

When he goes back through all of the grievances of the past in the judicial confirmation process, real or perceived, he says the system was broken back then but it is not now.

He also says that because Democrats have voted or allowed a vote—they haven't necessarily voted for them, but they have allowed a vote—on 123 of the President's judicial nominees and disallowed votes on only 2, that it somehow makes it all right.

There is an important point that needs to be made. When 123 of President Bush's judicial nominees have been confirmed and 2 have been blocked by unprecedented filibusters—and please understand there has never been a filibuster before, a true filibuster of judicial nominees before in the history of the Senate before Miguel Estrada and Priscilla Owen—how can some of these same people stand on the floor of the Senate or in the Judiciary Committee or in front of TV cameras and say President Bush is nominating only ideologues. Back in my State, some of the names I have heard these nominees called would be fighting words. If somebody called you some of the names I have heard these nominees called, indeed the President for nominating some of these same people, those would be simply fighting words.

We are not fighting here today. I am simply trying to make the point that the sort of harsh, shrill, unreasonable, emotional allegations being made by some of these special interest groups that are being repeated by some Members of this body when it comes to these nominees simply don't stand up to any test of reason.

Two years for a judicial nomination is not a sign of a healthy judicial confirmation process. It is a sign that the system is broken and needs to be repaired.

I yield to the distinguished Senator from Kentucky.

Mr. MCCONNELL. I say to my friend from Texas, if he will yield the floor and let me get the floor, we will do this very quickly.

Mr. CORNYN. I am happy to do so.

The PRESIDING OFFICER. The Senator from Kentucky.

#### UNANIMOUS CONSENT REQUEST— H.J. RES. 51

Mr. MCCONNELL. Mr. President, the assistant Democratic leader and I have been working over the last few hours to come up with a consent agreement with regard to handling the debt limit. We have now reached agreement.

Therefore, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, the Senate proceed to the consideration of Calendar No. 80, H.J. Res. 51, the debt limit extension; that first-degree amendments be limited to 12 per side, with relevant second-degree amendments in order; provided that no amendments with respect to gun liability or hate crimes be

in order on either side; that upon disposition of all amendments, the joint resolution as amended, if amended, be read the third time, and the Senate then vote on passage of the joint resolution without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator does not have the floor.

Mr. REID. Would the Senator from Kentucky withdraw his consent at this time?

Mr. MCCONNELL. Mr. President, I withdraw the unanimous consent request for the time being.

I yield the floor.

#### OWEN NOMINATION

Mr. CORNYN. Mr. President, I have some further remarks I want to make with regard to the Owen nomination. I know there are other Senators who will be coming to the floor. I certainly want to give them an opportunity to speak on that subject if they wish.

As I was saying, the comment of the Senator from North Dakota that 123 Bush judicial nominees have been confirmed and only 2 obstructed, as these 2 fine ones have been, and that is a sign that the system is not broken really is at odds with the caricature I have heard and the Nation has heard about the type of person President Bush has nominated for judicial office. The truth is that they are uniformly highly qualified, able, and experienced, and should be, and are the same type of people who should be confirmed; and why they have picked out these 2 nominees against whom to engage in an unprecedented filibuster is, frankly, beyond me.

I see the Senator from Kentucky and the Senator from Nevada here. I yield the floor to them.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

#### UNANIMOUS CONSENT AGREEMENT—H.J. RES. 51

Mr. MCCONNELL. With apologies to the Senator from Texas for the interruption, we would like to try one more time to reach an agreement on something Senator REID and I have been working on for the last few hours.

