

Although it is now one of the most conservative appellate federal courts, the 5th Circuit has a long and honorable history—defending civil rights during the 1960s and the rights of asbestos workers, systematically deceived and injured by their employers, in the 1970s. Owen would add nothing positive to that legacy.

Americans want independent, commonsensical and capable judges, not those whose political ideology—from either direction—wins them a nomination. As long as Bush continues to exclude the American Bar Assn. from the nomination process, he should not be surprised that his choices draw fire.

[From the San Antonio Express-News, July 21, 2002]

BUSH COURT CHOICE SHOULD BE REJECTED

Once competency is established, the most important qualification for a judge is commitment to following the law as it is written—regardless of personal philosophy.

Justice Priscilla Owen is clearly competent, but her record demonstrates a results-oriented streak that belies supporters' claims that she strictly follows the law.

Because of Owen's record as a member of the Texas Supreme Court, the Senate Judiciary Committee should reject her nomination to sit on the U.S. 5th Circuit Court of Appeals.

Her most infamous opinions involve cases in which minors were seeking a legal bypass allowing them to get an abortion without parental consent.

In those cases, she consistently landed in a small court minority that opposes such bypasses, while a majority of her fellow judges on an all-Republican court upheld the law as legislators wrote it.

Former Justice Al Gonzales clearly pointed that out. In an opinion that countered a dissent she supported, he wrote: ''To construe the Parental Notification Act so narrowly as to eliminate bypasses, or to create hurdles that simply are not to be found in the words of the statute, would be an unconscionable act of judicial activism.''

Now serving as President Bush's White House counsel, Gonzales is defending his former state court colleague. However, opinions she wrote in the parental consent cases show a clear line between strict constructionist judges and activists.

Owen, who remains on the state's high court, is an activist.

In recent years, judicial nomination struggles on Capitol Hill have become a game, played by both parties, or petty obstructionism.

The Senate should not block a judicial nominee simply because he or she is more conservative or more liberal than the Senate's majority party.

It also should not engage in petty personal attacks. But concerns about Owen go to the heart of what makes a good judge.

When a nominee has demonstrated a propensity to spin the law to fit philosophical beliefs, it is the Senate's right—and duty—to reject that nominee.

A hearing on Owen's nomination is set for this week.

Although Owen should be rejected for a lifetime appointment, the Democrat-controlled Senate should have given her a hearing long ago. Bush nominated Owen on May 9, 2001.

Owen and the president were owed better treatment. Even nominees who are destined for rejection deserve timely consideration, and the Democrats should pick up the pace in considering Bush's judicial picks.

During his years as Texas governor, Bush did a masterful job of selecting quality, moderate judges. But his decision to nominate Owen is a disappointment.

We urge Bush to take more care in future nominations and return to his previous policy of nominating judges who believe in the law more than any ideological agenda.

[From the San Francisco Chronicle, July 23, 2002]

FEINSTEIN'S DECISIVE MOMENT

Sen. Dianne Feinstein, D-Calif., faces a momentous decision. Today, the Senate Judiciary Committee will hold hearings on Priscilla Owen, the president's candidate for a lifetime appointment to the United States Court of Appeals for the Fifth Circuit. With the committee divided along party lines, Feinstein could cast the decisive vote.

When George W. Bush became president, he excoriated judicial activism and vowed to nominate justices who interpret the law, instead of trying to rewrite it.

Priscilla Owen simply does not satisfy the president's own criteria for this position. According to a report issued by People For the American Way, a liberal advocacy group, Owen has demonstrated a disturbing pattern of overruling the law when it clashes with her conservative ideology.

In one case, for example, Owen's dissenting decision would have effectively rewritten a key Texas civil rights law by making it more difficult for employees to prove discrimination. Her colleagues on the bench—mostly Bush appointees—wrote that her ruling ''defies the Legislature's clear and express limits on our jurisdiction.''

With respect to reproductive rights, Owen advocated a far more restrictive interpretation of the Texas law that allows a minor to obtain an abortion without parental notification. Her dissent prompted then-Justice Alberto Gonzales, now the White House counsel, to write that her opinion constituted ''an unconscionable act of judicial activism.'' Gonzales, naturally, now expresses the White House party line, hailing Owen's integrity and ability. ''I'm confident she will follow the law as defined by the Supreme Court,'' Gonzales was quoted as saying in the San Antonio Express-News.

