The Senator is right, this issue is defining it. I will probably want to speak on it, and others may want to do the same. We have at least a 2-hour timeframe to get some work done. I hope we can do it.

Mr. REID. Mr. President, I didn't mean to say that anybody speaking on the amendment is a waste of time. I meant to say there is no need to be speaking unnecessarily when we can do other things. If the Senator or people who oppose his amendment want to speak, that will be helpful to the Senate. What I am saying to the Senator from Idaho is, you don't need to maintain the floor to protect your rights, nor do we. I have received calls, as has the majority leader, from some Democratic Senators who believe there may be some ability to work out a compromise.

Mr. CRAIG. Good. I thank the Senator for saying that. I did not take that characterization in any critical way.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF TIMOTHY J. CORRIGAN, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will go into executive session to proceed to the consideration of Calendar No. 960, which the clerk will report.

The legislative clerk read the nomination of Timothy J. Corrigan, of Florida, to be United States District Judge for the Middle District of Florida.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be equally divided between the chairman and ranking member of the Judiciary Committee.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, how much time is available to the Senator from Vermont in his capacity as chairman of the Judiciary Committee?

The ACTING PRESIDENT pro tempore. Three minutes 40 seconds.

Mr. LEAHY. I thank the distinguished Presiding Officer.

Yesterday marked the first anniversary of the September 11 terrorist attacks on the United States. Americans, very appropriately, honored the memory of the brave men and women who died in that terrible time. Our thoughts were and are with those who perished that day, the loved ones they left behind, and the heroes who acted with fearlessness, bravery and hope.

The world has changed during the last year, but, fortunately, the principles on which this country was founded have not changed. I want to especially commend Chief Judge William Sessions of the U.S. District Court for the District of Vermont for proceeding with an immigration and naturalization ceremony in Vermont yesterday. What a wonderful gesture, granting citizenship to a new group of Americans and reminding us that we are a nation of immigrants and that our borders are open to immigrants who come to America seeking freedom, opportunity and a better life for their children. Whether our relatives came here for religious or political freedom in the 17th or 18th centuries, or to escape famine and persecution in the 19th and 20th centuries, many of us are descendants of those immigrants. Senator KENNEDY reminded us all earlier this year that immigrants are not the problem, terrorists are the problem. When the President appeared last night on Ellis Island, framed against the backdrop of the Statue of Liberty, that setting likewise reminds us that we are a nation of immigrants. Let this country, and what it stands for, always be a beacon of hope and freedom for the oppressed and downtrodden.

I am glad to see the President before the U.N. today. When our President speaks before the United Nations, we should not be looking at it as Democrats or Republicans, but as Americans. We want him, in his representation of our Nation and as our chief spokesperson on foreign policy, to be successful, and I wish him that success. I also appreciate his invitation to be there for the speech. Of course, our Senate votes will keep me here.

The Judiciary Committee continues working hard to make progress on judicial nominations and on legislation to respond to the new challenges that face our great nation. The Senate met on September 12 last year, and the Judiciary Committee held a business meeting on September 13. I kept the agenda that day to consensus items and bipartisan legislation. I felt strongly that we did not need partisan bickering but that we needed to come together and show that we can unite and that there is much that unites us all. We were able to report the first United States Attorneys nominated by President Bush. We worked on our bill to authorize the activities of the Department of Justice, a bipartisan drug use prevention, treatment and rehabilitation bill and the bipartisan Drug Competition Act.

That same afternoon we held a confirmation hearing for judicial nominations, including a judicial nominee from Mississippi. Just as we continued to meet and work in the immediate aftermath of the attacks on September 11, we also proceeded with hearings through and in the immediate aftermath of the receipt of the anthrax letters sent to Majority Leader DASCHLE and to me.

We worked hard to improve what became the USA PATRIOT Act with bipartisan support in the weeks that followed in September and into late October. In addition to our work on this landmark legislation, as well as continued oversight of the Justice Department, the FBI and the INS, we continued to hold judicial nominations hearings to help fill vacancies in our Federal courts with fair-minded judges.

We have now reported 80 judicial nominees out of committee. With today's confirmation of Judge Corrigan for the Middle District of Florida, we will confirm our 75th judicial nomination from President George W. Bush. We have confirmed more of President Bush's nominees in less than 15 months—75—than were confirmed in the last 30 months that a Republican majority controlled the Senate and the pace of judicial confirmations—73. We have also now confirmed more of President George W. Bush's judicial nominations since July, 2001—75—than were confirmed in all of 1989 and 1990, the first 2 years of the term of his father President George H.W. Bush—73.