I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, the Senate proceed to the consideration of Calendar No. 80, H.J. Res. 51, the debt limit extension; that first-degree amendments be limited to 12 per side, with relevant second-degree amendments in order; provided that no amendments with respect to gun liability or hate crimes be in order on either side; that upon disposition of all amendments, the joint resolution, as amended, if amended, be read the third time, and the Senate then vote on pas-

sage of the joint resolution, without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### UNANIMOUS CONSENT AGREEMENT—S. 113

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, Calendar No. 32, S. 113, the Foreign Surveillance Act, be referred to the Senate Intelligence Committee and that the committee be automatically discharged from further consideration of the measure and the Senate then proceed to its immediate consideration under the following limitation: That there be 2 hours of general debate equally divided between Senator KYL and Senator SCHUMER, or their designees; that the only amendments in order, other than the committee-reported substitute, be the following: Feingold amendment regarding reporting be considered and agreed to; Feinstein amendment regarding permissive presumption, with 4 hours of debate equally divided.

I further ask unanimous consent that following the disposition of the above-listed amendments and the use or yielding back of the debate time, the committee amendment be agreed to, the bill, as amended, be read the third time, and the Senate proceed to vote on passage, with no further intervening action or debate.

Further, I ask unanimous consent that following passage of the bill, the title amendment be agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, on the paragraph indicating the Feingold amendment regarding the report being considered and agreed to, is there any time on that?

Mr. MCCONNELL. No.

Mr. REID. No time. Just reported and agreed to. No objection.

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

Mr. MCCONNELL. Mr. President, I apologize again to the Senator from Texas for the continued interruptions. I have no anticipation that I will be doing that again.

The PRESIDING OFFICER. The Senator from Texas is recognized.

#### OWEN NOMINATION

Mr. CORNYN. Mr. President, I notice the Senator from Alabama is here, and I believe he wants to speak on the Owen nomination. I will turn the floor over to him in a few minutes.

There are a couple of things I want to finish responding to regarding what the Senator from North Dakota and the Senator from Nevada have said, and the way they characterize Justice Owen—as an activist, as somebody who is out of the mainstream, and in terms of judicial qualifications.

I just point out that the picture they paint is totally at odds and inconsistent with the fact that Justice Owen has broad, bipartisan support in the Senate, and it is only a narrow minority of the Senate that is blocking the bipartisan majority from actually voting. To me, that is not evidence of an extreme position or somebody who is out of the mainstream.

I point out and remind my colleagues that former Texas Supreme Court justices, Republicans and Democrats, a long list of former Presidents in the State bar of Texas, Republicans and Democrats, have endorsed her confirmation. That is hardly evidence consistent with the portrait that her detractors are attempting to paint and that was painted by the Senator from North Dakota just a few moments ago. In her last election, 84 percent of the voters in Texas voted for her reelection—hardly consistent with the picture of an extreme, out-of-the-mainstream person and nominee.

I will tell you that in 2000 virtually every major newspaper in Texas endorsed her reelection. Here again, that is not consistent with the portrait being painted today by her opponents.

Let me finally address the issue on which Justice Owen has been criticized, and that is the Texas parental notification statute. I point out to my colleagues that Justice Owen had no choice but to interpret the Texas parental notification statute as adopted by the Texas Legislature. She had no choice. She did her best. I think it is a record of which she and the Senate can be proud.

But I think some of the arguments against this nominee are really wolves in sheep clothing. In other words, I think some of the special interest groups that are opposing Justice Owen's nomination really object to the Texas parental notification statute—a statute which I strongly support because I believe it protects parental rights, in order to at least be involved in one of the most serious and profound decisions that a young girl may have to make in her young life, when under Texas law, if she wanted to get her ears pierced at a doctor's office, she could not do so without parental consent.

This law does not require consent; it requires notice to at least one parent before a minor child decides to get an abortion. As I say, I think a lot of the arguments being made against Justice Owen and this nomination are really masked by an underlying objection by some of these special interest groups to the fact that Texas has—like the vast majority of States—a parental notification law. Eighty-four percent of the American public supports parental rights and laws requiring that a minor child give notice at least to a parent before getting an abortion.

