

of the confirmation process and to the tradition of this Senate. I strongly support her confirmation. I believe if logic and reason prevail, we will confirm her instead of filibustering this nomination.

This nominee is sterling. She has the highest possible rating of her peers. She has performed as one of Texas's finest litigators and has won election to the Supreme Court of Texas with 80 percent of the vote, having the support of every major newspaper in her State. I find it difficult to see how we now are not even allowing her to have a vote in this body.

They say she was rejected once. I was on the committee. That was when the Democrats were in the majority. They voted a straight party line in committee after I thought she testified brilliantly in examination. That never happened in the 8 years President Clinton was President.

Never did we vote down a nominee in committee on a party-line vote. They say, well, only two of them have been blocked here. In 8 years, there were 377 confirmations of President Clinton's judges. One was voted down. None were voted down in committee. She was voted down on a party-line vote in the Senate Judiciary Committee, but she had not been rejected by the full committee.

If they think she is going to be rejected again, why don't they let us have a vote? Let's vote on it. I suggest this nominee is going to win a majority of the votes in this Senate.

The Constitution makes clear that the Senate has an advice and consent power. It notes, with regard to treaties, that the Senate shall advise and consent provided two-thirds agree. Then with regard to the confirmation of all other offices, it just says the Senate shall advise and consent.

Since the founding of this country, we have understood that to mean the Senate will have a majority vote on the confirmation. There is no other logical thing it could mean. So now we have ratcheted up the game.

I recall distinctly a little over 2 years ago when my Democrat colleagues went to a private retreat. A number of law professors, Lawrence Tribe, Cass Sunstein, and Marsha Greenberg went there, professors all who advised them to change the ground rules on the judicial nominations. It is written in the New York Times. Since then, there has been a systematic change in the ground rules of judicial confirmations. When they had the majority, they attempted to kill nominees in committee on a party-line vote, which had never been done before. And now, amazingly, they are going to the filibuster.

The American people need to understand something important. In the history of this country, there has never been a filibuster of a circuit or district judge. Never. It has always been an up-or-down vote.

I remember when some did not like some of President Clinton's judges and

they said we should filibuster; Chairman HATCH said, No, we do not filibuster judges.

When holds went on too long—the way you defeat a hold is to file a motion for cloture—and a cloture vote was moved for by Republican leader TRENT LOTT to bring up Democratic Bill Clinton's judges. I voted for cloture on each one of them. Sometimes I voted against the judge, but I voted for cloture to bring the vote up because I did not want to participate in a filibuster.

We have a big deal here. Why someone would seek out this magnificent nominee, this person who is not only qualified for the Fifth Circuit Court of Appeals but qualified to sit on the U.S. Supreme Court, and filibuster their nomination, is beyond me. It is just beyond me.

I conclude by saying I spent over 15 years of my professional career trying cases in Federal court as a U.S. attorney and assistant U.S. attorney. I appeared before courts of appeal. I wrote briefs to courts of appeal. I appeared before Federal judges. I think I have looked at her record carefully. I have heard the explanations she has made in committee. I think they are imminently sound and reasonable. I think President Bush could not have found a finer nominee. I have every confidence that she would be a superior judge on the court of appeals, and I am absolutely confident, were she given an up-or-down vote, she would be confirmed.

We need to take seriously our responsibilities here. Let's have an up-or-down vote. Let's confirm this fine nominee. She will serve us and America well.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—EXECUTIVE
CALENDAR

Mr. FRIST. Mr. President, for the past 2 days, we have been working on an agreement looking for an orderly, systematic process by which we could consider some of the pending judicial nominations. It had been our hope we could reach an agreement to consider these nominations this week and early next week. Unfortunately, after a lot of discussions—and we worked on both sides of the aisle in good faith—but after a lot of discussions, it does not appear we will be able to reach the consent agreement.

