should have been under the supervision of the Democrats at that time. It probably takes some time to make the change over. Almost his entire career in the Justice Department was under the leadership of Janet Reno and a Democratic Solicitor General. The Democrats gave him the highest possible performance rating.

Mr. Bender, when he was evaluating him, gave him the highest evaluations. I think it odd now that he would come forward and suggest there was a problem. In fact, one of the evaluations given to him specifically noted his loyalty to the policies of the Department of Justice.

It was also said there was some deal about law clerks and screening law clerks for Supreme Court Justice Kennedy. Let me point out I think it is a great honor that Justice Kennedy was so impressed with Miguel Estrada that he asked him to do screening of possible law clerks for him. Justice Kennedy is considered a middle of the road swing Justice who votes with various sides, on various sides, and is not perceived as any kind of right-wing ideologue. He liked Estrada so much that he asked him to help him screen his law clerks. I think that is a matter that is a positive thing.

The PRESIDING OFFICER. There is a standing order for a vote on another nominee at 5:30.

NOMINATION OF MARIAN BLANK HORN, OF MARYLAND, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS

The PRESIDING OFFICER. Under the previous order, the hour of 5:30 p.m. having arrived, the Senate will now proceed to the consideration of Executive Calendar No. 43, which the clerk will report.

The legislative clerk read the nomination of Marian Blank Horn, of Maryland, to be a Judge of the United States Court of Federal Claims.

Mr. HATCH. Mr. President, it is my pleasure today to speak in support of Marian Blank Horn, who has been nominated for a second term on the U.S. Federal Court of Claims. Judge Horn is a distinguished United States Court of Federal Claims Judge whose legal career has been nothing short of stellar.

Judge Horn graduated from Fordham University Law School in 1969, and began her career as an assistant district attorney in Bronx County, NY, before joining Arent, Fox, Kintner, Plotkin and Kahn, where she worked in the litigation division.

From 1973 to 1975, Judge Horn was a project manager for a Study of Alternatives to Conventional Criminal Adjudication which was financed by the U.S. Department of Justice's Law Assistance Enforcement Administration. She also served as an adjunct professor at American University's Washington College of Law, where she taught the Introductory Legal Methods course.

In 1975, Judge Horn joined the Office of General Counsel for the Department of Energy/Federal Energy Administration. From 1979 to 1981, Judge Horn served as the deputy assistant general counsel for Financial Incentives, Office of General Counsel, where she supervised all legal work related to financial incentives at the United States Department of Energy. In addition, she served as legal advisor to the assistant secretaries for Fossil Energy and Resource Applications, as well as the Office of Energy Research.

From 1981 to 1986, she worked in the United States Department of Interior, where she assisted the Associate Solicitor and helped administer the Surface Mining Control and Reclamation Act of 1977. In 1985, Judge Horn was promoted to principal deputy solicitor, where she supervised all the Regional and Field Offices of the Solicitor's Office in the Department and acted as the chief lawyer to the Secretary and Under Secretary of Department of Interior. So you see that Judge Horn already had a very impressive resume in 1986, when she was first confirmed.

Since that time, she has built an excellent reputation as a judge, and I am confident that Judge Horn will continue being a fine member of the Federal Bench.

Mr. LEAHY. Mr. President, today we consider the nomination of Judge Marion Blank Horn to the U.S. Court of Federal Claims. Although this is not a so-called ''Article III'' court with lifetime appointments, it is an important court with 15-year terms for its members. Judge Horn has been serving on the court for almost 15 years and I do not oppose her re-appointment. What I do take issue with, however, is the Administration's unilateral actions, in spite of the bipartisan cooperation and appointments of other Presidents to this and other courts.

The process for nominating judges to the Court of Federal Claims has traditionally included accommodation and compromise. For more than 2 years Senate Republicans blocked President Clinton's appointment of Larry Baskir to the court until a compromise could be reached. They refused to give him a hearing and refused to allow any of the other vacancies to be filled unless the administration promised to keep conservative Judge Loren Smith as the Chief Judge. Republicans also insisted on the reappointment of another Republican appointee, Judge Christine Miller. Finally, Senator HATCH agreed to allow five Clinton nominees to have hearings and votes if the administration also named his staffer Edward Damich to the court and promised to retain Judge Smith as Chief until his retirement into lifetime senior status at the end of his term appointment. Upon Chief Judge Smith's ''retirement,'' President Clinton named Judge Baskir the Chief Judge. Shortly after his inauguration, President George W. Bush summarily removed Judge Baskir as chief judge and installed Judge Damich as the Chief Judge.