The U.S. Supreme Court has upheld the validity of those laws as not impeding access to an abortion, but merely involving a parent and letting a parent know. Of course, if for some reason,

within the letter of that law, a parent cannot be notified, or should not be in the eyes of a judge, there is a judicial bypass provision, and that was exactly the law that Justice Owen was duty-bound to interpret as a member of the Texas Supreme Court in dealing with that Texas parental notification statute.

Justice Owen, in a vast majority of those cases, voted with a majority of the court and dissented from the majority less often than two other justices on that same court.

I would point out that the author of the Texas parental notification law, Senator Florence Shapiro, supports Justice Owen's confirmation.

One other point. I hope we can finally put this issue to bed because it seems as if it gets trotted out every couple of days when it comes to the Owen nomination, and that is the allegation that Alberto Gonzales, White House counsel, formerly a member of the Texas Supreme Court who served with Priscilla Owen, accused her of judicial activism. That is just not true. That is not the fact, and anyone who cared enough about the issue would certainly read the opinions that are referred to by those who are making that fallacious claim.

What happened in that case is some members of the court accused Judge Gonzales of misreading the statute. He stated it would be judicial activism for someone to change the law to suit their own personal beliefs. He did not say Judge Owen had done that.

To me, that settles the issue completely. Here again, you find the facts more divorced from what is happening, what is being said as you see a person, a fine, decent person, a highly qualified candidate for this judicial office, being attacked unfairly. As you see the facts twisted and this caricature again being painted, it bears no relationship to the facts.

I remember Senator ARLEN SPECTER the other day, I think it was in the Senate Judiciary Committee, saying it is clear the Rules of Evidence that apply in court that somebody speak from personal knowledge, that it be trustworthy, it be credible, do not apply to statements made on the floor of the Senate or in the Senate Judiciary Committee. People repeat facts other people say that may be completely wrong or by people who have a motive to bend the truth.

Justice Owen, has been a victim of people who have bent the truth or who care nothing for the truth and who care only for defeating this very fine nominee by our President for this judicial office.

Mr. President, we are not going to give up the fight to have a bipartisan majority of the Senate vote on either Judge Owen's confirmation or on the confirmation of Miguel Estrada. As we heard yesterday before the Senate Subcommittee on the Constitution, constitutional scholars said there are serious constitutional problems with the

argument that somehow the cloture rule, which requires 60 votes to cut off debate, can trump the Constitution, which requires only a majority vote.

Senator SPECTER yesterday alluded to something called the nuclear option. He said he was not going to talk about it. All I wish to say is we are not going to give up, and I will not give up when I see a good person, an honest, a decent person who has worked hard, who has risen to the top of the legal profession, who has become a judge and excelled in her job as a judge, who has been faithful to the oath she has taken to interpret the law and not to be a superlegislator or be a legislator wearing a black robe, I am not going to stop as long as it is possible to do anything within my power to see her confirmed and to see that justice and fairness be provided to this good and decent person.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Texas. He knows Priscilla Owen. He served on the Texas Supreme Court. He served as the attorney general of Texas. He knows the legislators who passed the laws in Texas. He knows Justice Owen's history and the respect she has in the community. One can sense his feelings of how bizarre it is to have this wonderful woman, who is popular throughout the State, with 84 percent of the vote, unanimously well-qualified rating by the American Bar Association, attacked and have people come to this body and say she is some sort of extremist. It is really a sad day.

My colleagues on the other side say: We are only objecting to two nominees. Why would they pick Priscilla Owen to be one of the two? Justice Owen is so marvelous. They say she was turned down last year. That was when we had an interlude in which the Democrats had the majority in the Senate and they had a majority in the Senate Judiciary Committee. That committee, on a straight party-line vote, voted down this wonderful candidate, Priscilla Owen, for the Federal court, on a straight party-line vote.

That was not done in the 8 years President Clinton was in office when Republicans had a majority. Republicans never voted down one of his candidates on a straight party-line vote. We ought to think about that.