But close observers of her Texas record are less confident of her objectivity. Danielle Tierney, a Planned Parenthood spokeswoman from Texas, said Owen has ''a record of active opposition to reproductive and women's rights.''

Owen has also tried to finesse laws that protect public information rights, the environment, and jury findings.

The point is, Owen has created a strong record of ''rewriting'' the law when it does not match her conservative convictions.

This is why it is vital that Feinstein reject this nomination.

[From the Dallas Morning News, July 16, 2002]

JUSTICE OWEN: PERPETRATOR OR VICTIM OF POLITICS?

HER ACTIVISM HAS BEEN EXTREME, EVEN BY TEXAS STANDARDS

(By Craig McDonald)

Texas Supreme Court Justice Priscilla Owen, who faces a Senate Judiciary Committee hearing Thursday on her nomination to the 5th U.S. Circuit Court of Appeals, flunks the stated judicial criteria of both President Bush and the Democratic chairman of the Judiciary Committee.

Although the president nominated Justice Owen, she flunks his own pledge to appoint ''strict constructionists'' who narrowly interpret laws rather than write opinions promoting a political agenda. ''I want people on the bench who don't try to use their position to legislate from the bench,'' Mr. Bush has said. Yet Justice Owen's record on the Texas Supreme Court is one of a judicial activist who seeks to make laws from the bench.

Justice Owen also flunks the criteria of Senate Judiciary Committee Chairman Patrick Leahy, who has pledged to stop any ''ideological court packing.'' Justice Owen's record has established her as an ideological extremist out of the mainstream—even on the all-conservative Texas Supreme Court.

Justice Owen's extreme opinions have mobilized a large coalition of Texas organizations working to stop her appointment. The groups fighting her nomination range from the Texas chapter of the American Association of University Women to the Women's Health and Family Planning Association. They include the AFL–CIO, the National Association for the Advancement of Colored People, Planned Parenthood, the Texas Civil Rights Project, the Texas Abortion Rights Action League and others.

While each of those organizations has its own reasons for opposing Justice Owen, my group—Texas for Public Justice—is particularly troubled by the fact that she has amassed a body of rulings that advance the agendas of the special interests that bankrolled her judicial campaigns. Thirty-seven percent of the $1.4 million that Justice Owen raised for her Supreme Court campaigns came from donors with a direct stake in case in her court.

Letting special interests bankroll judicial campaigns has shattered public confidence in Texas courts. A 1999 Texas Supreme Court poll found that 83 percent of Texans, 79 percent of Texas lawyers and 48 percent of Texas judges say campaign contributions significantly influence judicial decisions. Commenting on the poll, U.S. Supreme Court Justice Anthony Kennedy said, ''The law commands allegiance only if it commands respect. It commands respect only if the public thinks judges are neutral.''

Since Justice Owen joined the high court in 1995, she has written and joined a slew of opinions that favor businesses over consumers, defendants over plaintiffs and judges over lawmakers and juries. A 1999 study by Austin-based Court Watch found that individuals won just 36 present of their cases during Justice Owen's tenure, compared to a win rate of 66 percent for businesses, 70 percent for insurers and 86 percent for medical interests.

While all nine Texas Supreme Court justices are pro-business conservatives, Justice Owen and Nathan Hecht became an isolated bloc of extremist dissent about 1998. Masquerading as ''strict constructionists,'' Justices Owen and Hecht have promoted the interests of big business and the far right with much less restraint than their fellow Texas justices. That ultraconservative activism is all the more disturbing, given that it mirrors the agenda of the top donors to their judicial war chests.

In making lifetime appointments to federal appeals courts, the president and the Senate can—and should—do better. Justice Owen lacks criminal trial experience, has taken more than $500,000 in judicial contributions from interests with cases in her court and has produced a body of activist opinions that are extremist—even by Texas standards.

[From the San Antonio Express-News, July 21, 2002]

JUDGE OWENS FLUNKS BUSH'S OWN ''STRICT CONSTRUCTIONISTS'' TEST

(By Jan Jarboe Russell)

In a perfect world, there wouldn't be ''liberal'' judges or ''conservative'' judges, there would just be good judges. After all, if you ask ordinary people what they want in a federal judge, what they want are judges who are fair, learned and impartial, judges who have the ability to lay aside their own political views and do their public duty.

