

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

Department about his prior employment. But for that, that vote could occur, seeming to suggest that the same thing would be the case with any other nominee—that as long as the information was forthcoming and they knew about the individual, that therefore they could vote.

In fact, the last line, after this colleague talked to others in the Democratic Party, states: Look, if we can just get this information, do you think we can vote? And the answer was: Affirmative, to a person, because, frankly, then we would know for whom we were voting.

There was no commitment to vote for Miguel Estrada but at least they would allow the vote to go forward because they would then know "for whom we are voting."

Well, we do know who we are voting for in the case of Justice Owen. Her record is out there for everyone to see. There has never been a suggestion by anybody that she needs to produce more in the way of a record. It is there to be evaluated.

I suspect the reason Members on the other side of the aisle will not allow her to come to a vote is because they fear she will be more conservative as a justice than they would like to see. Let's be honest about it.

I voted for numerous circuit court nominees of President Clinton knowing they were far more liberal than I am. On my own circuit, the Ninth Circuit Court of Appeals, I voted for several who I knew were more liberal, and their voting record subsequently has borne that. They were confirmed. I voted for them. I felt President Clinton was the President; he was elected by all of the people. He had the right to nominate his own people, and if they were otherwise qualified, then I ought to vote for them. That has always been the tradition, that has always been the standard, by which we have judged these candidates for circuit court. So it is very troubling now to have a new standard imposed on us.

I come this morning to note that we are soon going to go back to the nomination of Priscilla Owen. I implore my colleagues to think about what they are doing by creating the 60-vote standard. There is no way that can be the standard only for Republican Presidents and not Democratic Presidents. It is either going to be the standard or it is not. If it becomes the standard for all Presidents, then I believe it is only a very short period of time before the confirmation process is going to grind to a halt because there will always be political differences.

By and large, that is what divides the Democrat and Republican Parties. We view life a little bit differently. We are all great Americans. We all support the troops and all want the judiciary to succeed, but we have some philosophical differences. That is fine, but they should not be the basis for not confirming judges or, more importantly, for requiring 60 votes to con-

firm because it is a very rare Senate in which one party has more than 60 votes in controlling the Senate. So it is basically going to grind the confirmation process to a halt.

That is a breach of our comity to the judicial branch; it is a breach of our obligations to the American people, to ensure justice is done. We know that justice delayed is justice denied. We have already heard from the Supreme Court Chief Justice about the emergencies that exist because we cannot fill these vacancies.

We have a crisis. We have to find a way to resolve this crisis. I suggest that the simplest way to do this, that is fair to everybody, is the way we have always done it: Express yourself, allow the vote to occur, vote your conscience and then move on. But do not hold up the votes simply because you have a philosophical disagreement with the President who nominates these candidates.

I urge my colleagues to think carefully because in the case of Priscilla Owen, as the bar association found, as the Judiciary Committee concluded in its most recent action by passing her out on the Executive Calendar, she is a fine justice. She would make a fine member of the Federal bench. There is no legitimate reason to oppose her.

I urge my colleagues to think about this as we focus on her qualifications, on the relationship between the Senate and the House, and on the obligation we have to the courts and to the American people. This is serious and we ought to be acting in a serious way. I urge my colleagues to support the nomination of Justice Priscilla Owen.

TRIBUTE TO EMILIE WANDERER

Mr. REID. Mr. President, I would like to pay tribute to Emilie Wanderer, of Henderson, NV, on the occasion of her 101st birthday, which she celebrated earlier this month.

Emilie Wanderer is the oldest member of the Nevada bar, but her significance goes well beyond her longevity. She both contributed to, and exemplifies, the progress our society has made in terms of quality. She broke down barriers for herself and for others. During a time when many women were discouraged from pursuing higher education and many were excluded from professional opportunities, Emilie Wanderer embarked on a legal career in addition to raising her children.

Her noteworthy accomplishments include becoming the first woman to practice law in Las Vegas, being the first woman to run for district judge in Nevada, and joining with her son John Wanderer in the first mother-son legal practice in the State. She has been an inspiration and a role model for Nevadans, especially for women pursuing careers in fields traditionally dominated by men.

Through her legal work and through her life, she has made our State a better, kinder, fairer, and more just place.

Emilie Wanderer is considered a legend in the southern Nevada civil rights community. Several decades ago, racism and segregation plagued Las Vegas like so many places throughout America. Earlier this year when we celebrated African American History Month we rightfully recalled the role that Black leaders played in the civil rights movement, but I think it is important also to recognize that some whites—not only famous and prominent people but also those who never received much attention or credit—were committed to the pursuit of justice and fairness.

Emilie Wanderer is one such person who helped bring about progress in race relations in Nevada. Early in her career, she served as legal counsel for the Nevada chapter of the National Association for the Advancement of Colored People, and she held NAACP meetings within her own home, even at the risk of harassment, threats and intimidation. She believed it was the right thing to do, and she had the courage of her convictions.

Emilie Wanderer's commitment to, and contributions to, promoting social justice and securing equal rights for all the people of Nevada deserve to be recognized and praised. On behalf of our State, I thank her and send my best wishes.

COMMEMORATING THE 35TH ANNIVERSARY OF THE DEATH OF MARTIN LUTHER KING, JR.

Mr. DURBIN. Mr. President, 35 years ago on April 4, 1968, Martin Luther King, Jr.'s life was tragically cut short by an assassin's bullet. Dr. King was just 39 years old. In 1963, Dr. King delivered a funeral eulogy for the children who were killed by a firebomb at the 16th Street Baptist Church in Birmingham, Alabama. Dr. King said: "Your children did not live long, but they lived well. The quantity of their lives was disturbingly small, but the quality of their lives was magnificently big." Dr. King's own words could be said about himself.

Only three Americans have ever had a Federal holiday named for them by Congress. Two were presidents George Washington helped create our Nation and Abraham Lincoln helped preserve it. The third, Martin Luther King, Jr., never held an elected office but he redeemed the moral purpose of the United States. He reminded us that since we are all created equal, all of us are equally entitled to be treated with dignity, fairness, and humanity.

Last month I had an opportunity to visit the State of Alabama for the first time. I went there with Democratic and Republican Members of Congress, on a delegation led by Republican John Lewis from Atlanta, GA. We paid a visit to some of the most important spots in American civil rights history. Dr. King's fingerprints are on these and countless other watershed events in American civil rights history.