

were bought some beer by some GI's who knew we were (for want of a better word) very uptight. All they talked about was Captain Bell and his K Company. They told us that if we wanted to do a lot of fighting that would be the company to be assigned to. That was really not what [my buddy, Ernie Desecker] and I had in mind!

A little before dark, someone on the other side of the room yelled that Captain Bell was walking down the street and every single soldier in that bar got up and crammed the windows to get a look at him. He had a couple of other officers on both sides of him, but he was walking a step or two ahead. It was a dirt muddy street, but he looked like he was walking on a parade ground. After he went by, you could hear Captain Bell stories all over the bar.

The next day, we were loaded on a truck and at each town, it would stop and some names were called to get off. When Dess and I were told to get off, the first thing we asked was, "What company is this?" When told it was Company K, we both wished we could climb back on that truck and head for the rear echelon! Of course, in a very short time, we were so very proud to be part of Captain Bell's Company K, and that pride continues to this day.

I was assigned to John Miller's squad in the second platoon with Sergeant Hart and Lieutenant Monk as platoon leaders. They were very kind and excellent leaders. I learned a lot from them that has stayed with me all these years.

Mr. President, leaders like Captain Bell and John Miller and Sergeant Hart and Lieutenant Monk were tough soldiers, but they had to be, and all the men who served under them came to understand that.

As Bill Gleason wrote about Captain Bell:

We understood . . . that if we made it through the war, we would owe our lives to him. And, we do. . . . [H]e kept us alive simply because he insisted we stay alive.

Leaders, like Captain Bell, made all the difference.

As Memorial Day approaches, I ask my colleagues to think about Captain Bell and the men of K Company. I ask my colleagues to think about and remember all the men and women who served our Nation during World War II—and to think about and remember all the men and women who have defended our Nation since that time. Memorial Day is a time to honor and remember these individuals. They fought, and therefore all of us now know peace and freedom—our children and our grandchildren know peace and freedom. We owe them our respect and, we give them our thanks.

I am grateful for the men of Company K.

I am grateful that they fought so that I can be here today in a free country—that I can stand here today on the Floor of the United States Senate in the world's greatest Democracy.

And, I am grateful that we can continue to enjoy Life, Liberty, and the Pursuit of Happiness because of their efforts nearly 60 years ago.

I thank them.

I thank all the men of K Company and especially one man who served in the Company—the author of the e-mail I quoted just a moment ago—a Private

named Richard DeWine. To him, I will simply say:

Thanks, Dad.

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

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

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

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

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

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. There will be a cloture vote on the Estrada nomination at 1:45.

Mr. LEAHY. I thank the distinguished occupant of the Chair.

Mr. President, it is unfortunate, I believe—and I say this as one who has been here with six different Presidential administrations of both parties—that rather than work with the Senate and Senators from both parties to identify consensus nominees who would get the overwhelming bipartisan support of the Senate for prompt confirmation, the administration seems to insist only on partisanship and strong-arm tactics.

Rather than ideological court packing and political intimidation on which the other side is insistent, I continue to urge the administration to work with us to take the appointment of Federal judges out of politics. If we do that, we can ensure the independence and fairness of the Federal judiciary.

Everybody, whether they are Republican or Democrat, has a stake in having an independent Federal judiciary. None of us want this country—which is rightly praised for having the most independent Federal judiciary in the world—none of us want to see it become a partisan judiciary.

Now, today we are going to be asked to vote on two cloture motions—one on the Estrada nomination and one on the Owen nomination. I think the last time the Senate was called upon to vote on two cloture motions for nominations on the same day was when Republicans were filibustering the nominations of Richard Paez and Marsha Berzon in the year 2000. Three years ago, numerous Republicans voted against cloture on those nominees, even though Judge

Paez had been pending for more than 4 years.

I worry that the Republicans spend all this time talking about how we are blocking judges. As a matter of fact, we are not. Out of 125 judicial nominees the Senate has considered, we have confirmed 123 of them. We have held up two. Two out of 125 is not bad. In fact, President Clinton would have loved to have had that kind of a record when he was President, but the Republicans stopped more than 50 of his judges—not merely two as we are asking to be reconsidered. They blocked 50.