Last fall when the Democrats were in the majority, we took the exceptional action of quickly moving the nomination of Larry Block to the Court of Federal Claims at the request of the ranking Republican, Senator HATCH. At that time, I noted that we would expect fairness and consideration in return, including true bipartisan consultation with respect to Federal Court of Claims nominations. Despite our accommodation on Mr. Block's nomination, the White House refused to act on the nomination of Judge Sarah Wilson who, up until a few months ago, was already serving with distinction on the Court of Federal Claims. Judge Wilson is a well-respected and talented lawyer who graduated from Columbia Law School, clerked for a Federal judge, was a fellow with the Administrative Office of the Courts, and served in the Department of Justice and in a prior White House. Yet, the administration and the Senate Republicans refused to accommodate our request to consider her nomination for a continued position on the court.

It troubles me that despite a long history of compromise and accommodation regarding appointments to this court, there has been no consultation with the Democratic leadership regarding the remaining nominations to the Court of Federal Claims. Instead, the White House proceeded as it does with most things—unilaterally. The same is true with respect to the Parole Commission, the Federal Election Commission and many other bipartisan boards and commissions.

I can count on one hand the number of States that have any sort of bipartisan selection commission for their district court judges. The importance of such organizations is paramount. They ensure that nominees for judicial office are selected based upon professional merit and experience. The recommendations of such commissions have the support of members from their community on both sides of aisle. Accordingly, these bipartisan commissions preserve the independence and integrity of the judicial branch of government and ensure the fair and equal administration and enforcement of justice.

Unfortunately, this President has thwarted the development of bipartisan boards and commissions for judicial appointments. The White House Counsel has indicated publicly that he does not favor bipartisan committees because they ''usurp the president's constitutional authority to choose judges.'' This unilateral and uncompromising view disregards the constitutional role of the Senate. It also fails to acknowledge that these commissions simply make recommendations to the President. They do not make nominations in lieu of the President. The administration's disdain for bipartisan commissions ignores past precedent and tradition.

It is one thing for a President to appoint members of his Cabinet to carry out his political agenda but it should be different with respect to judicial appointments. When a President makes

nominations for positions to a co-equal branch of government, he should not be able to tip the scales of justice by packing the courts with ideologues who are selected to implement his political agenda. Recently, Walter Dellinger noted that the President's ''slate of nominees, considered as a whole, . . . [is] a list tilted to the right and from which any other views have been carefully culled.'' I agree that we need to broaden the slate. This could be best accomplished with the creation of new judicial selection commissions who could make recommendations to home State Senators and to the President.

I urge the White House and Chairman HATCH to work with us to assemble the type of bipartisan panel that Senator HATCH helped assemble in 1997 and 1998 to fill the remaining vacancies on the Court of Federal Claims in a way that respects the tradition of compromise and accommodation that has marked appointments to this court. I also look forward to working with Senate Republicans to preserve our constitutional role in advising the President on judicial nominations to all courts through the use of bipartisan selection commissions.

Mr. SESSIONS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Marian Blank Horn, of Maryland, to be a Judge of the United States Court of Federal Claims? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Missouri (Mr. BOND), the Senator from New Mexico (Mr. DOMENICI), the Senator from Kentucky (Mr. MCCONNELL), and the Senator from Alaska (Ms. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. DODD), the Senator from Illinois (Mr. DURBIN), the Senator from Florida (Mr. GRAHAM), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Connecticut (Mr. DODD) and the Senator from Illinois (Mr. DURBIN) would each vote ''aye.''

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 38 Ex.]

YEAS—89

Akaka	Boxer	Chafee
Alexander	Breaux	Chambliss
Allard	Brownback	Clinton
Allen	Bunning	Cochran
Baucus	Burns	Coleman
Bayh	Byrd	Collins
Bennett	Campbell	Conrad
Biden	Cantwell	Cornyn
Bingaman	Carper	Craig
Crapo	Inhofe	Reed
Daschle	Inouye	Reid
Dayton	Jeffords	Roberts
DeWine	Johnson	Rockefeller
Dole	Kennedy	Santorum
Dorgan	Kerry	Sarbanes
Edwards	Kohl	Schumer
Ensign	Kyl	Sessions
Enzi	Lautenberg	Shelby
Feingold	Leahy	Smith
Feinstein	Levin	Snowe
Fitzgerald	Lincoln	Specter
Frist	Lott	Stabenow
Graham (SC)	Lugar	Stevens
Grassley	McCain	Sununu
Gregg	Mikulski	Talent
Hagel	Murray	Thomas
Harkin	Nelson (FL)	Voinovich
Hatch	Nelson (NE)	Warner
Hollings	Nickles	Wyden
Hutchison	Pryor	

NOT VOTING—11

Bond	Durbin	McConnell
Corzine	Graham (FL)	Miller
Dodd	Landrieu	Murkowski
Domenici	Lieberman	

The nomination was confirmed.

