

The Senator from Texas said—and I quote—there has been “an unprecedented act of obstruction.” He is referring to President Bush’s nominees being withheld, not allowing votes on judges.

Mr. President, I do not know—and I do not mean this to be cute or smart or mean spirited, but I do not know what kind of math my friend from Texas is using if he is talking about unprecedented acts of obstruction.

Right now in the Federal judiciary there is a 5-percent vacancy rate. We have four judges on the calendar now, and they will be approved within the next, probably, 24 hours. So that will bring the number of judges approved during the Bush administration to nearly 170. I do not have the exact number. I have lost track of it but nearly 170.

Three judges have been turned down: Bill Pryor from Alabama, Miguel Estrada from the District of Columbia, and Priscilla Owen from Texas.

Unprecedented obstructionism? We are talking about 170 to 3. So my math indicates that is pretty good.

When Senator DASCHLE took control of the Senate as majority leader, a decision was made that there would be no payback. It would not be payback time. In fact, a decision was made that we would do everything we could to get the nominations approved that were sent to us by President Bush. We have done that. The record is clear.

However, my friend from Texas should go back and look at how President Clinton was treated. People waited for years and years and were not even allowed a hearing. As we know, it was necessary on a number of occasions to file cloture. Cloture was invoked, and the judges were approved.

It is easy to come on the Senate floor and throw out terms such as “unprecedented acts of obstructionism,” but it is not true. No matter how many times you say it, it still is not true.

PAT LEAHY, who has been the chairman and ranking member of the Judiciary Committee during the approximately 3 years of the Bush Presidency, has done an outstanding job of moving these judges. I don’t know how we could do better. I guess we could be a rubber stamp for the President’s nominees. That is not what the Founding Fathers envisioned. They believed these names should be submitted to the Senate. The Senate should evaluate them and make a decision at that time whether or not the nominees are what the country should have in the way of judges.

A decision was made in the case of Miguel Estrada. He didn’t answer questions. He would not supply his memorandum from his time as Solicitor General. For those and other reasons, he was not approved. Priscilla Owen was criticized by the President’s own lawyer, Mr. Gonzales, who is now the White House chief lawyer. He and Priscilla Owen served together on the Texas Supreme Court. She was criti-

cized very heavily by Mr. Gonzales at that time. That is just a little bit of her problem. We know that she, by almost any standard, was quite radical—an activist, for lack of a better word. And we know Attorney General Pryor from Alabama was someone whose record was not such that he should become a lifetime appointment on the Federal bench.

That is 3, 3 to approximately 170. I do not know the exact number, but that is fairly close. By any math course you ever took, 170 to 3 is pretty good. In fact, it is real good. I wish we had had that kind of treatment when Bill Clinton was President.

I again remind everyone the vacancy rate in the Federal judiciary is now 5 percent. It is the best it has been in decades. Rather than having people come and push these little barbs at the Democrats on the Judiciary Committee, they should be giving them accolades for the cooperation they have maintained during President Bush’s tenure.

Mr. President, it is my understanding the distinguished Senator from North Carolina wishes to speak as in morning business. Her time is gone.

Mrs. DOLE. Mr. President, I ask unanimous consent to proceed for up to 1 minute.

Mr. REID. And let us have a minute on our side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from North Carolina is recognized for up to 1 minute.

THANKING BOB SCHIEFFER

Mrs. DOLE. Mr. President, I want to publicly thank our friend, Bob Schieffer, of CBS for revealing the story of his battle with bladder cancer. His going public will save the lives of countless others, especially men. In most every cancer case, early detection of and proper treatment can save your life. Bob Schieffer had a problem and immediately sought medical advice. The result was that in less than 8 months, he is cancer free. Thank you, Bob, for giving others direction and hope.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time? The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, the Senate is in morning business?

The ACTING PRESIDENT pro tempore. The Senate is in a period of morning business. The minority side has 25 minutes remaining.

Mr. HARKIN. I thank the Chair.

CALL FOR APPOINTMENT OF SPECIAL COUNSEL

Mr. HARKIN. Mr. President, many of my colleagues and I have been urging the Justice Department to appoint a special counsel to review and investigate the leak that revealed the identity of an undercover CIA agent. Some

of my colleagues on the other side of the aisle have responded by saying that we are blowing things out of proportion, that our motives are political. I have to disagree. This is a serious issue, and it is not just those on my side of the aisle who have concerns about the obvious conflict of interest for the Justice Department to investigate this matter on its own.