As I have noted through the year, we could have accomplished even more with a modicum of cooperation from the White House. I regret that the administration and some Senate Republicans have been unwilling to acknowledge what we have accomplished in this regard but have, instead, chosen a strident posture and rejected our efforts toward bipartisan cooperation. The administration has chosen division rather than consensus with respect to its selection of Federal judges, which is unfortunate and unnecessary. The White House has insisted on sending forth a number of nominees who are divisive. Their records evidence judicial activism to reach ultra-conservative outcomes. Thus, in addition to reporting favorably 80 judicial nominees since the change in majority, the Judiciary Committee has, after a hearing and careful consideration, voted against reporting two nominations.

I regret that with respect to the important matter of our independent Federal judiciary, a matter that affects all Americans, the White House has chosen the path of partisanship. I regret that some in the White House and among Republicans would rather raise campaign funds and stir up their most extreme supporters than fill judicial vacancies quickly with consensus nominees.

Senate Republicans are running away from their own record. It is revealing that they refuse to make a fair comparison to the actual results during their most recent period of Senate control, which shows starkly how far we have come. Had they, in the 6½ years they were in the Senate majority, acted as fairly and as quickly on President Clinton and President Bush's judicial nominees as we have, we would have far fewer vacancies.

The truth is that we have done about twice as much as they. With today's vote, the Democratic-led Senate will confirm its 75th judge—exceeding the

number of circuit and district court nominees the Republican Senate majority was willing to confirm in the last 30 months of their control of the process. Democrats have done more than Republicans did in less than half the time. Likewise, in less than 15 months of Democratic control of the committee, we have held more hearings, for more nominees, and voted on more nominees in committee, and the Senate has confirmed more nominees, than the Republicans did in their first 15 months of control of the committee in 1995 and 1996.

That today the Senate will confirm the 75th judge since July, 2001, is indication both of what we have been able to accomplish and what could be accomplished with some cooperation from the White House and Senate Republicans. I have noted how simple procedural accommodations that I suggested would have already resulted in another 10 to 15 fewer vacancies and more confirmations.

Unfortunately, my 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 26 years in the Senate. This is not the way to get judges through the Senate. Rather, with cooperation, with work, with something more than just words, nominees get through.

A New York Times editorial this week, on September 10, noted: ''We must fight the enemies of freedom abroad without yielding to those at home.'' We know that the terrorists are our enemy; they attacked all of us last September 11 and in the attacks that preceded it on U.S. embassies and the USS *Cole* and the 1993 World Trade Center attack. Republicans are wrong to try to make Democrats or the Judiciary Committee the enemy. We all want to ensure an independent and impartial Federal judiciary as a protector of our freedoms. Thus, ends-oriented, ideologically driven nominees selected to push the circuit courts and the law in a rightward direction are going to be scrutinized and may well be rejected.

I hope that, as we did in the days immediately following September 11, 2001 last year, we can come together and demonstrate unity. Since last July, we have greatly reformed the confirmation process and brought it out of the shadows and into the light of day. We now hold hearings, debate nominations, cast our votes, and abide by those votes. That was not the committee practice in the recent past, when secret holds and anonymous objections stalled scores of nominees by President Clinton. 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 already held 23 judicial nominations hearings, including one the week of September 11, 2001, and others during the period in which committee offices and hearing rooms were closed because of the anthrax letters.

Yesterday I noticed our 24th hearing to be held next week. I intend to call Professor Michael McConnell of Utah as a nominee at that hearing. Despite the fact that the committee has already acted upon and the Senate has already confirmed Judge Harris Hartz last December and Judge Terrence O'Brien this April to the 10th Circuit, the first new 10th Circuit judges in 7 years, I will proceed with a third hearing on a 10th Circuit nominee at the request of Senator HATCH. The other circuit court for which we have held hearings on three nominees has been the 5th Circuit. There, we proceeded with nominees at the request of Senator LOTT and Senator HUTCHISON.

In addition, at the nominations hearing next week we will hear from District Court nominees from California, Delaware, New Jersey, Tennessee, and Texas. By proceeding next week we are able to proceed with a full complement of District Court nominees. That leaves only one District Court nominee with the support of home-State Senators and an ABA peer review who has not yet been scheduled for a hearing.

Today's vote is on the nomination of Judge Corrigan to the United States District Court for the Middle District of Florida. Judge Corrigan has an extensive career, serving as a general litigator in private practice for over 14 years and as a U.S. Magistrate Judge for the Middle District of Florida since 1996. He received a unanimous ''Well-Qualified'' rating from the ABA and has strong bipartisan support. While so many nominees of President Clinton had that rating but were never given a vote by the Republican majority, Judge Corrigan received a hearing and a vote within days of his file being complete in July.

The confirmation of Judge Corrigan today will bring additional resources to the U.S. District Court for the Middle District of Florida. Judge Corrigan was nominated to fill a new position Congress created by statute in 1999 to address the large caseload facing the federal courts in Florida. He makes the second Florida district court nominee that we will have confirmed in one week. I congratulate Judge Corrigan and his family.