Senator CORNYN is a tremendous addition to the Senate. The Priscilla Owen matter was raised in his race. It was a matter he discussed, and the voters voted for Senator CORNYN to be their Senator, and he was on record as supporting her nomination.

Now that he is here and helped give us a majority, we moved her out of the committee. She really was not voted down in committee. She was blocked in committee. They tried to keep her nomination from reaching the floor of the Senate, where it could be voted up or down and succeed, until the majority changed.

It is frustrating to me to hear the Democratic Members of this body say: Miguel Estrada can be confirmed or we can move him up for a vote as soon as he turns over all of his records, all the memoranda he wrote while he was at the Department of Justice.

The Presiding Officer, the Senator from Minnesota, is a skilled attorney. He knows these issues. When a lawyer works for a client, the records are the client's records; they are not the lawyer's records. A lawyer cannot pass out his memoranda to his client without the client's permission.

In this case, Miguel Estrada had a client. His client was the United States of America, and his duty and responsibility was to give his supervisors in the Department of Justice—4 of his 5 years he was in the Department of Justice were during the time President Clinton was President of the United States. So his memoranda went to Clinton appointees and their people. They said just turn them over.

This is a big deal. I served almost 15 years in the Department of Justice. It was a great honor for me to hold that position. I think it is the greatest, most honorable law firm in the world. It was great to be there. They are good lawyers. They follow the law.

The Department of Justice should never give over their internal memoranda on a fishing expedition like this just to try to buy votes in the Senate to get somebody confirmed. They should stand firm, and the heat needs to be on those who ask for these records to be turned over.

It was said that some of those records have been turned over in the past. I remember one Senator waving around the documents saying it had been done before. I got them out of the RECORD. I determined that it was the Robert Bork nomination.

Most Americans who have been around a few years remember the Bork deal. He was the Solicitor General of the United States and was moved up to Attorney General.

He fired Elliott Richardson, the midnight massacre, and the Senate had a specific inquiry.

When Bork was in the Department of Justice, they wanted to know about the memoranda he had written involving Watergate, which raised questions of ethics and impropriety and misconduct.

It is quite a different thing if a Member of this Senate says, or this group of Senators say, we want certain records, and those records are records that may give light on a specific wrongdoing that has been alleged to have occurred; there is some sort of concern over an act of wrongdoing which has occurred, but they did not suggest Miguel Estrada was involved in a single act of wrongdoing. They just said: We want to see every memorandum he wrote to the Department of Justice, memoranda owned by the Department of Justice, part of the Department of Justice's work product, part of their decision-making process.

They should not turn it over. These Senators, some of whom are lawyers on the other side, know that, and they ought not to be asking for that. I do not believe they would accept it if Republicans were asking for it in the same circumstance. We have to have a certain amount of collegiality, we have to have a certain degree of fairness and respect for proper procedures, and it is disrespectful of the whole governmental process to insist that the work product of the Department of Justice, in a blanket fishing expedition, needs to be turned over to Senators in exchange for getting an up-or-down vote for a highly qualified nominee.

I am not pleased with what is going on. We all remember well when President Bush was elected and the Democrats had a Senate retreat, and one of the things they discussed was what to do about nominations. They had three well-known liberal professors known throughout the country, Laurence Tribe, Marsha Greenberger, and another lawyer lecture them. These liberal professors told Senate Democrats that they ought to change the ground rules, that they do not need to do like we have done for 200 years since America's founding. It is clear to me that as a result of that conference, somewhere along the line a majority of the Democratic Members of this body agreed, and they have changed the ground rules of confirmations in a way that has never been done before.

In committee, they voted down two nominees on a straight party line vote. They said we ought to change the burden of proof and put it on the nominee. They made a number of other allegations and changes in the process that they said ought to occur. They asked to strengthen the blue slip policy that gives an objecting home State Senator power to block a nomination. When President Bush was elected, they had a meeting and demanded that they have more power.