Why then is it so darn hard to find these kind of plain-and-simple judges? The answer, of course, is the dreaded P word; politics. The ongoing battle in the Senate Judiciary Committee over the nomination of Priscilla Owen to the 5th U.S. Circuit Court of Appeals is a perfect example of how politics is making a certifiable mess of America's judicial system.

In seven years on the Texas Supreme Court, the only way moderate-thinking people in Texas survived Owen's relentless ultra-conservative dissents was to toughen our stomachs and take her many efforts to rewrite our state laws one day at a time. This is a woman who has consistently ruled against consumers, has routinely overturned decisions of juries, has curtailed access to public records, and by anyone's measure is an avid anti-abortion ideologue.

Mind you: the Texas Supreme Court is no bastion of liberalism. The nine members of the court are 100 percent pedigree Republican, but Owen was such a right-wing activist she managed to earn the nickname ''Justice Enron'' for accepting $8,600 in Enron campaign funds in one year—$1,000 of it from Kenneth Lay himself—and turning around the next and writing an opinion that saved Enron $225,000 in school taxes.

As one of only nine states in the nation with the sorry system of electing our judges with expensive campaigns paid for by the very lawyers and businesses that come before these judges for justice, Texas gets exactly the kind of justice we deserve. In the case just mentioned, for example, Enron paid for the privilege of robbing the public school children of Spring, a Houston suburb, of their rightful share of taxes.

I don't expect President Bush to nominate judges to the federal bench with whom I agree politically. But I do expect Bush to nominate people to lifetime positions on the federal bench who meet Bush's own standards of ''strict constructionists,'' judges who will interpret rather than write the law. Owen fails the Bush test.

In no less than a dozen cases in which the Texas Supreme Court was asked to allow a pregnant teenager to bypass the state's parental notification requirement and have an abortion, Owen voted every time to deny the bypass and created hurdles that were not written in the state's law. In one case, when lawyers for a high school senior requested that the court act quickly on the girl's request for permission to bypass the notification requirement, Owen wrote a dissent that asked: ''Why then the rush to judgment?'' The girl was in the 15th week of pregnancy at the time.

Owen's rulings in these abortion notification cases were so strident that Alberto Gonzales, now Bush's White House counsel but then a member of the Texas Supreme Court, wrote in a majority opinion that Owen and two other dissenting justices were thwarting the clear intent of the law. To accept their reasoning, he wrote, ''would be an unconscionable act of judicial activism.''

Gonzales finds himself in the role of reluctant cheerleader for Owen. In a telephone interview from his office in the West Wing the other day, Gonzales claimed that he never accused Owen of judicial activism and believes she would be an excellent judge. His opinion has written in black-and-white only two years ago—he clearly called her dissent an ''unconscionable act of judicial activism''—but maybe in his struggle to find the gray, Gonzales meant that he thought all of three of the judges were unconscionable. Who knows? Politics makes people parse words very carefully.

Owen's political credentials are indeed impressive. She is a protege of Karl Rove, the president's political adviser, and it is Rove who is pushing her judicial nomination. But politics should not be the primary measure of a judge's ability to administer justice.

As much as it pains me to say it, Justice Enron should stay put in Texas.

[From the Houston Chronicle, July 31, 2002]

DIFI, OWEN WOULD BE VERY ODD COUPLE

(By Cragg Hines)

Sen. Dianne Feinstein, a wonderfully calm, cool Californian, loves to be the swing vote. It increases the sense that she is unbought and unbossed, and it makes her political currency slightly more valuable than that of colleagues who fall predictably one way or another on an issue.

Part of this is political tromp l'oeil, an illusion so strong that it's difficult to tell it's not genuine. For, when the roll is called, only rarely is Feinstein not reliably found where she sought to be—in her regular center-left Democratic pew.

Which brings us to the nomination of Justice Priscilla Owen of the Texas Supreme Court to be a judge on the 5th U.S. Circuit Court of Appeals, a place where the conservative judicial activist, corporate suck-up and made member (blood oath?) of the Federalist Society has no earthly place being.

Feinstein ran last week's hearing by the Senate Judiciary Committee on Owen's nomination and said she was ''keeping an open mind'' regarding President Bush's determination to give Owen lifetime employment. (For the forgetful: Bush and Owen both got their start in statewide politics as clients of the White House political high priest, Karl Rove.)

Feinstein's self-advertised ''open mind'' is about the only hope for supporters of Owen. The Judiciary Committee's nine Republicans need one of the panel's 10 Democrats to vote with them to get the nomination to the floor.