Under Republican control, there were not a whole lot of votes on the floor. Basically, they had a routine that if one Republican Senator objected, then the nominee never got a hearing and never got a vote. The Republicans never faced having to debate the nominees on the floor. The nominees were just never given a hearing in committee. They were never given a vote on the floor.

We had several Senators, many serving now, who just refused to return their blue slips. In fact, we had a definite rule by the chairman of the Judiciary Committee at the time that said that if you had a Senator, for example, from the home State who objected, that person would not go forward.

We had this once where the Senator from North Carolina objected to a circuit court judge, so, of course, we never had a hearing or a vote on that nominee. The Senator from Texas objected to several courts of appeals nominees. Distinguished Hispanic nominees were never given a hearing and never given a vote, because, as the chairman said, if both Senators from the State objected, of course, you could not go forward.

I know the Republicans now intend to go forward with at least one judge where both Senators from that State object—apparently it makes a difference who is President. When they blocked 50 or 60, some by a one-person objection, that was considered following the constitutional responsibility of advice and consent. When we ask to hold up two of the most controversial, divisive nominees—2 out of 125 nominations—we are suddenly obstructionists. But 50 or 60 on the other side is "good government."

Now, a lot of us have worked hard to repair the damage done during that time, from 1995 through the early part of 2001. But again, I find, unlike the other administrations I have served with here—President Ford, President Carter, President Reagan, former President Bush, President Clinton; all Presidents who would work with Senators of both parties to try to get a consensus on their nominees—this White House shows no interest in that.

There has been little acknowledgment of our efforts. The current administration continues down the strident path of confrontation and court packing rather than working with Senators. Well, court packing and politicizing of

the Federal judiciary should never be allowed under any President.

One of my heroes is Franklin Roosevelt. When Franklin Roosevelt tried to pack the courts, tried to politicize the appellate courts, the Senate stopped him. And the Senate should always do that—no matter who the President is.

I am not concerned that the President nominates conservative Republicans—and I voted for hundreds of them over the years—but I am not going to vote for somebody who seems to be nominated solely for the purpose of politicizing the Federal bench.

When I was chairman of the committee, we worked hard to hold hearings and confirm nominees, in order to lower the number of vacancies—which had increased because of the refusal of Republicans to allow many nominations to go forward during the Clinton years. We had a very high number of vacancies. After I became chairman, we cut that number of vacancies virtually in half. Now the vacancy rate is down to about 5½ percent.

Now, people seem to talk about two judges not going forward, two judges for well-paid lifetime jobs. I wish, having gotten the judiciary vacancy rate down to 5½ percent, we would look at the fact that the Nation's unemployment rate is 6 percent. The number of private-sector jobs lost since the beginning of the Bush administration is 2.7 million. Almost 9 million Americans are now out of work. Unemployment has risen by more than 45 percent.

The Democrats in the Senate have moved forward to confirm 123 of this President's judicial nominees. But the Republican-led Senate seems obsessed with trying to force through the most divisive of this President's controversial, ideologically chosen nominees.

During the Clinton administration, President Clinton's administration added a million people—a million new jobs—every year. We are losing well over a million jobs a year since this administration came in.

I would suggest that if they really want to find some way to fix the unemployment, don't talk about two people getting extremely high-paying lifetime jobs, talk about the 9 million or so out of work.

What bothers me in the Estrada matter, is that the administration and the Republican leadership have shown no willingness to be reasonable to accommodate the Democratic Senators' request for additional information as shared with the Senate by past administrations. We have endured numerous cloture votes as an indication of Republican intransigence in this matter. It is nothing more.

What bothers me, again, is that there has been no effort—no effort made, as there always has been in past administrations—to work through these matters. It just does not happen.

I mention this more in sadness than anything else. But it is almost as though this administration plays by different rules than any other.

I suggest to the administration, they were not given a mandate to politicize our Federal judiciary.

They were not given a mandate for court packing. They were not given a mandate to take the independent Federal judiciary and turn it into a very narrow branch of the narrowest part of the Republican Party. Nobody is given such a mandate. Just as Franklin Roosevelt found when he wanted to pack the courts from the liberal side and the Senate said no, by the same token, President Bush has to be told no now that he wants to pack the courts on the other side. We do not want a political bench. Anyone ought to be able to come into a court and say, it makes no difference whether I am Republican, Democrat, rich, poor, White, Black, Independent, no matter what my background, I will be treated fairly by that judge.