At the same time, they complain in this body about nominees who did not move because of the traditional exercise of the blue slip. They wanted to have even more power to block nominees of President Bush than existed to block President Clinton's nominees. So it is a frustrating thing.

The most dramatic and historical change of the ground rules occurs when this body engages in filibusters. I noticed they said Mr. Paez was held up 1,000 days. Well, Priscilla Owen and several others are at about that number right now.

How did the Paez matter come to a vote? In my strong view, Paez should never have been confirmed as a Federal judge based on the record we had. I opposed his nomination. But how was it brought up? How do you deal with a hold? You move for cloture. It is a process. No filibuster was ongoing. It just was not being brought up for a vote.

The majority leader of the Republican Party, TRENT LOTT, moved for

cloture. I voted for cloture even though I opposed the Paez nomination. Cloture was voted overwhelmingly. Why? Because we did not believe that filibuster was an appropriate remedy for dissatisfaction over a judge. The Republicans believed that a judge should not be filibustered. It has not been done for a circuit or a district judge since the founding of this country, until our colleagues on the Democratic side have now openly filibustered Priscilla Owen and Miguel Estrada.

If they were to say, this is an extremist judge who lacks qualifications, and those sorts of things, maybe we ought to be able to use that power. But that is not the case with these two judges.

These two judges were rated by the American Bar Association. The American Bar Association is an institution that on legal and social issues is, I think, consistently to the left of the American people and the Senate. For example, they oppose any laws restricting abortion and they take a number of very liberal positions on social issues. But the American Bar Association is an entity that understands what the legal practice is about.

They can go out in the community pretty quickly and determine if someone is irresponsible or an extremist. They will rate them accordingly. Well, the American Bar Association has done in-depth background checks on Miguel Estrada and Priscilla Owen. As I recall, they have one person who does a lot of the work. They talk to all of the judges before whom the lawyer practices. They talk to the opposing counsel, co-counsel. They talk to the leaders of the bar in the community. They talk to just about anyone who would have an opinion on them.

They talk to civil rights leaders. They always talk to minority representatives to make sure they have broad-based feedback. Then there are 15 or so of them who meet and evaluate this nominee, and they issue a rating.

With regard to Priscilla Owen, a justice on the Texas Supreme Court, elected with 84 percent of the vote last time, they unanimously rated her the highest rating they give: Well qualified.

Miguel Estrada, editor of the Harvard Law Review, clerked for the Second Circuit Court of Appeals, clerked for Justice Anthony Kennedy on the Supreme Court of the United States, something very few lawyers ever get to do in their life—it is one of the highest honors one could have—they interviewed all the lawyers and all the people, including, I am sure, people in the Clinton Department of Justice where he worked, and they rated him unanimously well qualified, as both of them should have been.

So this talk that they are somehow extremist is just not right. When we see a woman of such good demeanor as Priscilla Owen displayed during her confirmation process—she took all of those questions, many of them based on false premises, with great skill and

aplomb, I thought, and handled herself well, as did Miguel Estrada—this is a very unsatisfactory time in this Senate, when now for the first time in the history of America we have filibusters of circuit judges. This is not about a judge who some lawyers think has an integrity problem. Nobody has suggested that. They are not nominees who people think are somehow unqualified intellectually, or they have lack of experience or lack of ability to do the work. These are the best of America.

Many of us have asked, why would they pick these two nominees? It seems one reason we keep coming back to—and it is so bizarre, I hate to repeat it almost—is that both of these nominees are clearly worthy of serious consideration for the Supreme Court of the United States. They are so fine and have such a marvelous breadth of experience and record of accomplishment in their lives that both of them ought to be on any shortlist for the Supreme Court of the United States. So is that why we are having an objection? They are too good, too qualified, too capable, too intelligent? I do not know, but something is awry when the filibuster is used against people of this quality. I feel very strongly about that.