I am referring to the Washington Post-ABC poll that was released. The poll found that nearly 7 in 10 Americans believe a special type of prosecutor should be named to investigate allegations that the Bush administration officials illegally leaked the name of an undercover CIA agent. The survey found that 81 percent of Americans considered the matter serious, while 72 percent thought it was likely that someone in the White House leaked the agent’s name. It’s clear the people of this country want a full, fair and independent investigation.

I would also like to take a minute to respond to comments from my colleague from Minnesota that were made earlier Wednesday. I believe he may have been misinformed. I wanted to make sure my colleague from Minnesota was clear on the difference between an independent counsel and a special counsel. Yesterday I had again stated the need for the Attorney General to appoint a special counsel to investigate this leak regarding an undercover CIA agent. We all know that a Federal law was broken—that is clear—a law that provides for stiff penalties, imprisonment, and fines. It is a Federal crime, under the Intelligence Identities and Protection Act of 1982 to intentionally disclose information identifying a covert agent to anyone not authorized to receive this classified information.

Columnist Robert Novak printed that information. We need to know who the senior administration official or officials were that gave him that information. But we also need to find out who gave that information to the administration officials.

Let me be clear about this. There is a cancer spreading in this administration. Most have focused only on who it was who gave the name of the undercover agent to Mr. Novak, the columnist. Clearly that is illegal. But there is another question behind that. How did that individual or individuals get access to this classified information about this undercover agent? Who gave that individual this information? Did it come from the National Security Council? Did it come from the State Department? Did it come from the CIA itself? Did someone in the White House request this dossier on Mr. Wilson and his wife? Or was it voluntarily given to them by someone in the CIA or the National Security Council or somewhere else? This is an even deeper question because it goes to what they wanted this information for. Why would individuals high in the administration want the information about who was

an undercover agent and who was not, unless they had the intention of using that information to intimidate Mr. Wilson, to put a chilling effect on those who might want to disagree with this administration's position on Iraq.

That, I believe, is another concern we have—the chilling effect. The greatest weapon we have in our fight against international terrorism is not a ballistic missile, it is not this missile defense shield that people want to build over this country, it is not our laser-guided bombs; the best weapon we have against international terrorism is the intelligence and information we get from agents in the field around the globe, working with our friends and allies and others, so that we can get to the terrorists in their incubation, before they are able to carry out their dastardly deeds, break up their cells, break up their lines of communication. It is the intelligence and information that we need to win this battle against terrorism.

If, however, one of our agents in the field and all that agent's contacts now think that at some time this administration, or an administration in the future, can "out" them, release their name, then that puts kind of a damper on whether or not they are going to get information. That could put people's lives in jeopardy, put them at risk in the future.

For example, the woman who was outed, Valerie Plame, had in fact traveled overseas as an undercover agent. I assume now people will be looking at whom she contacted, whom she talked to, who were her sources of information. This is not, as I said the other day, some little real estate deal out in Arkansas. This is not just some President philandering with some White House aide. This has to do with the security of our country.

According to the Washington Post, a senior administration official told the Post that before Novak's column appeared, two top White House officials called at least six journalists and disclosed the identity of the CIA agent. Now the Justice Department is investigating.

So let's get this straight. The Attorney General, appointed by the President, is investigating the President's office. As I said yesterday, and I say again this morning, if an investigation ever cried out for a special counsel, this is it. Again, I point to an article that appeared on the front page of the New York Times today, which said: Attorney General is closely linked to inquiry figures. Rove was a consultant. Deep political ties between top White House aides and Attorney General John Ashcroft have put him into a delicate position as the Justice Department begins a full investigation into whether administration officials illegally disclosed the name of an undercover CIA agent. Karl Rove, Mr. Bush's top political advisor, whose possible role in the case has raised questions, was a paid consultant to three of Mr.

Ashcroft's campaigns in Missouri—twice for Governor and for United States Senator in the 1980s and 1990s. Jack Oliver, the deputy finance chairman of Mr. Bush's 2004 reelection campaign, was the director of Mr. Ashcroft's 1994 Senate campaign and later worked as Mr. Ashcroft's deputy chief of staff.

Does anyone really believe that this Attorney General can, with a straight face, say they are going to investigate these people when they work for them and they have close ties? As I said, a special counsel is needed desperately.

In response yesterday morning, when I called for this, my colleague from Minnesota accused some of my colleagues and me of "rank political hypocrisy" when it comes to calling for a special counsel. He said this, and I quote from the RECORD today:

I'm a slight student of history. I believe in 1999 there was an effort in this body, led by Senator Collins from Maine, a bipartisan effort to put in place a provision to allow for a special prosecutor. And it was blocked. It was stopped by the very same folks today that are talking about needs for a special prosecutor. I think, and I am going to be very blunt here, what we are hearing is a little rank political hypocrisy when it comes to calls for a special prosecutor.