If the nomination is not cleared by the committee, it's dead. None of this sending it to the floor without a recommendation in a Senate with a one-vote Democratic margin and run by Majority Leader Tom Daschle, D–S.D.

(Owen opponents would still like to hear something definitive from two other Demoracts—Sen. Joseph R. Biden, Jr. of Delaware, who did not show up for last week's hearing, and the enigmatic gentleman from Wisconsin, Sen. Russell D. Feingold—but the focus is on Feinstein.)

Owen's opponents believe that Feinstein will eventually vote against the Texas jurist, but they cannot be absolutely certain. Feinstein is not about to help them divine the oracle at the moment.

''I've been giving it a great deal of thought,'' Feinstein said this week as the Senate headed toward summer recess. ''I'm not going to let my decision be known, but at an appropriate time, I will.

''What I've said, and I've taken this position, I think, rather scrupulously, is that I don't make up my mind until after the hearing.''

There was little in the hearing that should lead Feinstein, or any senator, to believe that Owen is anything but the very bright, very ideological, very driven hard-right jurist revealed in her work over the last seven years on Texas' highest civil court.

Finally, Sen. Richard J. Durbin, D-Ill, asked Owen directly about her position on abortion.

''My position is that Roe v. Wade has been the law of the land for many, many years . . . ,'' Owen said, noting that decision had been modified (and made more restrictive by subsequent rulings). ''None of my personal beliefs would get in the way of me applying that law or any other law.''

But Owen's record, in a series of recent abortion-related cases, suggests otherwise. In all but one of the cases, Owen sought to tweak and torture the Texas law to something not intended by the Legislature.

Feinstein was listening to all of this and, one assumes, took it on board. In case she didn't, an editorial in The Los Angeles Times the morning of the hearing should have helped: The work of Owen and similarly situated conservative jurists ''reveal(s) a strong streak of judicial activism dressed up as traditional principle.''

The home state newspaper parsed Feinstein's situation: She also chaired the hearings earlier this year in which the Judiciary Committee rejected Bush's nomination of Charles Pickering of Mississippi for a seat on the 5th Circuit Court.

''She is anxious to avoid being labeled obstructionist,'' The Times said of Feinstein. ''But given the repeated calls for mainstream nominees, not to mention her long support of abortion rights, Feinstein should vote no, and so should her colleagues.'' Feinstein said she weighs such opinion but that it is not dispositive.

One piece of baggage Feinstein would like to discard in the Owen matter is that her vote will have anything to do with a business relationship that the senator's husband, Richard C. Blum, has with Dr. James Leininger of San Antonio, a generous supporter of Owen's judicial campaign.

''I've never met (Leininger), talked with him, seen him, heard from him—and that's that,'' Feinstein said. Nor, she said, ''have I ever talked to my husband about this, nor has he ever talked to me about it.''

So Feinstein should be able to vote against Owen with a clear conscience.

Mr. LEAHY. In part, this article says:

Senate Judiciary Committee Chairman Patrick Leahy has held hearings on 82 Bush judicial nominations, 80 of which have been approved by the committee. Most of those nominees have been pro-life conservatives whose performance on the bench the committee still judged to be fair and professional. For example, last week the committee unanimously reported on President Bush's choice of Federal District Judge Reena Raggi of New York for the U.S. Circuit Court of Appeals for the Second Circuit.

Parenthetically, I might add that Judge Raggi was originally appointed by President Ronald Reagan, a conservative Republican who promised to appoint only judges who satisfied his litmus test.

The American people appreciate balanced judging, and thanks to the Senate Judiciary Committee, they're getting it.

I ask unanimous consent that the editorial be printed in the RECORD.

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

Through constant repetition, conservatives have managed to make a code phrase out of ''judicial activism,'' applying it to rulings that in their mind go beyond the words in legislation or the U.S. Constitution. But conservatives themselves are hardly immune from the problem.

Case in point: Texas Supreme Court Justice Priscilla Owen, rejected last week for the 5th U.S. Circuit Court of Appeals by the Senate Judiciary Committee because of her record of making law from the bench. The committee made the right decision for the American people.

Owen's activist judging has gone so far beyond the statutes enacted by the Texas Legislature that she was even criticized by fellow conservatives on the state Supreme Court, including Alberto Gonzales, who is now Bush's White House counsel.