During the Clinton administration, we all worked very hard in cooperation with Senators GRAHAM and Mack to ensure that the Federal courts in Florida had its vacancies filled promptly with consensus nominees and had the judicial resources it needed to handle its caseload. Due to bipartisan cooperation among the Senators and with the White House, during the Clinton administration, the Senate was able to confirm 22 judicial nominees from Florida, including 3 nominees to the 11th Circuit. It is most unfortunate that such tradition of cooperation, coordination and consultation has not been continued by the current administration.

My recollection is that the only Florida nomination that generated any controversy or opposition was that of Judge Rosemary Barkett of the Florida Supreme Court to the 11th Circuit. I do recall that Judge Barkett was strongly and vociferously opposed by a number of Republican Senators because of what they viewed as a judicial philosophy with which they did not agree. Those voting against her confirmation include Senators HATCH, GRASSLEY, MCCONNELL, SPECTER, and THURMOND, all of whom are now on the Judiciary Committee, as well Senators LOTT, NICKLES, and HUTCHISON of Texas. Judge Barkett received the highest rating of the ABA, ''Well Qualified,'' and yet 36 Republicans voted against her confirmation, but she was confirmed with bipartisan support, including the support of her home-State Senators. Indeed, there was extended opposition both before the Judiciary Committee and on the Senate floor.

Unfortunately, the cooperation, coordination and consultation that Senator Mack and Senator GRAHAM shared with the Clinton White House do not seem to be the model for the way this White House has chosen to communicate with Senator GRAHAM and Senator NELSON. That is most unfortunate. It is a tribute to Senator GRAHAM and to Senator NELSON that we have made the progress that we have. I know that it has not been easy. They have been more than gracious in their willingness to support these nominees. We urge the White House to work with these Senators to nominate qualified, consensus nominees for the remaining vacancies in the courts.

With today's vote, the Democratic majority in the Senate has demonstrated once again how it is fairly and expeditiously considering President Bush's judicial nominees. We have worked very hard to provide bipartisan support for the White House's nominations in spite of its lack of willingness to work with us in partnership.

Mr. HATCH. Mr. President, I rise in support of the confirmation of Tim Corrigan to the U.S. District Court for the Middle District of Florida.

I have had the pleasure to review Judge Corrigan's distinguished career and I can say, without hesitation, that his confirmation will bring to the Federal bench, not just a legal scholar with impeccable credentials, but a caring individual who used his many skills and talents to serve his community and his less fortunate fellow citizens.

Tim Corrigan graduated with distinction from Duke University in 1981, where he was a member of the editorial board of the Duke Law Journal. After graduation, he served as a law clerk to the Honorable Gerald B. Tjoflat of the United States Court of Appeals for the Eleventh Circuit.

Following his clerkship, Judge Corrigan spent 14 years in private practice with a prominent Jacksonville law firm, where he focused on civil litigation. He also engaged in a substantial appellate practice, including preparing

appellate briefs and delivering oral argument in several district courts of appeals in Florida, the Supreme Court of Florida, and the U.S. Court of Appeals for the Eleventh Circuit. Moreover, Judge Corrigan served as co-counsel in a case in the U.S. Supreme Court where he had a primary role in the preparation of the briefs.

Judge Corrigan became a U.S. Magistrate Judge in 1996. Because of the heavy caseload of the Middle District of Florida, the magistrate judges are entrusted with substantial responsibilities. Thus, in addition to handling a broad array of civil and criminal nondispositive motions, he has conducted numerous evidentiary hearings in criminal cases and issued many reports and recommendations regarding dispositive criminal motions. He has also exercised full jurisdiction over Federal civil cases, including a lengthy jury trial.

Judge Corrigan has published a number of legal writings and recently participated in a revision of the Middle District of Florida's Civil Discovery Handbook. He has also taught law school classes as an adjunct instructor.

Judge Corrigan has been recognized by the Jacksonville Bar Association for the many hours he has spent doing pro bono work. Throughout his career he has volunteered his time for the United Way, Big Brothers, the Special Olympics, the Jacksonville Area Legal Aid, and the Guardian of Dreams, an organization that provides scholarships to low-income students.

Judge Corrigan will make a fine member of the Federal Bench.

Mr. President, I wish to respond to some of the remarks of my colleague from Vermont about the Judiciary Committee's treatment of President Bush's judicial nominees.

My colleague from Vermont says that the Judiciary Committee has moved 80 nominees and only voted against two. This, he says, is a record which hasn't been equaled in years and years, certainly not during President Clinton's administration. I am frankly amazed by this assertion. In fact, under my chairmanship the Judiciary Committee did not vote against a single nominee. Not a single nominee in the span of six years of Republican control of the Senate. Even when one of President Clinton's nominees was voted down, the Committee under my chairmanship permitted the nomination to go to the floor for a full Senate vote. My colleague from Vermont certainly cannot say the same. In the last fifteen months, the Democrat-controlled Judiciary Committee has already voted against two nominees in committee and voted against allowing their nominations to go to the floor for a vote. This is not a record to promote.