That is in the CONGRESSIONAL RECORD today from Senator COLEMAN of Minnesota. I think Senator COLEMAN needs to brush up on his history. In 1999, the independent counsel law expired. Republicans were in charge of the Senate and they chose not to reauthorize it. This law allows the Attorney General to recommend an independent counsel, to lead an investigation, and a three-judge panel chooses that counsel. That independent counsel was accountable to no one. It had its own staff, budget, and missions. The investigations could go on indefinitely.

My main problem with the Office of Independent Counsel was that the investigations could go on forever, with a bottomless budget that taxpayers had to pay. The Collins alternative was a step in the right direction, which limited the time on these investigations. But the Republican leadership never scheduled a vote—never scheduled a vote.

By the way, former independent counsel Kenneth Starr opposed renewing that law. Regardless, appointing an independent counsel or prosecutor is not what I have been talking about. I don't believe I've ever mentioned appointing an independent counsel. I have said the Attorney General should appoint a special counsel. There is a big difference. The Attorney General alone can appoint an outside special counsel if he believes there is an inherent conflict of interest or if he deems it is in the public interest for a special counsel to be appointed. The special counsel reports to the Attorney General, who pays the counsel's salary and the salary of his or her staff.

The key to the special counsel is this. At the end of the investigation, the Attorney General must report to

Congress all instances where he blocked the special counsel from taking an action, such as subpoenaing documents or putting a witness before a grand jury. That is the kind of balance we need in this kind of situation, when the administration is obligated to investigate itself.

So I think the Senator from Minnesota not only needs to brush up on his history but also definitions. It was an entirely different issue in 1999. The law had expired. The Republican majority did not move to reauthorize it and to even call for a vote to reauthorize the independent counsel law. Quite frankly, I am one of those who don't believe in these independent counsels because they go on forever and they are accountable to no one. They can investigate whatever they want. That is not what I am calling for.

What I am calling for is the Attorney General to use the authority he has under the law to appoint a special counsel, someone of prominence, someone of integrity, someone who would assure the American people the investigation will be done fairly, objectively, and thoroughly, and let the chips fall where they may. It would not go on forever. The Attorney General decides the salary and the pay and how much staff. But the key is this: The special counsel would have, under the auspices of the Attorney General, the ability to subpoena witnesses, to subpoena documents and records, to take a person before a grand jury. The Attorney General could say no and stop it, but at least we would know that. The people of America would know whether or not the Attorney General stopped the special counsel from getting certain documents or referring a witness to a grand jury. Therein lies the check and balance that is so important to making sure we have an open and transparent system of Government.

Mr. REID. Will the Senator yield for a question?

Mr. HARKIN. It is time we have a special counsel.

I am honored to yield to my friend from Nevada.

Mr. REID. I ask my friend this question: If someone within the CIA had divulged the name of this operative, that person, it seems to me, would be subject to criminal penalties and would be considered a traitor; is that true?

Mr. HARKIN. I know the person would be subject to criminal penalties. I am not certain I know the definition of a "traitor," but I think it would be closely akin to that. I don't want to make a statement. I don't know the absolute definition of "traitor," I say to my friend. Obviously, it would be subject to penalties. We have Aldrich Ames right now spending his life in prison without parole because he divulged the name of operatives, undercover agents, whose associates and others were killed in the former Soviet Union, and Aldrich Ames today is where he ought to be: in prison for life without parole.

The same applies here, it would seem to me, I say to my friend from Nevada, that this is a case where not only someone in the CIA but anyone in a position who has access to this classified information would be subject to this. Again, I say to my friend from Nevada, since he is on the floor, I really think many of the people who are inquiring about this are stopping short because they are only focusing on who gave the information to Mr. Novak. There is a deeper and I think even more profound question to be asked: How did those individuals in the administration get that classified information? How did they come by that information to know this Valerie Plame was an undercover agent? That raises very serious questions.

Mr. REID. If I can answer and ask a question. First of all, Webster's compact dictionary I have in my desk says a traitor is one who betrays trust. So certainly if a CIA agent leaked to the press the name of one of his colleagues who is an undercover agent, he would be a traitor.

Mr. HARKIN. I accept that definition. I say to my friend, my feelings and my senses are that someone with this kind of information who leaked it I think has violated the law and betrayed the government and the citizens of the United States.

