

partner with the law firm of O'Melveny & Myers handling civil matters before he was appointed to the State court bench in 2001. He played professional football before going to law school and has served in the Air Force Reserve.

Two other district judges in California have already been unanimously confirmed this year, Judge Selna and Judge Otero. Last Congress, led by a Democratic Senate majority, the Senate confirmed four nominees to the Federal district courts in California. Percy Anderson and John Walter were confirmed to the U.S. District Court for the Central District of California on April 25, 2002, just 3 months after their initial nominations. The Senate also confirmed Robert G. Klausner to be a U.S. District Judge for the Central District of California on July 18, 2002, and Jeffrey S. White to be a U.S. District Court Judge for the Northern District of California on November 14, 2002. The Senate has now filled all seven of the vacancies on the Federal trial courts in California that we inherited.

Last year, at the urging of Senator FEINSTEIN and the chief judge of the district, we included in the 21st Century Department of Justice Appropriations Authorization Act, five additional judgeships for the Southern District of California. We also included an additional position for the Central District of California. By mid-July California will have six important vacancies to be filled. I look forward to working with the Senators from California to proceed, if possible, in advance of July on additional nominations so that these much-needed seats can be filled quickly with fair, mainstream nominees. It is unfortunate that the President, who has had notice of these upcoming vacancies for some time, has not worked with the California Senators and their bipartisan commissions to send consensus nominees to the Senate.

I congratulate Judge Carney, his family, and the Senators from California on his confirmation.

• Mr. NELSON of Florida. Mr. President, I want to express my support for the nomination of Cormac J. Carney to be U.S. District Judge, for the Central District of California. Mr. Carney has the knowledge, experience and personal characteristics needed to succeed on the Federal bench.

Unfortunately, due to inclement weather, I was unable to return to Washington in time for the vote to confirm Mr. Carney, but I would like the RECORD to reflect that, had I been present, I would have cast my vote in favor of his confirmation.●

The PRESIDING OFFICER. The President will be immediately notified of this action.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

The Democratic leader.

#### TRIBUTE TO PRIVATE FIRST CLASS LORI PIESTEWA

Mr. DASCHLE. Mr. President, I want to take just a couple of minutes of my leader time to make a statement with regard to a very special young woman.

Throughout America—especially in Native American communities—Americans are grieving the loss in combat of Army PFC Lori Piestewa. But we are also feeling pride for Lori Piestewa's remarkable life.

PFC Piestewa was a member of the Army mechanics unit that was ambushed by Iraqi soldiers on March 23.

Her body, and the remains of eight other soldiers, were recovered last week from a hospital in southern Iraq when Special Forces stormed the hospital to rescue another member of the 507th Maintenance Company, PFC Jessica Lynch.

Private Piestewa is the first Native American woman in the U.S. Armed Forces ever to die as a result of combat.

She was 23 years old. She leaves behind two small children—a 4-year-old son and a 3-year-old daughter. . . .

She also leaves behind a broken-hearted but proud family—and countless friends.

There are more than 12,000 Native Americans serving in our military today—including many from my State of South Dakota.

They and Private Piestewa are part of a noble tradition that too few Americans know much about.

It is a tradition that includes heroes like the "Code Talkers" of World War II—the service members from the Lakota, Navajo and other Indian nations who developed the only military code that was never broken by the Japanese.

The Code Talkers were key to U.S. victories throughout the Pacific theater. Their service helped turn the tide of the war—and saved untold numbers of American lives.

Today, Private Piestewa takes her place alongside them as an American who risked everything to protect her land and her people.

Over the weekend, memorials began to appear all over the reservation near Tuba City, AZ, where Private Piestewa grew up and where her family still lives.

At one of the memorials, someone left a group of red, white, and blue balloons. Included in the bunch was one green balloon, the team color for Tuba City High School, where Lori Piestewa had been a softball star and a junior ROTC commander.

On May 24, Private Piestewa will be honored at another memorial. Red rose petals will be placed in her honor in the reflecting pool of the Women in Military Service for American Memorial at Arlington National Cemetery.

When I heard about the memorials to Private Piestewa, I thought of another cemetery—at Wounded Knee, on the Pine Ridge reservation in South Dakota.

I remember the first time I visited it. As I walked toward the cemetery, I was surprised to see little American flags dotting many of the graves. When I got close enough to read the headstones, I could see that many of the people there were veterans.

Some—like Private Piestewa—had died in the service. Others had died years after they took off the uniform. But they wanted it recorded on their graves: This person loved this Nation.

I have never seen a more profound expression of American patriotism.