The real story is the Senate's Democratic leadership is treating President Bush unfairly when it comes to judicial nominees. Some would justify this unfair treatment of President Bush as tit for tat, or business as usual, but the American people should not accept such a smokescreen. What the Senate leadership is doing is unprecedented.

Historically, a President can count on seeing all of his first 11 circuit court nominees confirmed. Presidents Reagan, Bush, and Clinton all enjoyed a 100-percent confirmation rate on their first 11 circuit court nominees. In stark contrast, seven of President Bush's first 11 nominations are still pending now for almost a year and a half since they were nominated.

History also shows Presidents can expect almost all of their first 100 nominees to be confirmed swiftly. Presidents Reagan, Bush, and Clinton got 97, 95, and 97, respectively, of their first 100 judicial nominations confirmed. I know that is true. I helped to get President Clinton's 97 of his first 100 judicial nominations confirmed. In this case, the Senate has confirmed only 73 of President Bush's first 100 nominees.

Some try to blame Republicans for the current vacancy crisis, and that is pure bunk. In fact, the number of judicial vacancies decreased by three during the 6 years of Republican leadership of the committee. There were 70 vacancies left by the Democrats when I became chairman of the Judiciary Committee in January 1995, and there were 67 at the time the Republicans left.

I might add again—I have said it many times, but it needs to be said—President Reagan was the all-time judicial confirmation champion with 382 judges confirmed. He had 6 years of a Republican—his own party—Senate helping him. President Clinton had virtually the same number confirmed, 377, and he had 6 years of the opposition party, meaning the Republican Party, to assist him, and he got basically just as many as President Reagan. He was treated very fairly, and I know because I was the Judiciary Committee chairman for those 6 years.

Some have tried to blame the White House for the committee's sluggish pace on nominees, and that again is pure bunk.

Specifically, I want to respond to the unbelievable allegations that the White House has failed to consult with home State Senators about judicial nominations.

In contrast to the claims of the distinguished Senator from Vermont, there has been an abundance of consultation by the White House with home State Senators. In my 26 years, I have not seen anything like it. The White House has risen above and beyond the call of duty insofar as consultation is concerned.

My colleagues who complain about the alleged lack of consultation from the White House really want something else altogether. What they want is for the President to defer to them 100 percent on judicial nominations. They want to be the one to nominate judges with only minimal, if any, input from the White House.

This, of course, would turn the Constitution on its head. The Constitution plainly gives the President the power to nominate Federal judges. The Senate's role is only that of advice and consent. It is an important role, but it is certainly not as important as the right to nominate judges.

Maybe they should offer an amendment to the Constitution if they would like it otherwise, but I know that amendment would not see the light of day.

The bottom line is that President Bush will continue to consult in good faith with home State Senators about judicial nominations. He deserves the same courtesy of good faith in return, not the partisan rejection of qualified nominees that the committee Democrats have handed him.

Mr. President, last week in the Judiciary Committee, one of my colleagues appeared to partially justify his vote against Justice Priscilla Owen by claiming that the White House failed to consult him on the nomination of Judge Reena Raggi from his home State of New York.

I ask unanimous consent to print in the RECORD a letter from the White House counsel totaling the number of consultations that were made with the distinguished Senator. I think the record needs to be made clear.

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

THE WHITE HOUSE,
Washington, September 5, 2002.

Hon. CHARLES E. SCHUMER,
Hart Office,
Washington, DC.

DEAR SENATOR SCHUMER: I write in response to your statement this morning during a Senate Judiciary Committee meeting that you were not consulted by the White House prior to the nomination of Judge Reena Raggi to the United States Court of Appeals for the Second Circuit. I was surprised and very disappointed to hear of your comments, given the extensive consultation that took place between us prior to President's Bush's nomination of Judge Raggi in early May, 2002.

Our records reflect that beginning in early September, 2001—more than eight months before Judge Raggi's nomination was submitted to the Senate—my staff called your office numerous times to seek your input on prospective candidates for the Second Circuit vacancy to which Judge Raggi was ultimately nominated. By early November, 2001, my staff had provided your office with a list of the names of candidates, including Judge Raggi, who we planned to interview for the vacancy.

In mid-November, I advised you that we were prepared to submit Judge Raggi's names to the President in advance of commencing an FBI background investigation, Immediately after receiving the President's approval, my staff informed yours that Judge Raggi's names had indeed been submitted to the FBI. At that time, we invited your staff to contact us at any time with any questions or concerns as you reviewed Judge Raggi's qualifications. No such questions or concerns were ever raised.