I agree with Senator CORNYN, and I am glad he is having hearings about it. I am glad he is inquiring into this because he has the judicial experience, integrity, and capability to maybe help us work our way through this maze. Maybe we can figure out a way to get around this. We certainly know the Constitution of the United States, clearly, in the case of advise and consent, will be by majority vote. It is very difficult to interpret it any other way.

Let me say a little bit more about the sterling qualities of Priscilla Owen. She finished at the top of her class at Baylor Law School and aced the Texas bar exam. She made the highest possible score on the Texas bar exam. What better proof of legal ability objectively analyzed than by the tests you take for a bar exam. She passed that with flying colors, with the highest possible score. She was a partner at one of Texas's finest firms, Andrews and Kurth, when she ran for the Supreme Court in 1994. She practiced and litigated for 17 years and was recognized as one of Texas's finest lawyers; not some office clerk who never went to court, but a litigator who was out in the courtrooms in the Federal court and the State court trying cases and developing a reputation of excellence.

She is a member of the American Law Institute, the American Adjudicatory Society, the American Bar Association, a Fellow of the American and Houston Bar Foundations. She was re-elected to the Supreme Court in 2000, garnering 84 percent of the vote. She spent so little money in her campaign, despite her big win, that when it was over, she had a good bit of money left. She did something I have never heard of a politician doing: She went back

and checked her contribution list and sent back everybody the money they gave to her. There is certainly no Senator who has done that. We like to keep our campaign account, thinking we may need it again some time. That was a voluntary action on her part that demonstrates her high character and high standards.

She serves as the liaison to the Supreme Court of Texas court and mediation task force and the statewide committees on providing legal services to the poor and pro bono services. This mediation task force, I know, causes grief to some of our aggressive litigators, but mediation is a growing method of settling disputes, short of full-fledged and highly expensive litigation. She has been at the forefront of that. I have not heard anyone complain about that.

I ask myself, What is it people would complain about? Is it because she is looking for ways to reduce the costs of protracted litigation?

She was part of a committee that successfully encouraged the Texas legislature to enact legislation that has resulted in millions of dollars a year in additional funds for providing legal services to the poor. She does not just sit there in the office and write opinions. She cares about justice. She wants to make sure everyone has a good day in court. She participated in a committee that raised millions of dollars to help the poor have better legal counsel. That is important. This is some extremist we are talking about?

She serves as a member of the A.A. White Dispute Resolution Institute. She was instrumental in organizing a group known as Family Law 2000 which seeks to find ways to educate parents about the effect of a dissolution of a marriage, the effect on their children, and to lessen the adversarial nature of legal proceedings when a marriage is dissolved. That is important. A lot of parents get so caught up in the anger at their spouse. They have to realize that children are completely baffled by this. They are watching this fight going on with the parents, both of whom they love, and they want to be together, and it is a painful experience. The legal system and the court system of America needs to do a better job of thinking about the impact of these hostile, aggressive divorce proceedings on children. She took a lead in that. This is an extremist?

Among other community activities, she serves on the Board of Texas Hearing and Service Dogs for the blind. She is a member of the St. Barnabas Episcopal Mission in Austin, TX, where she teaches Sunday school and is the head of the altar guild. Is this an extremist Episcopalian? That is a contradiction in terms.

She earned her BA from Baylor and graduated cum laude from Baylor, and was a member of the Baylor Law Review. She was honored as the Baylor Young Lawyer of the Year and as a

Baylor University outstanding young alumni.

That led up to her sterling career and practice, her election to the Supreme Court of Texas, her nomination by the President of the United States, who is from Texas and knows her and knows her record. He nominated her for consideration by this body which led to her eventual rating by the Bar Association of America, unanimously well qualified. I am proud of her in that respect.