The thoughts and prayers of our Nation are with the family and friends of PFC Lori Piestewa.

She was an American hero. We are deeply grateful to her for her service and sacrifice—and to all Native Americans who are serving, and have served, our Nation in uniform.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I compliment the distinguished minority leader for this very sensitive and very important statement about this wonderful person. As someone who belongs to a family which has lost my older brother, and lost a brother-in-law—an older brother in the Second World War, and brother-in-law in Vietnam—and then have another brother-in-law who is suffering tremendously from his war wounds, who fought both in the Inchon Reservoir in Korea and also in Vietnam, I have to say these are the greatest of all Americans. I really appreciate his sensitivity in delivering this message for the Senate here today.

#### EXECUTIVE SESSION

#### NOMINATION OF PRISCILLA RICHMAN OWEN, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Mr. HATCH. Mr. President, I ask unanimous consent the Senate now resume executive session for the consideration of Calendar No. 86, Priscilla Richman Owen, of Texas, to be U.S. Circuit Judge for the Fifth Circuit.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I hoped my friend in his statement tonight would indicate why we are moving to this woman, when we have people here—we have Edward Prado, who is from Texas, Dee Drell from Louisiana, Richard Bennett from Maryland—who, it appears, will go through here very easily.

My friend should understand, as I told him privately, there will be some people wanting to speak about this at some length.

The majority leader has indicated there will be no more votes today so there is no need for anyone to hang around on this tonight—that's true? You are going to speak, but there is

going to be no action taken on this other than the motion?

Mr. HATCH. There will be no action on this tonight.

Mr. REID. I withdraw any objection.

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

The clerk will report.

The legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, to answer my distinguished friend, the reason Priscilla Owen is being brought up today is because we are gradually trying to move the President's nominees as quickly as we can. She was nominated on May 9, 2001, almost 2 years ago. I am trying to do it, as close as I can, in chronological order, which seems to me to be the way to go, when I can.

I am not the only one who made this decision; a number of people did, including the majority leader, who desired to bring Priscilla Owen up today. I commend him because she really deserves to be brought up at this particular time. She has been waiting for almost 2 years and went through what I consider to be a tremendously insensitive hearing when the Democrats controlled the committee, and then came back for another hearing just a short while ago, where I think she more than substantiated the reasons why the President would have picked her to be a nominee for the Circuit Court of Appeals.

So I rise today to express my enthusiastic support for the confirmation of Justice Priscilla Owen to the Fifth Circuit Court of Appeals.

The Senate's consideration of Justice Owen's nomination is important. It is important because it represents an opportunity to remedy the mistreatment Justice Owen received last September when she was voted down in the Judiciary Committee along party lines and not allowed a vote on the Senate floor, where she would have been confirmed by Members of both parties. The decision by the committee last September was unprecedented, representing the first time a nominee rated unanimously well qualified by the American Bar Association had been voted down by the Judiciary Committee. This is despite the fact that Justice Owen had—as she does today—the full, unqualified support of her home State Senators, both of whom testified on her behalf.

It is important to note that with regard to circuit court of appeals nominees, it is important to have the support of both Senators, but it is not absolutely essential. In the case of district court judges, it has been all but essential. The reason is that circuit court of appeals nominees represent not just one State but a whole series of States, as is the case in the Fifth Circuit.

It is important because this nomination will demonstrate whether the senate will be fair to a qualified nominee and provide an up and down vote. This isn't just a qualified nominee; this is a well-qualified nominee, according to the American Bar Association.

It is perhaps most important because we have the opportunity to place a great judge on the Fifth Circuit Court of Appeals.

Three weeks ago we took the first step in remedying the wrongful treatment inflicted on Justice Owen last fall by holding an open hearing in which I invited all Members to come and ask her questions. Members were also free to submit any written questions following the close of the hearing. The hearing was informative. It was productive. Justice Owen answered every question during the hearing and responded to lengthy written questions with substantive can cogent answers. As she has done throughout this process, Justice Owen consistently demonstrated her intelligence, her legal acumen, and her respect for the law.

The hearing was valuable for several reasons. First, the hearing allowed us to obtain some much needed perspective and insights from Senator CORNYN, who, as we all know, served with Justice Owen on the Texas Supreme Court and observed her work as a judge day to day for 3 years in hundreds of cases. He knows her. He knows what it is to be a judge and to be called upon to make hard decisions in close cases. He knows the workings of the Texas Supreme Court. He was most helpful in placing into proper context what outsiders seem to think was extremely unusual or striking criticism from her court colleagues in a few cases—and darn few cases.