On abortion, age and employment discrimination, insurance and tax matters, the former corporate oil lawyer repeatedly embellished the plain language of the law to rewrite it to conform with her own ideological views. She also found ways to side consistently with corporations, including Enron, which contributed generously to her Supreme Court election campaign.

President Bush has accused the Senate Judiciary Committee of blind partisanship, but the facts don't bear that out. In less than two years, the Democratic-controlled committee has approved more Bush nominees for the federal bench than the Republican-controlled Senate Committee did in six years with President Clinton.

Senate Judiciary Chairman Patrick Leahy (D-Vt.) has held hearings on 82 Bush judicial nominations, 80 of which have been approved by the committee. Most of those nominees have been pro-life conservatives whose performance on the bench the committee still judged to be fair and professional. For example, last week the committee unanimously confirmed Bush's choice of Federal District Judge Reena Raggi of New York for the 2nd U.S. Circuit Court of Appeals.

Nevertheless, Bush lashed out angrily at the Owen defeat: ''I don't appreciate it one bit, and neither do the American people.''

Quite the contrary, Mr. President. The American people appreciate balanced judging, and thanks to the Senate Judiciary Committee, they're getting it.

Mr. LEAHY. Madam President, I ask unanimous consent for 1 more minute, with another minute to be given to the Senator from Utah.

Mr. REID. Will the Senator yield?

Mr. LEAHY. Yes.

Mr. REID. I was going to go into a quorum call for 5 or 6 minutes anyway. If the Senators would like 3 more minutes each or something, that is fine. Otherwise, I will go into a quorum call.

Mr. LEAHY. Madam President, I ask unanimous consent for that time.

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

Mr. LEAHY. Madam President, there was a suggestion made—I am sure inadvertent—by the distinguished Senator from Utah that it was unprecedented to see a nominee with a well-qualified rating be voted against. Actually, the Senator from Utah has voted against such a person, like Judge Rosemary Barkett of Florida, as have a number of others. But then there were a whole lot of others who we can say were not voted against? Why? Because they were never allowed to have a vote during Republican control of the Senate.

This is a partial list of nominees who never had a vote, but they had the highest rating possible: H. Alston Johnson from the Fifth Circuit was never given a hearing by the Republicans; James Duffy from the Ninth Circuit was never given a hearing; Kathleen McCree Lewis from the Sixth Circuit was never given a hearing or a vote; Judge James Lyons, from the Tenth Circuit, was never given a vote or a hearing; Allen Snyder, from DC, had a hearing but no vote; Judge Robert Cindrich, from the Third Circuit, was never given a hearing or a vote; Judge Stephen Orlofsky, from the Third Circuit, was never given a hearing or a vote; Judge Andre Davis, from the Fourth Circuit, was never given a hearing or a vote; and Enrique Moreno, of the Fifth Circuit, was never given a hearing and never given a vote.

These are people with the highest possible rating from the ABA. Republicans can say they never voted against them. Why? Because they were never brought up and never given a vote. If they had been given a vote, they would have known where they stood.

My good friend from Utah, perhaps inadvertently, thought I was comparing a time when he was not chairman. I do compare a time when he was chairman. I will take the first 15 months that he was chairman with a Democratic President.

The Democratic President nominees got 14 hearings in 15 months; the Republican President nominees, under my chairmanship, got 23 hearings.

Nominees who received hearings under Republicans were 67; under the Democrats with a Republican President, 84.

Nominees confirmed, 56; in the same period of time, it was 74 with us.

Nominees voted on in committee: They allowed 61 during that 15 months. We have had votes on 82 of this President's judicial nominees.

It is nice to say nominations are not being handled fairly. The fact is, if we used the Republican precedent as a mark of fairness, we would not have to do anything else for the rest of the year because we are way beyond what they did.

I reserve the remainder of my time.

Mr. HATCH. Madam President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from Utah has 4 minutes 5 seconds.

Mr. HATCH. How much on each side?

The PRESIDING OFFICER. The Senator from Vermont has 7 seconds.

Mr. HATCH. Madam President, again, the Senator from Vermont and I are friends, but I totally disagree with what he has been saying. It is a smoke screen.