They complain about these parental notification cases. In Texas, the law of Texas is a modest law. It says before a child can have an abortion, before they can be taken off someplace by some older boyfriend to have an abortion—and too often that is what the cases are—they at least ought to tell one parent. If they choose not to do that, they can go to court. If they have a good reason why they should not tell either parent, the court will allow them not to do so. It is called parental notification law. I think it makes sense. Virtually overwhelmingly, the American people support that; 80 something percent of the people support that. In Texas, you cannot get your ears pierced or a tattoo without parental consent—not just notification. So for Heaven's sake, it should not be considered extreme to require notification prior to an abortion. The Supreme Court of the United States has upheld these laws.

Let me give the hard facts on these cases. The way it works in Texas, a child goes to a court and says: I don't want to tell my parents; they might get mad. The judge has a hearing. If the judge disagrees and says: No, you need to tell one of your parents; we believe you can tell your mother, you should tell your mother before you undergo this procedure, if you want to go forward, you can, but you should tell her. Then, if the young person is not happy with that, they can appeal. They take the appeal to the court of appeals in Texas, a three-judge court, and that three-judge court reviews the opinion of the trial judge. If the trial judge said the young person did not have to tell the parents, there is no appeal. It is over. The case will never even get to the court of appeals unless the trial court says no, you must tell your parents. If the court of appeals overrules the trial court, the case ends there.

If the appellate judges after reviewing the record of the trial court conclude the trial court was correct and affirms that decision, then the young person can appeal again. In this case it would go to the Texas Supreme Court where Justice Owen sits.

By the time it has gotten to the court, a trial judge has ruled notification is appropriate, and a three-judge intermediate appellate court of Texas has ruled it ought to be done.

These are the numbers. Justice Owen agreed with the lower court opinion and voted to require parental notification in 10 of the 14 cases. She voted to

reverse the lower court and grant the exception outright two times. She voted twice to just flat reverse the lower court and say the young person is entitled to an exception—on 2 of those 14 cases. And on 2 cases she did not believe the lower court had done it correctly, had not heard the case fairly, and sent it back down for further hearings on the facts.

In my experience as a litigator who has been involved in trying a lot of cases, that is about the percentage you would expect. You would expect that by the time a case has gone through two levels that the lower courts are probably right most of the time.

So I just don't think that is an extreme record at all. I cannot believe they continue to persist in arguing she is somehow a judicial activist. As Senator CORNYN has pointed out, that was a reference to another judge's dissent; not her opinion even. It was unfair to say Judge Gonzales has said she was an activist. It is not so.

As a matter of fact, I would add this: They say this lady is an extremist. She is not fit for the Federal court because she has not voted right on these parental notification cases. It is almost humorous to think about it. But she voted with the majority of the Texas Supreme Court in 11 of the 14 cases before that court. The full court voted to require parental notice in 7 cases and to grant the exception outright in 3 cases and to remand 4 cases.

These are just excuses, for some reason, that are out there that have been used to block her. They do not withstand rigorous analysis.

One more thing. Let's say she made a mistake. I don't know how many hundreds of cases she has heard on the supreme court. But the American Bar Association and the legal community in Texas, they know her. After a while you form an opinion of a judge and a lawyer. You have an opinion as to whether or not they have good judgment, whether they are capable, whether they work hard, whether they have integrity. Even if they make a mistake somewhere along the line in a case, that is not disqualifying. Any judge who ruled on thousands of cases is not going to be mistake free.

I would say she has done extraordinarily well. We ought to listen to the opinions of those who know her, like Senator—Judge—CORNYN, her former colleague on the court; like all the major newspapers of Texas; like the American Bar Association; like her colleagues on the bench; and like President Bush, who knew her in Texas. She is qualified to an extraordinary degree and would make a magnificent circuit court judge and should be confirmed. We ought not to be in the midst of a historic filibuster on any nominee, really, but particularly this one.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### NATO EXPANSION

Mr. SESSIONS. Mr. President, we are waiting for wrap-up. I would like to make a few brief remarks in support of the provision offered by Senator WARNER and Senator LEVIN and others that deal with the expansion of NATO, and in particular, the rule of consensus in NATO.