Senator CORNYN showed that this type of talk is common among court members and that such criticism is perfectly normal and even healthy for a well-functioning judiciary. Judges disagree from time to time, and they may express themselves with fervor during such times. That is to be expected. Senator CORNYN personally attested to Justice Owen's dedication to her judicial duties. He has seen the work and the care she puts into deciding each case. He also attested to her commitment to enforcing the will of the legislature. As Senator CORNYN said,

I know [Justice Owen] is a good judge who always tries to faithfully read and apply the law. That is simply what good judges do, and we can ask for nothing more.

In this regard, it strikes me once again as significant that the two individuals conscripted as star witnesses to discredit Justice Owen as an activist judge—Judge Alberto Gonzales and Senator CORNYN—are actually two of her biggest supporters and attest to her fitness for the bench and for this position on the Fifth Circuit Court of Appeals. Nothing can change that fact no matter how hard some try to pretend otherwise.

Justice Owen is also firmly supported by former Texas Supreme Court Chief Justice John L. Hill and former Justices Jack Hightower and Raul Gonzalez, all of whom are Democrats and all of whom know Justice Owen's record. Justices Hightower and Gonzalez have the additional perspective of judges who personally served with Justice Owen. Fifteen past presidents of the Texas State Bar, Democrats and Republicans alike, have enthusiastically endorsed her. Those who know Justice Owen and her record best know she will make an excellent Federal circuit court of appeals judge.

Second, the hearing allowed us to set the record straight: Justice Owen does not engaged in results-oriented jurisprudence nor does she see such practices as desirable or legitimate in any manner. In addition, there is no credible evidence that Justice Owen harbors biases against plaintiffs or defendants or favors one interest over another. Some have charged that she consistently rules against certain plaintiffs and legal rights. Justice Owen has provided the committee with a long list of decisions which refute that charge. One the issue of results-oriented decisionmaking, let me quote what she said to Senator KENNEDY on this subject:

I do not try to achieve a result, and I don't look at whether I want one side to win or the other side or one segment of our population to be favored over another. That is not my job.

Later she said, regarding her decisions:

Sometimes workers win, sometimes big companies win. The outcome is determined by the law applied to the facts, not my favoring one side or the other.

These are the words of a judge who understand her role and respects the limits of her judicial authority. We don't need politicians and legislators dedicated to achieving certain results, policies, or outcomes serving on the bench as judges who would do the same.

Incidentally, I find it particularly ironic that on the one hand, Justice Owen is faulted by some for engaging in results-oriented decisionmaking, and, on the other hand, she is faulted for not engaging in what amounts to results-oriented decisionmaking. Thus she is criticized for not reaching "balance" in her decisions, for voting too often or too infrequently—take your pick—in the majority or dissent—take your pick—in particular types of cases—take your pick—or for not sticking up for, showing sufficient "sympathy" for, or displaying enough "dedication" to, certain types of litigants.

Of course, we should shun jurists who are looking to achieve "balance" in their decisions or do what may be popular or controversial in a case—apart from what an honest reading of the law and facts in that case would dictate. And it is serious error—indeed, a misunderstanding of the role of our independent judiciary—to simply translate

a judge's decision in a certain case as that judge's intent to achieve a certain outcome or set some broad policy that will favor or prove "hostile" to certain types of future litigants. A decision naturally will prove "detrimental" to one of the parties—one side loses the case—but we can hardly criticize the judge who is following the law as passed by the legislature. It is not a matter of looking to see whether some partisan interest group has characterized a judge as "deaf" to certain concerns or "coldhearted" to certain plaintiffs; it is a matter of looking to see whether a judge can put aside personal feelings and apply the law.

Sometimes, as Senator CORNYN helpfully pointed out during the hearing 2 weeks ago, a judge may or may not like the posture of the case or the record developed in the lower court, but an appellate judge must take the case as it is and make the best decision based upon the law and the facts. That is a judge's job, that is what we expect judges to do, and that is all we should expect judges to do. Justice Owens has lived up to that standard.

Third, the hearing set the record straight on Justice Owen's decisions in judicial bypass cases. No matter how much some would prefer to argue the point, these cases were not about the right to an abortion. There was never any question about the girls' right to an abortion. Indeed, Justice Owen argued in the Doe 2 case that, based on a 1990 Supreme Court decision striking down a Minnesota statute requiring a minor girl to obtain consent from both parents, a statute requiring a girl to notify both parents would also be questionable under the Constitution. Clearly, Justice Owen recognizes a woman's right to obtain an abortion. These cases were about whether a minor girl should be required to notify one parent before obtaining an abortion, in accordance with the Texas state legislation enactments. And Justice Owen has been well within the mainstream of her court in the 14 decided cases, joining the majority judgment in 11 of those cases.