In late April, 2002, upon completion of the FBI background investigation, my staff informed yours of the President's intention to nominate Judge Raggi. Following the nomination, you returned your ''blue slip'' reflecting your support for Judge Raggi's nomination. Today, you joined your colleagues

on the Judiciary Committee in unanimously voting to approve the nomination.

In my view, the extensive consultation that took place between us concerning Judge Raggi's nomination reflects the common practice we have followed to date regarding federal judicial nominations in New York and elsewhere. In light of this record, I find your statements this morning very troubling. I trust that you share my desire to continue the same extensive practice of consultation on federal judicial nominations in New York that has been in place since the President took office. In light of that past practice and the history of Judge Raggi's nomination, I know that you will want to issue a public correction of your statements this morning.

Sincerely,

ALBERTO R. GONZALES,
Counsel to the President.

Mr. HATCH. Finally, some might suggest that the Republicans left an undue number of nominees pending in committee without hearings at the end of the Clinton administration. We did leave 41, which is 13 less than the Democrats left without hearings in 1992 at the end of the Bush administration. In fact, a number of the nominees now who have been submitted to the committee were submitted by Bush 1 back in the early nineties. They were never given a hearing, never given a chance, and they are still being dragged through the mud—not so much the mud, but through the difficult times of the confirmation process without any hearings.

President Bush deserves to be treated at least as well as the last three President. Instead of thinking up new ways to rewrite history, the Senate Democratic leadership of the committee should begin confirming President Bush's first 11 and first 100 judicial nominations at a pace that matches or exceeds the rate we reached for President Reagan, President George Herbert Walker Bush, and President Clinton.

I think it would be fair, and I hope we can some day in the future work it out where both sides on the Judiciary Committee will work together to see that these nominations are brought to the floor where, in an expeditious fashion, the Senate as a whole can decide whether or not to confirm them. We have to work towards that end. I am going to be dedicated towards working toward that end.

I know there are colleagues on the other side on the Judiciary Committee who would like that as well. I believe it will end a lot of this partisan confusion. Frankly, I hope we can see that the Constitution will be implemented and that the Senate as a whole will decide whether or not to confirm these people. If that were the case, I have no doubt that Judge Pickering would have been confirmed to the Fifth Circuit Court of Appeals, and I think there is no question that Justice Priscilla Owen would have been confirmed to the Fifth Circuit Court of Appeals. I have high hopes they will be confirmed in the future anyway.

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 Timothy Corrigan. Tim Corrigan, an experienced Judge in Florida's Middle District, has been nominated to serve as a Federal judge in the Middle District of Florida.

Tim Corrigan's qualifications make him an excellent candidate for service on the Federal bench. Prior to his appointment as a Magistrate Judge, Judge Corrigan spent 14 years in private practice with the Jacksonville law firm of Bedell, Dittmar, De Vault, Pillans and Coxe, P.A. As a Magistrate Judge since 1996, he has considerable experience handling a broad variety of civil and criminal matters, including conducting numerous evidentiary hearings and misdemeanor trials.

Judge Corrigan received his law degree, with distinction, in 1981 from Duke University School of Law, where he served as a member of the editorial board of the Duke Law Journal. He received his undergraduate degree, with honors, from the University of Notre Dame in 1978.

Mr. Corrigan is a member of the Florida Bar, the Jacksonville Bar Association, the Federal Bar Association and the American Bar Association. The Jacksonville Bar Association recognized Judge Corrigan in 1991 for his pro bono services. From 1987–1989, Judge Corrigan served on the board of Jacksonville Legal Aid and was honored for his efforts.

I thank my colleagues for considering this nominee. I am confident that they will agree that Judge Timothy Corrigan posses the qualities needed to effectively serve on the Federal Bench.

Mr. DEWINE. Mr. President, as Senator HATCH just mentioned, last Thursday, on September 5, 2002, the Judiciary Committee met in an executive business meeting and considered the nomination of Texas Supreme Court Justice Priscilla Owen to be a Federal Court of Appeals Judge for the 5th Circuit. As a member of the Judiciary Committee, I participated in the debate on her nomination and then cast my vote in Owen's favor. Unfortunately, Owen's nomination was rejected on a straight party-line vote of nine in favor and ten against. I thought that the issues that had been raised against Justice Owen were unfounded. I won't go into Justice Owen's excellent qualifications here today, nor will I address objections that have been raised regarding her nomination.

However, had the full Senate engaged in a debate on Justice Owen, and I think she deserved such a debate, I would have pointed out significant mischaracterizations that have been made about her decisions in a series of parental notification cases before the Texas Supreme Court. I discussed this issue in the Judiciary Committee debate, so for the information of other Senators who did not have the opportunity to participate in that debate, I ask unanimous consent to print my committee statement for the RECORD.