Allow me to address the fate of nominees first sent up by the first President Bush. In fact, some pending today without a hearing who were nominated by the first President Bush nearly 10 years ago. These are nominees still on the list after 10 years that the Democrats have not allowed to come up: Terrence Boyle for the Fourth Circuit and John Roberts for the DC Circuit, considered one of the two or three greatest appellate lawyers in the country before the Supreme Court; Henry Saad for the Sixth Circuit; Ronald Leighton for the Western District of Washington; and Richard Dorr for the Western District of Missouri. All five of these nominees were nominated by the first President Bush, better than 10 years ago, but never received committee action at that time. I hope they, too, will soon

receive their long-awaited hearings and confirmation votes.

By the way, there were 42 left over at the end of the Clinton administration. Nine of them were put up so late, there was no way anybody could have gotten them through. That brings us down to 33, and of the 33, there were others who did not have the support of both home-State Senators. There were those who, for one reason or another, could not make it.

Contrast that when Bush 1 left office and the Democrats were in control. There were 54 left over. That is 11 more than were left when President Clinton left office.

If you want to talk statistics, I can talk them all day long, and I can tell you we have been much more fair than what we have seen in the first 2 years of the Bush 2 administration.

I suggest that instead of spending our time talking about the same small handful of Clinton nominees, we should focus on the ones pending before us today who never saw the light of day the last time the Democrats controlled the Senate.

Justice Owen, for instance—and this is an important point—is literally the first one in history who had the support of both-home State Senators, the highest rating of the American Bar Association, and was voted down in committee and not even given a chance to have a vote on the Senate floor.

Currently, there are 80 empty seats on the Federal judiciary. That is a 9.3-percent vacancy rate, one of the highest in modern times. This means that 9.3 percent of all Federal courtrooms are presided over by an empty chair.

There are currently 21 nominees who are slated to fill positions which have been declared judicial emergencies by the Administrative Office of the Courts. Of those, 11 are Circuit Court of Appeals nominees.

Only 5 of President Bush's first 11 circuit court nominees nominated on May 9, 2001—a year and a half ago almost—have had hearings. In other words, the Judiciary Committee has taken no action whatsoever on nearly half of the circuit court nominations that have been pending for over 16 months.

There is no reason for this other than stall tactics. All of these nominees received qualified or well-qualified ratings from the American Bar Association.

There were 31 vacancies in the Federal courts of appeals on May 9, 2001, and there are 28 today. The Senate Democrats are trying to create an illusion of movement by creating great media attention and controversy concerning a small handful of nominees in order to make it look like progress. But we are not making any progress in filling circuit vacancies.

President Bush has responded to the vacancy crisis in the appellate courts by nominating a total of 32 top-notch men and women to these posts—but the Senate is simply stalling them. Over the past year, the Senate has confirmed only 13. There are still 19 Circuit Court nominees pending in Committee. By comparison, at the end of President Clinton's second year in office, we had confirmed 19 circuit judges and had 15 circuit court vacancies.

There were only two Circuit Court nominees left pending in committee at the end of President Clinton's first year in office. In contrast, there were 23 of President Bush's Circuit Court nominees pending in Committee at the end of last year.

Some try to blame the Republicans for the vacancy crisis, but that is bunk. At the end of the 106th Congress when I was chairman, we had 67 vacancies in the Federal judiciary. During the past 9 months, the vacancy rate has been hovering right around 100. Today is at 80.

Some think that the point of ''advise and consent'' is to match statistics from previous years. This rear-view-mirror driving is nonsense. The Senate has a duty to exercise its advice and consent, and it has done so on only 40 percent of President Bush's appellate court nominations so far this Congress. The question is not: How many judges should we let President Bush have? The question is: Is the Senate getting its work done?

The Sixth Circuit Court of Appeals, which encompasses the states of Michigan, Ohio, Kentucky and Tennessee, has only 8 of 16 seats filled, leaving that court half-empty. The President has nominated 8 individuals to fill these vacancies, but only two have received a hearing, despite the fact that two of these nominees have been pending since May 9, 2001.

The U.S. Court of Appeals for the District of Columbia is also functioning far below its normal capacity, with 4 out of 12 authorized judgeships currently vacant. Although the President nominated Miguel Estrada and John Roberts on May 9, 2001, to fill seats on this Court, they have not yet been given a hearing.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. Madam President, last year when the Republicans controlled the Senate Judiciary Committee, they did not hold one hearing on President Bush's nominees. We have done 82.

Mr. GRAHAM. Mr. President, I would like to thank the Judiciary Committee for recognizing the needs of Florida and favorably reporting the nomination of Judge Kenneth A. Marra.