The PRESIDING OFFICER (Mr. TALENT). Under the previous order, the President shall be immediately notified of the Senate's actions.

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—Continued

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have heard some of the remarks made on the floor today. I thought I would clarify them, clarify the reality of what really happened. I have had a little bit of criticism by my colleagues from the other side of the floor because we actually had the committee vote last week when it should have voted. So I took the liberty of writing a detailed letter to the distinguished Senator from South Dakota, the distinguished minority leader, who is a dear friend. I know he has been concerned that maybe there was some breach of the rules. So I would like to read this letter into the RECORD so that everybody will understand that there was no breach of the rules last Thursday. Anybody who says there was really doesn't understand the rules, does not understand the obligations of the chairman.

I am writing in response to your comments on the Senate floor concerning the Judiciary Committee's executive business meeting this past Thursday. I know you are a person of the highest principles who would never intentionally misrepresent the actions of a Committee Chairman, particularly when the action involves an interpretation of that committee's particular rules. I think you may have been provided with some incorrect information, and I would like you to know the truth.

As you know, the Judiciary Committee met at 9:30 a.m. last Thursday to consider several nominations and some legislation. Although the Democrats were cooperative about voting out a few widely-supported District Court nominations and some other nominations, they made it clear that they would attempt to filibuster at least two of the three nominees for the Circuit Courts of Appeal, Deborah Cook John Roberts and Jay Bybee.

It is important to note that the nominations of Mr. Roberts and Justice Cook had been filibustered in Committee during our last meeting two weeks ago, and had been on the agenda but held over the week before that. I could have forced a vote two weeks ago, but I declined to do so out of deference to my Democratic colleagues, who had assured me that we would vote on the nominations at the next meeting, meaning last Thursday.

From 9:30 a.m. to approximately 12:30 p.m. yesterday, Committee Members engaged in a thorough debate on the three Circuit Court nominations. I allowed every member to talk as long as they wanted. Everyone was allowed to say his or her piece [even though we could have limited debate].

When the speeches ran out at 12:30 or so, I announced it was time for a vote. Senator Kennedy objected. I overruled the objection, and then all of the Democratic Members walked out of the hearing room in order to deny the Committee a quorum. A few minutes later, Senator, Specter returned to the Committee room, making a total of nine Republicans present, and then a couple of the Democrats returned and demanded to continue the filibuster even though every democrat who wanted to speak had already done so. As support for their filibuster, they relied upon Rule 4 of the Judiciary Committee rules. That rule allows any Member to move to have an item on the Agenda voted upon. In this case, the nomination on the Agenda was brought to a vote.

As background, you know well that Senate Committee Chairmen have a number of inherent powers that are not expressly stated in Committee rules. For example, the Judiciary Committee Chairman has the power to call and set the agendas for hearings and mark-ups even though those powers are not explicitly granted by Committee Rules. The Chairman also has the inherent power to bring a matter to a vote. The Chairman also has the power to interpret the rules of the Committee, as Senator Leahy has done in the past. The Parliamentarians assured me of this on Wednesday.

Rule 4 of the Judiciary Committee Rules is not the authority by which the Chairman calls for a vote. On the contrary, the clear text of Rule 4 gives a majority of the Committee (which must include Members of both parties) a mechanism to force a vote, presumably when the Chairman does not want or call one. In other words, it ensures that the majority will is not thwarted by an obstreperous Chairman who refuses to allow a vote on an item on the Agenda.

Rule 4 works like this: When a Member wants to end debate and bring a matter to a vote, he or she is entitle dot make a motion to hold a vote and the Chairman must entertain it. If anyone objects, then the Committee must vote on the motion (the motion is not debatable). The motion carried only if a majority of the Committee, including at least one Member of the minority party, votes in favor. If the motion carries, the Committee proceeds to a vote on the underlying matter.

The Democrats who raised Rule 4 at the mark-up [last Thursday] turned Rule 4 on its head. They tried to use it to deny a vote, not to force one. Their argument ignores the purpose of Rule 4, the inherent power of the Chairman to call for a vote, the fact that the debate had already ended, and the common sense idea that legislative bodies must have the power to make decisions—even difficult ones. I do not believe that Committee filibusters should be allowed, and I think it is a good and healthy thing for the Committee to have a rule that forces a vote.

I understand your misperception given the fact that you may not—and indeed have no