NATO is now 26 countries. It is a group that has provided a bulwark for freedom and liberty against the totalitarian Communists of the Soviet Union and their footstools they dominated in Eastern Europe. They stood firm for a half century, and we have lived to see the collapse of the wall, collapse of the Soviet Union, and freedom spread across Eastern Europe. It is one of the great events in all of history, maybe the highlight of the 20th century.

The NATO alliance has a rule called the consensus rule. It says:

In making their joint decisionmaking process dependent on consensus and common consent, the members of the alliance safeguard the role of each country's individual experience and outlook while at the same time availing themselves of the machinery and procedures which allow them jointly to act rapidly and decisively if circumstances require them to do so.

That is the rule. We have gone up in numbers. We are going to add more members now. We are probably going to go over 30 members. As a result, we have to ask ourselves what is this unanimous group? What happens if a country goes bad? What if the Communists take back over one of their former footstools they ran over in Eastern Europe? What if a Milosevic takes over a country and rejects the ideals of NATO? What if some radical religious party takes over a country and leads it on the wrong road? What if a Saddam Hussein, a fascist-type government, takes over one of these countries? We are not able to act anymore? We have to sit here and stop all of NATO's legitimate actions?

What this amendment would do is ask the NATO alliance to talk openly and honestly about this problem. It does not require anything. What it requires and asks is the NATO ministers meet and discuss this rule and see if they want to keep this rule.

It focuses on a couple of questions. One is should you always have to have a unanimous vote? I remember very distinctly after the Kosovo effort, which was mainly driven by our air power, the commander of the American Air Force who directed our air campaign against Kosovo, answered some questions I asked him.

I asked him if the unanimous rule and consent requirement hinder his selection of targets.

He said: Yes.

I said: Did that hindrance delay the successful outcome of the war? Did it cost more lives of Kosovo citizens and Serbian citizens? And did it endanger American lives?

Yes.

Why did this happen? The NATO group approved even the targets our Air Force were selecting before they committed their flights over Kosovo. This is not healthy. This is not a good way to run a war. Now we are going to have 30-plus nations, some of which may have ethnic or political or weird ideas, and they may object to targets. They may object to tactics.

We had an incredible 11 days to figure out a way to get NATO to vote to support Turkey, in case Saddam Hussein attacked Turkey. Some have said that was a good record. Eventually they did get the agreement, but they had to move outside the political NATO to the military NATO. That means France is not in it. You know France is not even a part of the military NATO compact. So they got out of the political NATO and finally got our people all to agree to defend a NATO member against Saddam Hussein. It took 11 days to do so.

I would say to my friends in the NATO alliance, we are so proud of this alliance and what it has achieved. We are proud of the commitment and high ideals that NATO has set for that region and throughout the whole world. But we are a little nervous. We think it is about time to think through this consensus rule.

I don't want to stir up anything. I don't want to say that we don't respect any one nation's vote in NATO nor give it great respect. But I do think that a mutual respect to the United States' overwhelming majority of NATO would be to ask questions: Wait a minute. What kind of mechanism could we do that would protect small nations, and that would protect the minority of nations but allow NATO to act legitimately even without an absolute unanimous vote?

I think Senator WARNER, Senator LEVIN, Senator ROBERTS, and others who have offered this are on the right track. I have asked about it for some time. In fact, when the matter came up several years ago to expand NATO, I asked a number of the witnesses from President Bush's administration some tough questions about it. They were forward. I asked about the rule of consensus. They defended it. They said, Well, we think it is going to be OK. Senator LEVIN, likewise, took the same position. When we had the recent hearing on the further expansion, we dealt with this same issue.

I quoted some of Senator LEVIN's remarks previously. I think this is a good time for us to move forward to bring this to a head. Let us talk about it openly. I don't think a discussion without any requirement to act could upset anybody. Let us talk about it and maybe we can make some progress.