Ken Marra, a skilled and respected Judge in Florida's Fifteenth Circuit, has been nominated to serve as a Federal judge in the busy Southern District of Florida. If confirmed, he will fill a newly created and much needed judgeship position.

Judge Marra's solid qualifications make him an ideal candidate for service on the Federal bench. A circuit judge since 1996, he currently serves in the Palm Beach County Court's civil, family and criminal divisions. Before his tenure as a circuit judge, Judge Marra spent 16 years practicing commercial litigation in Palm Beach County and Washington, DC. He also served as a trial attorney with the United States Department of Justice.

Judge Marra is a graduate of the State University of New York at Stony Brook and earned his law degree from the Stetson University College of Law in 1977. Before attending law school, the judge taught social studies to high school students in New York.

The strength of Judge Marra's nomination is evident from the strong support that he has earned from his local bar. When asked to comment on his nomination for a January 4 Palm Beach Post article, Amy Smith, president of the Palm Beach County Bar Association, said, ''He is an absolutely perfect choice: impeccable background, extremely intelligent, consistently one of the highest rated judges in the judicial evaluations done here.'' Ms. Smith said Marra's judicial demeanor ''is gracious and humble. The President couldn't have made a better choice.''

When the Palm Beach County Bar Association released its biennial survey of circuit and county judges earlier this spring, Judge Marra ranked the highest in the neutrality and fairness category, with 63 percent of the attorneys rating him as ''outstanding.''

In Florida, Judge Marra submitted his application to a judicial nominating committee comprised of a diverse group of Floridians, who in turn recommended three candidates to the President for consideration. Senator BILL NELSON and I interviewed these candidates.

In summary, Mr. Marra is an intelligent, well-respected, and qualified candidate for the Federal bench.

I appreciate the Senate's consideration of Judge Marra's nomination and look forward to working with my colleagues to confirm additional nominees to Florida's Southern and Middle Districts, two of the largest and busiest judicial districts in the country.

The PRESIDING OFFICER. All time has expired.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Kenneth A. Marra, of Florida, to be United States District Judge for the Southern District of Florida? The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Illinois (Mr. DURBIN), the Senator from Iowa (Mr. HARKIN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Washington (Mrs. MURRAY), are necessarily absent.

Mr. NICKLES. I announce that the Senator from Colorado (Mr. ALLARD), the Senator from Missouri (Mr. BOND), the Senator from Kentucky (Mr. BUNNING), the Senator from Colorado

(Mr. CAMPBELL), the Senator from New Hampshire (Mr. GREGG), the Senator from North Carolina (Mr. HELMS), the Senator from Arkansas (Mr. HUTCHINSON), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Alabama (Mr. SESSIONS), the Senator from Alabama (Mr. SHELBY), the Senator from New Hampshire (Mr. SMITH), the Senator from Pennsylvania (Mr. SPECTER), are necessarily absent.

The PRESIDING OFFICER (Mr. NELSON of Florida). Are there any other Senators in the chamber desiring to vote?

The result was announced—yeas 82, nays 0, as follows:

[Rollcall Vote No. 211 Ex.]

YEAS—82

Allen	Dorgan	Lugar
Baucus	Edwards	McCain
Bayh	Ensign	McConnell
Bennett	Enzi	Miller
Biden	Feingold	Murkowski
Bingaman	Feinstein	Nelson (FL)
Boxer	Fitzgerald	Nelson (NE)
Breaux	Frist	Nickles
Brownback	Graham	Reed
Burns	Gramm	Reid
Byrd	Grassley	Roberts
Cantwell	Hagel	Rockefeller
Carnahan	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Hutchison	Smith (OR)
Cleland	Inhofe	Snowe
Clinton	Inouye	Stabenow
Cochran	Jeffords	Stevens
Collins	Johnson	Thomas
Conrad	Kennedy	Thompson
Corzine	Kerry	Thurmond
Craig	Kohl	Torricelli
Crapo	Kyl	Voinovich
Daschle	Landrieu	Warner
Dayton	Leahy	Wellstone
DeWine	Levin	Wyden
Dodd	Lincoln	
Domenici	Lott	

NOT VOTING—18

Akaka	Gregg	Murray
Allard	Harkin	Santorum
Bond	Helms	Sessions
Bunning	Hutchinson	Shelby
Campbell	Lieberman	Smith (NH)
Durbin	Mikulski	Specter

The nomination was confirmed.