This is the standard I have always held for the judiciary and for each judge—fairness. I voted for hundreds of Republicans. I voted for them in every single State of the Nation. But I am not going to vote for people who seem to be sent there simply to politicize and polarize the Federal courts.

When I was chairman, I moved faster on nominations of President Bush than the Republican Party ever did on nominations of President Clinton. I stopped the anonymous holds. Dozens upon dozens of President Clinton's nominations were held up by a single Republican putting an anonymous hold. I did away with that when I was chairman. We brought people up, we had hearings, and we voted. As I said before, it is, of course, a fact that we have confirmed 123 of the President's nominees.

We hear all of a sudden that this is so unprecedented. Yes, it is unprecedented. We have held up two. They held up 60. Maybe it is unprecedented that we did not do the same thing.

I believe filibusters should be rare. I said on the floor that I was opposed to them but that statement has now been taken out of context by some on the other side of the aisle. If you read the whole quote, you will see that I was referring to a filibuster by anonymous hold, something I did stop when I became chairman. But the administration holds the key to the Estrada nomination. If they want to make it go forward, we could.

Today the Republican leadership is insisting on two more cloture votes on the Estrada and Owen nominations. These will be the sixth vote on a cloture petition on the Estrada nomination and the second on the Owen nomination. The last time the Senate was called upon to vote on two clotures for nominations that I can recall is when Republicans were filibustering the nominations of Richard Paez and Marsha Berzon in 2000. Three years ago today, on March 8, 2000, numerous Republicans voted against cloture on those nominees, respectively, even though Judge Paez' nomination had been pending for more than four years

at that point. Those Republican Senators included nine who are still serving today, including majority leader BILL FRIST and Senators ALLARD, BROWNBACK, BUNNING, CRAIG, DEWINE, ENZI, INHOFE, and SHELBY, as well as Senators GRAMM, HELMS, HUTCHINSON, MURKOWSKI, and SMITH, who led the filibuster of these two nominees. In fact, after Republicans failed to keep cloture from being invoked, Senator SESSIONS moved to indefinitely postpone the Paez nominations, and 31 Republicans voted in favor of that motion to stop a vote on Paez's nomination to the Ninth Circuit. Those Republican Senators included 22 who still serve in the Senate, including majority leader FRIST as well as Senators ALLARD, BOND, BROWNBACK, BURNS, COCHRAN, CRAIG, CRAPO, DEWINE, FITZGERALD, GRASSLEY, GREGG, INHOFE, KYL, LOTT, MCCONNELL, NICKLES, SANTORUM, SESSIONS, SHELBY, THOMAS, and WARNER.

Since July 2001, a number of us have worked very hard to repair the damage done during the years 1995 through the early part of 2001. We have made significant progress. Unfortunately our efforts have received little acknowledgment and the current administration continues down the strident path of confrontation and court packing rather than working with Senators of both parties to identify and nominate consensus, mainstream nominees.

While the Nation's unemployment rate rose last month to 6 percent. The vacancy rate on the Federal judiciary has been lowered to 5.45 percent. While the number of private sector jobs lost since the beginning of the Bush administration is 2.7 million, almost 9 million Americans are now out of work, and unemployment has risen by more than 45 percent, Democrats in the Senate have moved forward to confirm 123 of this President's judicial nominees, reduced judicial vacancies to the lowest level in two decades, by almost 60 percent. Yet the Republican-led Senate remains obsessed with seeking to force through the most divisive of this President's controversial, ideologically-chosen nominees.

The President promised to be a uniter not a divider, but he has continued to send us judicial nominees that divide our Nation and, in the case of Miguel Estrada, he has even managed to divide Hispanics across the country. The nomination and confirmation process begins with the President, and I urge him to work with us to find a way forward to unite, instead of divide, the nation on these issues.

Republican talking points will likely focus on the impasse on two of the most extreme of the President's nominations rather than the 123 confirmations and the lowest judicial vacancy rate in 13 years. They will ignore their own recent filibusters against President Clinton's executive and judicial nominees in so doing.