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

STATEMENT REGARDING 5TH CIRCUIT COURT OF APPEALS NOMINEE JUSTICE PRISCILLA OWEN

Mr. Chairman, I believe that we are headed for a very momentous vote today and I would like to follow up on a comment made by Senator FEINSTEIN in regard to the closeness of the last election. I would simply say that whether an election is decided by a few votes or whether it is a landslide, the President still has the constitutional duty that is prescribed in the Constitution and the Senate has its constitutional obligation. I candidly do not think that how close an election is or whether it was a landslide matters one bit.

Let me talk about Justice Owen's opinions in the Doe cases that Senator FEINSTEIN was talking about. I think we need to put this in its proper perspective. First of all, these are not abortion cases. These are parental notification bypass cases.

As we all know, these were a series of Texas Supreme Court cases interpreting a Texas statute that requires a minor to tell one of her parents before she has an abortion. None of these cases had anything to do with whether a woman could get an abortion. That was not before the court. In Texas, as in the rest of the country, women may legally get abortions.

The question of a right to abortion is not what these cases were about. The only question in any of these Doe cases was whether a minor child could avoid the requirement of Texas law to get parental consent to tell one of her parents before she got an abortion.

The Doe cases came to the Texas Supreme Court only after an act of the Texas Legislature in 1999, when it passed a law that requires parental notification when a minor is seeking an abortion. Let me just reiterate, the Texas legislature created this notice requirement, not the Texas Supreme Court, and certainly not Justice Owen.

When the legislature enacted this law, it included a process that a minor could use to circumvent the notice requirement. The legislature looked to the United States Supreme Court and looked to the precedent of the Supreme Court on parental notice rights to craft what was intended to be a limited exception to the parental notice rule, but an exception that was constitutional.

The process allowed a teenage girl to go to a State court judge and ask for a ''judicial bypass''. The legislature instructed the court to grant the bypass if the young lady could demonstrate one of the following. Senator FEINSTEIN has outlined these, but I am going to read them again because I think it is important to understand the context of these decisions.

One, the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents; OR if she could demonstrate that notification would not be in the best interests of her; OR, three, if she could demonstrate that notification may lead to physical, sexual, or emotional abuse of the minor.

Now, while these exceptions appear straightforward, as with all statutes in a common law system—and that is what we are dealing with—the terms are, of course, subject to interpretation by the courts. And I would submit that what we see in the Texas Supreme Court is that give-and-take on the interpretation; that when you look at both the majority and minority opinions in each one of the cases, you will see interpretation. So that should not be the issue.

Many, many, many statutes every single day are construed by our courts, and the

courts are obligated to interpret and apply the statutes as they believe the legislature intended.

Senator FEINSTEIN and others at the hearing raised the issue of statutory construction, and basically the charge was that Justice Owen had become a judicial activist. Let me talk, if I could, about some questioning I did of Justice Owen at the hearing on three separate issues.

I asked Justice Owen about her analysis of the Texas parental notification statute. She made these three points about decision making in state courts of appeals, and although I think these points are obvious, I would like to repeat them because I think it gives us a better understanding of what the issues are in front of us.

I think that it is particularly important for the Committee to consider how the Texas Supreme Court analyzed the Doe cases and whether that analysis was consistent with standard appellate review.

First, Justice Owen told me that the Texas Supreme Court applied the standard presumption, something that all courts must apply, that a state legislature is aware of U.S. Supreme Court precedent on an issue on which it is legislating. So in interpreting the statute, both the majority and, in a dissent, Justice Owen applied this rule of construction.

The language of the Texas statute tracks closely with language in Supreme Court precedent on the issue. It therefore was simply standard procedure for the justices to look to the U.S. Supreme Court case law to interpret the Texas law. You can't interpret one without the other. It was not an act of activism in any sense. It was merely standard appellate procedure to look at Supreme Court precedent. The only difference in the outcome of the majority's opinion and Justice Owen's dissent in one key case had to do with a pretty nuanced application of the precedent to the facts of the case.

Second, another important point Justice Owen made in response to my questions was that appellate courts almost always defer to trial courts on issues of fact. That was Justice Owen's position in the Doe cases and that is the standard applied to fact issues in a vast majority of cases in our country's courts of appeals.

That deference is necessary because the trial courts are in a much better position to judge factual issues. The trial courts get to see the witnesses firsthand and to judge their credibility. These Doe cases obviously hinge on that analysis, the analysis by the trial court, the trial court's ability to judge the demeanor of the witnesses, the trial court's determination of the facts. The trial court, for example, had the advantage of actually listening to the teenager's testimony to determine whether she was ''mature'' or not.

Now, in all the cases before Judge Owen—I think we need to keep this in mind—in all the cases, when we think about the factual determination that the teenager had not met the requirements for a judicial bypass. The trier of fact had already made that determination.

The final point, again to state the obvious, that was brought out in my discussion with Justice Owen was that before the Texas Supreme Court ever heard a parental notification case, a bypass case, a number of judges had already denied the bypass.