Mr. REID. I move to reconsider the vote.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 5005, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, I yield myself such time as I may consume under the leader's time.

The PRESIDING OFFICER. The leader has that right.

JUDICIAL NOMINATIONS

Mr. LOTT. Mr. President, I do not want to take an extended period of time because I know the managers of the legislation are here and ready to go forward with the very important consideration of and amendments to the Homeland Security Department, but I must comment on action last week of the Senate Judiciary Committee.

Once again, Mr. President, there has been a tremendous miscarriage of justice by the Judiciary Committee. By a vote of 10 to 9, a unanimous, partisan block of Democrats—10 Democrats—voted against the nomination of Priscilla Owen, who had been nominated by the President to a seat on the Fifth Circuit Court of Appeals.

The way this nomination was handled is a cause for great concern as well as the fact that, once again, the Senate will not have a chance to vote on a eminently qualified and experienced nominee to serve on the Fifth Circuit Court of Appeals. I am convinced that had her nomination been permitted to make it to the floor—as the Republican Majority in the past allowed numerous controversial Democrat nominees to get to the floor—Judge Owen would be approved by the full Senate and she would be confirmed.

We always hear the arguments of those who say that there have been actions in the past where nominees who were qualified were not given votes. However, during the time when I was majority leader I remember numerous cases where despite the belief of many Senators on our side that the nominees' views were far, far outside the mainstream, we still permitted their nominations to come to the floor. We did that because while we disagreed with their political and ideological views, it was still hard to argue that they were not professionally qualified.

Mr. President, I specifically remember the nominations of Marsha Berzon, Richard Paez and Rosemary Barkett. Certainly, these nominees, while they were qualified, were in my opinion not near as qualified in the legal profession as Priscilla Owen.

Berzon had had no judicial experience whatsoever. And a minority of the ABA evaluation committee gave Berzon and Paez only a ''qualified'' rating whereas the ABA committee unanimously—unanimously—gave Priscilla Owen its highest rating of ''well qualified.''

Beyond professional qualifications, numerous Senators on this side of the aisle also had severe concerns that Berzon, Paez, and Barkett were very far out of the mainstream in light of their records which raised questions for many Senators as to whether they should be confirmed.

Marsha Berzon had been a prominent ACLU and Labor Union lawyer who opposed parental consent laws for minors' to have abortions and had worked against the rights of individual workers in favor of the rights of unions. She was also a prominent and active member of the Brennan Center for Justice that cranked out initiatives it characterized as ''stand[ing] up to right-wing attacks on the judiciary.''

Richard Paez had written publicly of his belief that whenever judges feel legislatures have failed to act, ''there's no choice but for the courts to resolve the question that perhaps ideally and preferably should be resolved through the legislative process.'' That is exactly the kind of judicial activism that Priscilla Owen's critics have falsely accused her of in order to give themselves an excuse for voting against her. Paez had also ruled as a district judge—prior to his confirmation to the appeals court—that States and cities could not outlaw was aggressive and intimidating panhandling by the homeless because it would infringe on a panhandler's free speech rights.

Rosemary Barkett, while a Florida Supreme Court Justice, had argued for overturning the death penalty of a man who had brutally murdered a youth in Jacksonville and then sent a tape to the victim's mother describing the horrible details of the killing. An opinion signed by Barkett opposed the death arguing that the killing was ''a social awareness case . . . effectuated to focus attention on . . . racial discrimination.''

Nevertheless, despite the misgivings and question marks from an ideology standpoint as to whether or not they should be confirmed, the Republican majority permitted all three of these nominations to come to the floor and be voted on by the full Senate and all three were confirmed.

Now, in contrast to these three far left nominees, let me speak to Priscilla Owen's qualifications.

First of all, I am not one who thinks it is particularly important whether the American Bar Association rates a nominee qualified or not. But, of course, the ABA's judgment has been described by a number of leading Democrats as the gold standard in terms of evaluating a nominee's qualifications to serve in the Federal judiciary. Senator LEAHY and senator SCHUMER described it that way in a March 16, 2001 letter to the President insisting that the ABA's role in the judicial confirmation process had to be maintained.

However, that did not prevent them from voting against Priscilla Owen after she received a ''well qualified'' rating from the American Bar Association—the highest possible rating they could give and they gave it to her unanimously. This is also the first instance, I believe, that we have had of a nominee rated ''well qualified'' by the American Bar Association being defeated in the Judiciary Committee and