And we should never lose track of the fact that out of the close to 800 bypass cases since the Texas statute was passed, a mere 12 girls have appealed all the way to the Texas Supreme Court. These are usually the toughest cases. By this time, two courts—the trial and the appeals courts—have already considered the bypass petitions and turned them down. Given the deference appellate courts must pay to the findings of the trial court—the court which is in the very best position to listen to the girl, consider all relevant evidence, and hear the arguments—the decision is likely to affirm the lower court rulings denying a bypass. That should be no great surprise. Certainly Justice Owen and her colleagues on the Texas Supreme Court disagreed in some cases, but in all cases there was a genuine effort to apply applicable precedent.

These parental consent cases show that Justice Owen takes Supreme Court precedent seriously: she looks to precedent for guidance, she cites it, and she makes a good-faith effort to apply it to the case at hand. She understands the rules of appellate review and takes pains to follow them. She is a judge who defers to the legislature's considered judgment in its policy choices and earnestly seeks to ascertain legislative intent in her rulings. None of her opinions, to quote the Washington Post, "seem[] to us [to be] beyond the range of reasonable judicial disagreement."

I have been on the Judiciary Committee a long time—27 years now—and I have seen many, many nominees come through the committee. Justice Owen takes a backseat to no one. She has shown herself to be a brilliant, fair, and restrained jurist who will be a strong credit to the Federal courts. Simply put, Justice Owen deserves to be on the bench. I urge my colleagues to do what is right and join me in supporting her confirmation to the Fifth Circuit Court of Appeals.

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

The PRESIDING OFFICER (Mr. CHAMBLISS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### LEGISLATIVE SESSION

##### MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

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

##### POLITICAL AND LEGAL REFORM IN EGYPT

Mr. MCCONNELL. Mr. President, the supplemental appropriations bill passed by the Senate last week includes \$3 million for the Government of Egypt and up to \$2 billion in future loan guarantees. While Egypt remains an important ally of the United States and a partner in our on-going war against terrorism, I continue to be extremely concerned about that country's lack of political, legal, and democratic reforms.

We provide substantial assistance to Egypt on an annual basis. We did so in this supplemental. While loan guarantees and other forms of economic aid may be beneficial to Egypt, we are doing far too little to promote political reforms that would benefit the Egyptian people. It is no secret that I have long felt that the Department of State

and the U.S. Agency for International Development need to do a better job in implementing democracy programs in Egypt that are both substantive and effective. This will require State and USAID to be aggressive in engaging the Egyptians on this issue on an ongoing and consistent basis. To date, this has yet to happen.

Waiting for the Egyptians to engage us on democracy programs is simply not an option.

Some may point to the recent release from jail of sociologist Dr. Saad Eddin Ibrahim, an Egyptian-American who was subjected to a political show trial, as evidence of political and legal reform in Egypt. It is not. Dr. Ibrahim should never have been arrested, should never have been tried, and should never have been jailed. Dr. Ibrahim's only 'crime' was to criticize the Egyptian government and to call for greater freedoms.

I continue to hope that the Secretary of State Colin Powell will clearly, publicly, and forcefully register the concerns of the United States regarding Egypt's commitment to human rights and democracy. It is not unreasonable for the United States to expect its allies to live up to basic standards of human rights and political freedom.

#### VOTE EXPLANATION

Mr. BUNNING. Mr. President, I was necessarily absent for rollcall vote No. 124 on the Kohl Amendment No. 455 and rollcall vote No. 125 on S. 762, and my position on both votes was left out of the RECORD.

Were I present for those votes, I would have voted in favor of both the Kohl Amendment and S. 762.

#### TRIBUTE TO PFC HOWARD JOHNSON II

Mr. SESSIONS. Mr. President, I rise today in memory of PFC Howard Johnson II. Private Johnson perished when his supply convoy was ambushed in the Iraqi city of Nasiriyah. He served his country with dignity, honor, courage and integrity.

America extends her sincerest sympathy to the family and friends of PFC Howard Johnson II upon his death in combat in the service of his country. It is a great form of love to give oneself courageously in unity with others to make our country safer and to create a better life for those long oppressed.

After completing the LeFlore High School ROTC, Private Johnson joined the Army and served in a critical role in the 507th Maintenance Company. The unit was ordered to Iraq and was attempting to provide service and support to forces moving north, where they were attacked and he was killed. He has left behind loving parents, whose lives have been given to the service of the Lord.

Private Johnson is survived by his father, Rev. Howard Johnson, his mother, Gloria Johnson, and two sisters,