First, the trial judge would have ruled against the teenager not just once, but really on all three of the ways that she could achieve the bypass. The judge would have had to have found that she had not proven her case on any of the three.

Next, a three-judge court of appeals would have ruled against the teenager on these same issues. So before this case ever reached the Texas Supreme Court, the case had already been decided once at the lower court and already decided at the appellate court.

I believe these are important points, all of them, all three, about how Justice Owen analyzed the Doe cases. And I think it may be constructive to put these cases in the context of all the bypasses requested by teenage girls in Texas.

We don't know the total number and I am not sure really what great significance it has, but we do know that at least 657 bypass petitions were filed between January 1, 2000 and March 8, 2002. This is the number of cases in which the Texas Department of Health paid some of the expenses for filing the petition. So it is the minimum number of cases that were just filed.

Of all these cases, we ended up with 10, 12 cases that got to the Supreme Court, depending on how you calculate them. Some came up for the second time on review. Of these ten cases, Justice Owen thought the majority of the Texas Supreme Court got it wrong three times. So she is only in the minority three times in the Texas Supreme Court, and in these cases she agreed with both lower courts. I think these are things that we need to keep in mind to put this in its proper perspective.

What we are really talking about here is a small handful of cases. A handful of cases in which a minor was required under Texas law to tell one of her parents that she wanted to have an abortion. Justice Owen conducted a perfectly reasonable analysis in her opinions. In three of those cases, she came to a different conclusion than the majority of the court.

That conclusion would not, as some would imply, overturn 30 years of abortion precedent. It would simply require each of these three teenage girls to tell one of their parents that they are going to have an abortion. So, in my view, it is ludicrous to think that this is sufficient to disqualify Justice Owen for a seat on the 5th Circuit Court of Appeals.

Mr. Chairman, I appreciate your time. I don't want to take the committee's time to talk about all the other issues. I thought I would just devote my time to that one particular issue.

Am I to understand the vote is to occur at 10 o'clock?

The PRESIDING OFFICER (Ms. STABENOW). The Senator is correct.

Mr. REID. Madam President, I do not want to cut Senator HATCH off from speaking, but I have to acknowledge that this judge will be approved by, I think, a unanimous vote. Unless Senator BURNS feels strongly to the contrary, we should go ahead with the vote. If Senator HATCH has something to say, he can speak after the vote. If Senator BURNS wants him to speak, I will be happy to do that. Senators are waiting around to vote. Schedules have to be met.

UNANIMOUS CONSENT AGREEMENT—H.R. 5005

Mr. REID. Madam President, while the Senator is making that decision, I ask unanimous consent that at noon today, when the Senate resumes consideration of H.R. 5005, the homeland security legislation, the Thompson amendment be set aside and Senator HOLLINGS be recognized to offer a first-degree amendment relating to national security; that the Hollings and Thompson amendments be debated concurrently for a total of 2 hours, prior to a vote in relation to each amendment, which 1 hour equally divided and controlled between the proponents and opponents of each amendment, with no second-degree amendments in order to either amendment prior to a vote in relation to each amendment; that upon the use or yielding back of time, without further intervening action or debate, the Senator vote in relation to the Thompson amendment, to be followed by an immediate vote in relation to the Hollings amendment; that upon disposition of these amendments, Senator BYRD be recognized to offer a first-degree amendment, as provided for under a previous order; provided further, that following a vote in relation to the Thompson amendment, regardless of the outcome, the Senate vote in relation to the Hollings amendment; that if neither amendment is disposed of, then the amendments remain debatable and amendable.

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

Mr. REID. Madam President, the only caution I will make is that this order does not provide for who is for and against these amendments. We really do not know at this stage. When the time of noon arrives, the Chair will have to make some ruling as to who is going to control the time in opposition to these amendments, if, in fact, there is anyone opposed to them.

Has the Senator made a decision?

Mr. BURNS. Madam President, I suggest and recommend to the chairman of the committee that we move forward on this vote. I know Senators have made their schedules around the vote that was determined to happen at 10 o'clock this morning. We have other business to do on the Interior appropriations bill and a short time within which to do it. I suggest to the chairman that we move forward.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I suggest we go ahead with the vote. I will ask for the yeas and nays once it is reported.

The PRESIDING OFFICER. The yeas and nays have previously been ordered.

Mr. LEAHY. I understand.

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Timothy J. Corrigan, of Florida, to be United States District Judge for the Middle District of Florida? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Delaware (Mr. CARPER), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from New Jersey (Mr. TORRICELLI), and the Senator from Minnesota (Mr. WELLSTONE), are necessarily absent.

Mr. NICKLES. I anounce that the Senator from Wyoming (Mr. ENZI), the Senator from New Hampshire (Mr.