What is unprecedented about the Estrada matter is that the administration and Republican leadership have

shown no willingness to be reasonable and accommodate Democratic Senators' request for information traditionally shared with the Senate by past administrations. That we have endured numerous cloture votes is an indictment of Republican intransigence on this matter, nothing more. What is unprecedented is that there has been no effort on the Republican side to work this matter out, as these matters have always been worked out in the past. What is unprecedented is the Republican insistence to schedule cloture vote after cloture vote without first resolving the underlying problem caused by the administration's inflexibility.

What is unprecedented about the Owen nomination is that it was made at all. Judge Owen had a fair hearing and was given fair and extensive consideration before the Judiciary Committee last year. We proceeded in spite of the fact that the Republican majority had refused to proceed with any of President Clinton's Fifth Circuit nominees during his last four-year term. Never before in our history has a President renominated for the same vacancy someone voted down by the Judiciary Committee, but that is what this President proceeded to do with this divisive and controversial nominee.

Senator HATCH used to say, when President Clinton was nominating moderates to more than 100 vacancies on our Federal courts, that there was no vacancy crisis. He used to say that he considered 67 vacancies to be "full employment" on the Federal judiciary. Today we are well short of 100 vacancies and well beyond what he used to term "full employment" with 47 vacancies. The committee continues to report nominations to fill additional vacancies, as well.

From 1995 through the summer of 2001, the Republican majority averaged only 38 confirmations a year with only seven to the Courts of Appeals. That explains why Federal judicial vacancies rose from 63 to 110 on the Republican watch and circuit vacancies more than doubled from 16 to 33. Of course, during those years there were no Republican-led hearings calling for prompt action or fair consideration of President Clinton's moderate judicial nominees. To the contrary, Senator Ashcroft held hearings designed to justify the slowdown. Senator Ashcroft and others perfected the practice of using anonymous holds both in committee and on the floor so that judicial nominees were stalled for months and years without consideration. Scores of nominees never received hearings, at least 10 who received hearings never received committee consideration and those who were ultimately considered often were delayed months and years through holds and filibusters.

Beginning in July 2001, Democrats started bringing accountability and openness to the process. In the 17 months of the Democratic Senate majority we held more hearings on more judicial nominees, more committee

votes and more Senate votes than before. We were able virtually to double the pace and productivity of the process. We did away with the secrecy of the "blue slip" and the anonymous hold. We considered President Bush's nominees fairly, responsibly and in those 17 months confirmed 100 of this President's nominees. We reversed the destructive trends with respect to the numbers of vacancies and length of time that nominees had to wait to be considered. While we could not consider all nominations simultaneously, we considered more, more quickly than in the preceding years. The Democratic majority inherited 110 judicial vacancies including a record 33 to the circuit courts. By December 2002, we were able, through hard work to outpace the 40 additional vacancies that had arisen and reduce the remaining vacancies to 60, including 25 to the circuit courts. We have continued to cooperate and today the remaining vacancies number 47, including 20 on the circuit courts. This is the lowest vacancy number and lowest vacancy rate in 13 years.

This is not to say that our work is done. Last week, with the help and hard work of the Senate leadership we were able to make additional progress. Last Wednesday, majority leader FRIST used the word "progress" to describe how we have been able to resolve complications caused by the manner in which nominations were forced through the Judiciary Committee early this year. Last Thursday, I thanked the majority leader and the Democratic leader and others for their efforts in this regard and for working with us to bring the nomination of Judge Edward Prado to a vote without further, unnecessary delay.

This Tuesday the Senate debated and voted on the nomination of Deborah Cook to the Sixth Circuit. She is the fourth nominee of President Bush to be confirmed to the Sixth Circuit in less than two years. During the entire second term of President Clinton, the Republican majority would not hold hearings or consider a single one of President Clinton's nominees to the Sixth Circuit—not Judge Helene White, not Kathleen McCree Lewis, not Professor Kent Markus. Nonetheless, while I was chair of the Judiciary Committee we proceeded to consider and confirm two conservative nominees of President Bush to the Sixth Circuit and this year the Senate has proceeded to confirm two more.

The work of the Senate would be more productive if this administration were more interested in filling vacancies with qualified, consensus nominees rather than packing the Federal courts with activist judges. The nominations and confirmation process begins with the President. Far from being someone who has sought consensus and unity on judicial nominees, this President has used judicial nominees as a partisan weapon and sought sharply to tilt the courts ideologically. That is unfortunate. Some of us have urged another

course, a course of cooperation and conciliation, but that is not the path this administration has chosen. Yet, in spite of the historically low level of cooperation from the White House, the Senate has already confirmed 123 of President Bush's judicial nominees, including some of the most divisive and controversial sent by any President.