On our side, we have been prepared to consider and vote on all of the circuit court nominations that are on the calendar now. I believe my Democratic colleagues, at this point, are prepared to vote on just one of these judges. Therefore, unless we can reach a con-

sent agreement tomorrow, following the cloture vote in the morning on the pending Owen nomination, it will be my intention to proceed to the Prado nomination. And following disposition of the Prado nomination, it would be my expectation to proceed to the Cook nomination. I hope both of these nominations, which have received, by the way, bipartisan support, will be considered and confirmed this week.

I think at this point I will go ahead and put forth the unanimous consent request. And then we will have some comment and discussion about where we are.

Mr. President, I ask unanimous consent that on Thursday, at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session and the consideration of calendar No. 105, the nomination of Edward Prado, of Texas, for the Fifth Circuit; further, that there be 3 hours for debate, equally divided between the chairman and ranking member or their designees; I further ask consent that following the use or yielding back of time, the Senate vote, without intervening action, on the confirmation of calendar No. 105; I further ask consent that following the vote, the President be immediately notified of the Senate's action.

I further ask unanimous consent that on Monday, May 5, at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session for the consideration of calendar No. 34, the nomination of Deborah Cook, of Ohio, to be a U.S. circuit judge for the Sixth Circuit; provided further, that there be 4 hours for debate, equally divided between the chairman and ranking member or their designees; further, I ask consent that following the use or yielding back of that time, the Senate proceed to a vote on the confirmation of the nomination, again, with no intervening action or debate.

Finally, I ask unanimous consent that when the Judiciary Committee reports the Roberts nomination, it be in order for the majority leader to proceed to its consideration, and it be considered under a 2-hour time limitation, and that following that time, the Senate proceed to a vote on the confirmation, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, reserving the right to object, I have, along with Senator DASCHLE, worked very hard on this request the majority leader has read into the RECORD. Senator MCCONNELL and the majority leader have also worked very hard. Over the years I have been involved in other matters where we have had very complicated, substantive issues we have been able to work out. I am very disappointed we

cannot work this out because this really does not compare to some of the difficult issues we have been able to resolve previously. But we have not been able to resolve this.

I am really disappointed for a number of reasons. It involves individual Senators who have also devoted a lot of time on this issue, both Democrats and Republicans. But if there were ever an effort in good faith by the two sides, this has been it.

I hope my objection, which I will enter in just a few moments, will not be the end of this. I hope we can, with a night's rest, work something out. For the last two nights we have come within a whisker of an agreement on these three judges. But in the Senate sometimes a whisker stops us, and it has done that.

So I reluctantly object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Kentucky.

Mr. McCONNELL. Mr. President, I say to my friend from Nevada, I share his frustration. These are three nominations that are going to be approved, one of them probably unanimously. The assistant Democratic leader and I have wrestled around with this now for the last 2 days, and we find ourselves still not in a position to lock in a vote on Cook and Roberts.

So tomorrow is another day, and we will try again. But it is sort of an indication of where the Senate stands these days, that even in a situation where you have three judges we know are going to be confirmed, we have not been able to reach an agreement after 2 days' work to conclude the inevitable, which is confirmation of these three judges.

Hopefully tomorrow will bring better results.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I am very hopeful we will be able to make progress. Again, the three Senators who are speaking now, with Senator DASCHLE, have been working very hard with our colleagues to try to reach an agreement. But we have been unsuccessful. We will keep moving ahead, and I am optimistic these three nominees will be confirmed shortly.

I do want to add, really for the benefit of my colleagues, that progress is being made. As my colleagues know, one of the nominees, Roberts, went back to committee, and the understanding was that with him going back to committee, we would have votes, up-or-down votes, on both Roberts and Cook. That is the background. We have been working on that for actually several weeks, and that process is underway. So we look forward to having that become a reality.

That first step, with Roberts going back to committee, was taken. And now the expectation is, and the general agreement is, we are moving in the direction that we will, at some point in

time—we have not been able to lock in the time—have votes on both Roberts and Cook.