GREGG), the Senator from North Carolina (Mr. HELMS), the Senator from Arkansas (Mr. HUTCHINSON), the Senator from Alabama (Mr. SESSIONS), and the Senator from New Hampshire (Mr. SMITH) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 0, as follows:

[Rollcall Vote No. 213 Ex.]

YEAS —- 88

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

NOT VOTING —- 12

Akaka	Enzi	Sessions
Carper	Gregg	Smith (NH)
Clinton	Helms	Torricelli
Dodd	Hutchinson	Wellstone

The nomination was confirmed.

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

LEGISLATIVE SESSION

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

ORDER OF PROCEDURE

Mr. DASCHLE. Madam President, I ask unanimous consent that the Senator from Pennsylvania, Mr. SPECTER, be recognized for a period not to exceed 5 minutes, and that following the remarks of the distinguished Senator from Pennsylvania, the Senate stand in recess subject to the call of the Chair to accommodate Senators who wish to watch the President's speech.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Pennsylvania.

MEASURE PLACED ON THE CALENDAR—S. 2924

Mr. SPECTER. Madam President, I ask unanimous consent to proceed as in morning business to allow for the second reading of a bill. I understand there will be objection. However, this relates to the award of the special Congressional Gold Medal to the crew and passengers on flight 93.

I had said on Wednesday and Tuesday, yesterday and the day before, that I intended to do this. Since making that announcement, I have discussed the matter with the Senator from New York, who is in the Chamber, and also the Senator from Texas, who is the ranking member of the Banking Committee. I asked the chairman to be present, but he had other business to which he had to attend.

This unanimous consent request is to proceed to the second reading of the bill, which I will object to, and then to ask unanimous consent that S. 2924, which was previously introduced as S. 1434, be taken up, and the Senator from New York will object to that. I said that if he was absent I would object on his behalf.

I am doing this so it will be known that every effort is being made by this Senator to get a resolution of S. 2924, which seeks to give gold medals, special Congressional Gold Medals, to all those who were on flight 93.

There are others, including the Senator from New York, who would like to include other people. The Banking Committee ranking member wants to sit down—which we are committed to do early next week—to try to get it resolved. However, for purposes of the record, I would like to proceed now with the second reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the second time.

The assistant legislative clerk read as follows:

A bill (S. 2924) to authorize the President to award posthumously the Congressional Gold Medal to the passengers and crew of flight 93 in the aftermath of the terrorist attack on the United States on September 11, 2001.

Mr. SPECTER. Madam President, I will now ask the Senate proceed to consider the bill, and I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

UNANIMOUS CONSENT REQUEST—S. 2924

Mr. SPECTER. I ask unanimous consent—and I understand there is an objection, but for the record I ask unanimous consent to take up S. 2924.

The PRESIDING OFFICER. Is there objection? The Senator from New York.

Mr. SCHUMER. Reserving the right to object, and I will object, the intentions of the Senator from Pennsylvania are good and noble and I am supportive of them, but there are people in New York who should be taken into account as well. We have been negotiating for a little while. We will continue to negotiate and hopefully come to a happy resolution. That is why I object. I have no objection to the Pennsylvanian people being included, but certainly I have objection to leaving out some of the heroes in New York who were not police and firefighters—they were included—but we have lots of people who tried to carry people downstairs and everything else. That is what we have to work out. So I will reluctantly object and hopefully we can resolve this shortly.

The PRESIDING OFFICER. Objection is heard. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Senator from New York for his comments. As I said, I anticipated the objection. I am willing to work with the Senator from New York to give recognition to the many heroes who were involved in the rescue effort in the World Trade Center towers. There is no doubt about that. However, I do want to get it moved along. I think this is something that would have been better had we been able to finish it before September 11, 2002. However, since we did not do that, since it is September 12, we now have a calendar to move it ahead.

I thank the Chair and my colleague from New York for yielding the floor.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess, subject to the call of the Chair.

Thereupon, the Senate, at 10:33 a.m., recessed until 11:09 a.m. and reassembled when called to order by the Presiding Officer (Mr. EDWARDS).

LEGISLATIVE SESSION

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2003

The PRESIDING OFFICER. The Senate will resume consideration of H.R. 5093, which the clerk will report.

A bill (S. 5093) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

Pending:

Byrd Amendment No. 4472, in the nature of a substitute.

Byrd Amendment No. 4480 (to Amendment No. 4472), to provide funds to repay accounts from which funds were borrowed for emergency wildfire suppression.

Craig/Domenici Amendment No. 4518 (to Amendment No. 4480), to reduce hazardous fuels on our national forests.

Dodd Amendment No. 4522 (to Amendment No. 4472), to prohibit the expenditure of funds to recognize Indian tribes and tribal nations until the date of implementation of certain administrative procedures.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

AMENDMENT NO. 4518

Mr. BOND. Mr. President, I rise to support the Craig second degree amendment. This amendment will address the continuing problem of hazardous fuels buildup in our Nation's