Mr. REID. The next question I ask my friend: So if a CIA operative would be subject to criminal penalties and would be considered a traitor for doing this activity, certainly someone working within the administration, within the White House, would be considered the same; is that not true?

Mr. HARKIN. I think the Senator from Nevada has it exactly right. That is true, they would be considered the same. I thank the Senator for asking the question because it does clarify a point.

If I can take off from what the Senator from Nevada just asked me—and it is a good point, it should be made—what would happen in the administration if someone in the CIA had leaked this kind of information about an undercover agent. What would happen? I will tell you what would happen. They would have that person locked up in jail before nightfall, and they would be prosecuted to the full extent of the law. My friend from Nevada raises a good question: What is the difference between that and someone in the White House or administration doing the same thing?

Again, it is time for a special counsel. As the New York Times said this morning on the front page, both Mr. Rove and Mr. Oliver have close connections with Mr. Ashcroft. I don't know whether they are involved in this or not, but they are both very high in the administration. There are too many close ties between Attorney General Ashcroft and people high in this administration for the people of this country to be assured that we are going to have a fair, independent, full, and thorough

investigation. Let the chips fall where they may and prosecute—yes, prosecute—the people responsible for leaking this information.

Mr. President, I intend to take the floor of the Senate every day to talk about this issue. We cannot allow this to be swept under the rug. We cannot allow a coverup to go on day after day. This is a President elected by the people, a servant of the people. And I don't think it is enough for any President to say: We will let the Attorney General investigate. The buck stops on the President's desk. I can only say if an allegation had been made about someone on my staff doing something like that, I would call them in, and I would have them sign a notarized legal document right there: I, so and so, had nothing to do with any leak and know no information about it whatsoever. Sign it.

That is what the President can do, and we can have this information out about who called Mr. Novak, who called these other reporters. We would know it before the sun went down today. That is why this coverup cannot continue to go on. The American people deserve better than this, and they are going to get it. We are going to find out who put our country at risk, who committed these treasonous activities.

I yield the floor.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR IRAQ AND AFGHANISTAN SECURITY AND RECONSTRUCTION, 2004

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1689, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1689) making emergency supplemental appropriations for Iraq and Afghanistan security and reconstruction for the fiscal year ending September 30, 2004, and for other purposes.

Pending:

McConnell modified amendment No. 1795, to commend the Armed Forces of the United States in the War on Terrorism.

Biden amendment No. 1796, to provide funds for the security and stabilization of Iraq by suspending a portion of the reductions in the highest income tax rate for individual taxpayers.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 40 minutes divided in the usual form on the McConnell amendment No. 1795.

The Senator from Kentucky.

AMENDMENT NO. 1795

Mr. McCONNELL. Mr. President, before proceeding to my remarks about the pending amendment, I point out to Members of the Senate that we are all familiar with the National Endowment for Democracy and the fact that it provides funds to the International Republican Institute and the National Democratic Institute, which operate overseas to help promote democracy, human rights, and all of the things that Americans believe are important.

The National Democratic Institute recently issued a report on Iraq that I think is noteworthy, and I am going to point out some excerpts from that.

I ask unanimous consent that excerpts from this report be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. McCONNELL. Former Secretary of State Madeleine Albright currently chairs the National Democratic Institute and she points out:

The past half-century provides ample proof that democracy is more than just another form of government; it is also a powerful generator of international security, prosperity and peace.

According to the NDI, inside Iraq there is an explosion of democratic politics.

. . . NDI will find fertile ground for democracy promotion initiatives on a scale not seen since the heady days of the fall of the Berlin wall.

That bears repeating, that the National Democratic Institute finds within Iraq today an explosion of democracy, and fertile ground for democracy promotion initiatives on a scale not seen since the fall of the Berlin wall.

Another finding of the NDI that I think is noteworthy is that the Iraqis are grateful for their liberation. There has been some notion promoted, I think by many in the press, that somehow the Iraqis are sorry that Saddam is gone. The NDI, headed by Madeleine Albright, finds that the Iraqis are grateful for their liberation.

In addition, the NDI finds significant evidence of support for the United States. For example, they say:

In Kirkuk, there was a large painted sign reading "Thank you USA" in English and in Kurdish.

Additionally, the NDI found overwhelming support for liberation, but lack of stability or economic opportunity obviously does erode, to some extent, support for the U.S.

They found that security and jobs are a precondition to democracy. We know that, and that is what this supplemental is all about. They found Iraqi frustrations are due to fear and uncertainty, not hostility toward the United