Mr. REID. Mr. President, if the majority leader will yield, I know the hour is late. I don't want to talk longer than necessary. I just want the record to be spread with the fact that we have a couple of Senators who have a different understanding as to what the majority leader and the minority leader and Senator McCONNELL and I thought had been agreed to. Senator McCONNELL was not on the floor; just the three of us thought it had been agreed to. There is an honest dispute as to a fact or two. This is just me speaking personally, not for my colleagues. I really think we should be able to work our way through this. It should not be as difficult as it is.

The Democratic leader and I acknowledge that the majority leader intervened right before the recess to get Roberts back for a hearing. We know that wasn't easy for him to do. We acknowledge that. We appreciate that. And we hope we can resolve this procedural quagmire. There certainly has been no bad faith by the leadership on the Republican side or the Democratic side.

Mr. FRIST. Mr. President, let me say, once again, that we will have a cloture vote on Owen tomorrow. And if cloture fails, we will go to Prado and, once Prado is completed, go to the Cook nomination. That will be the general plan.

MORNING BUSINESS

Mr. FRIST. 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.

NOMINATION OF PRISCILLA OWEN

Mr. KYL. Mr. President, I rise in morning business for a moment to speak about the nomination of Priscilla Owen of Texas to the Federal bench.

This is really an extraordinary nomination. It is very troubling to me that it appears most of our colleagues on the other side of the aisle are willing to keep Justice Owen from getting a vote. In the past, even with very controversial votes on Justices to the Supreme Court—and I have, for example, Justice Clarence Thomas in mind, and there was significant opposition to the confirming of Justice Thomas, primarily by Members of the other side of the aisle—the leaders of the Democratic Party understood that tradition called for a vote—probably knowing they would lose the vote. They, nevertheless, refused to support any kind of filibuster and they voted against Justice Thomas's confirmation. But he was confirmed 52–48.

I always respected the things they said at or about the time of that con-

firmation—that they would not ever support a filibuster, regardless of their particular feelings about the nominee. I thought that took courage, and I respected it, coming, as it did, from some of the key leaders of the Democratic side of the Senate. It confirmed to me that the tradition of the Senate relationship of comity we have with the President in dealing with his nominees, and the importance of our responsibilities with respect to confirming Justices of the Supreme Court and members of the Federal bench generally, is such that partisanship and tactical advantage could be laid to the side for the good of the country and these nominations could be voted on.

Now, there have been votes—sometimes—where the nominee lost. Most of the time, when votes are allowed to happen, the nominees prevail. But the new situation we have in this body, starting out with the President's nomination of Miguel Estrada—and now sadly, it seems, with the nomination of Priscilla Owen—we are going to require that unless 60 Members of the Senate agree to allow a vote, we don't get a vote. A filibuster, in other words, becomes the benchmark, the standard for confirmation of judges.

It has never been that way. There has only been one successful filibuster, and that was a very strange situation. There has never been a partisan filibuster in this body until now. It is especially remarkable because, in the case of Justice Owen, for example, one cannot claim, as has been claimed with regard to Miguel Estrada, that her record is unknown or unclear, or that there is more information that needs to be gleaned. She appeared not once but twice before the Judiciary Committee. The reason I wanted to take the floor briefly today is to say to my friends I don't think I have ever seen a nominee who handled herself or himself better than Justice Owen did at those hearings. She was forthcoming, brilliant in her exposition of the law, measured, and she clearly has the temperament to be a good judge.

She has been serving as a justice of the State Supreme Court of Texas. She has the support of another former justice of that court, Judge Gonzales, who obviously is now acting as the President's counsel, and the support of Democrats and Republicans alike.

The American Bar Association, as with Miguel Estrada, has recommended her for confirmation. She stayed at the hearing for as long as Members wanted her to stay. She answered all of the questions. So the same argument cannot be made that has been made about Miguel Estrada.

In fact, one of my colleagues on the other side of the aisle made it clear, in discussing the nomination of Miguel Estrada, that the only thing standing in the way of a vote—they would not necessarily commit to voting for him but at least allowing a vote on him—was producing this information which they say they want from the Justice