Last week the Senate proceeded to a vote on the nomination of Jeffrey Sutton to the Sixth Circuit. He received the fewest number of favorable votes of any nominee in almost 20 years with 52. He is the third controversial judicial nominee of this President against whom more than 40 negative votes were cast, yet those three nominees were not stalled and not subjected to a filibuster.

In just the last 2 years, 123 of the President's judicial nominees have been confirmed. One hundred of those confirmations came during the 17 months of Democratic leadership of the Senate. No fair-minded observer could term that obstructionism. By contrast, during the 6½ years during which Republicans controlled the Senate and President Clinton's nominations were being considered, they averaged only 38 confirmations a year. During the last 2 years of the Clinton administration, the Senate confirmed only 73 Federal judges. Combining the 1996 and 1997 sessions, Republicans in the Senate allowed only 53 judges to be confirmed in 2 years, including only 7 new judges to the circuit courts. One entire congressional session, the Republican-led Senate confirmed only 17 judges all year and none at all to the circuit courts. The Senate confirmed 72 judges nominated by President Bush last year alone under Democratic leadership.

By Republican standards, the 123 judges confirmed so far is more than they averaged for President Clinton over 3 years. If the Senate shut down today and did not consider another judicial nominee we would have already exceeded the total needed to best Republican efforts over an entire 3-year period. At the present rate, President Bush would not just exceed the number of judges appointed by prior presidents, he would shatter all appointment records.

This year, in spite of the lack of cooperation by the administration and the overbearing exercise of power by the majority, we have cooperated with committee action on 26 judicial nominees during the first 3 months of this year. We have proceeded in the Senate to vote on the confirmations of 23 judicial nominees this year, including four extremely controversial nominees to the circuit courts, which makes 123 of this President's judges confirmed overall. That compares most favorably to how Republicans treated President Clinton's nominees. In the 1996 session, for example, the Senate did not confirm a single circuit judge all year and confirmed only 17 judges that entire year. In 1999, the third year of that

Presidential term, and in 1997, the Senate did not reach the level we have already attained until October. We are well ahead of the pace in every year in which Republicans were obstructing consideration of President Clinton's nominees.

A good way to see how much faster this chairman is processing nominations for a Republican President is to compare this year's pace to a comparable year in the last Democratic administration. In 1997, when Bill Clinton was President, the Republican-controlled Judiciary Committee was just holding its second judicial nominations hearing of the year—compared to the ninth hearing that we held this week and was considering its first two circuit court nominees of the year—rather than its tenth. This chairman has moved five times more quickly for President Bush's circuit court nominees than for President Clinton's, and vacancies in the courts are nearly half of what they were in 1997. Even more noteworthy, by this point in 1999, the third year of the last presidential term, the committee had not held or scheduled a single judicial nominations hearing. In fact, no hearing for a judicial nominee was held until June of that year.

The fact is that when Democrats became the Senate majority in the summer of 2001, we inherited 110 judicial vacancies. Over the next 17 months, despite constant criticism from the administration, the Senate proceeded to confirm 100 of President Bush's nominees, including several who were divisive and controversial, several who had mixed peer review ratings from the ABA and at least one who had been rated not qualified. Despite the additional 40 vacancies that arose, we reduced judicial vacancies to 60, a level below that termed "full employment" on the Federal judiciary by Senator HATCH.

During the 17 months I chaired the Judiciary Committee, I worked hard to ensure that women and minorities were considered for the federal bench, and I am proud of that record. Many Hispanics and women nominated by President Clinton were blocked or delayed by the Republican majority, and I did not want to see that repeated.

Fine nominees such as Christine Arguello, Jorge Rangel, Enrique Moreno and Ricardo Morado and dozens of other Clinton nominees were never allowed hearings by Republicans, and others, such as Bonnie Campbell and Anabelle Rodriguez, received hearings but no votes in Committee. Others, including Judge Richard Paez, Judge Hilda Tagle, Judge Sonia Sotomayor, and Judge Rosemary Barkett, and dozens of other Clinton nominees were stalled for no good reason. Many of Clinton's nominees were not confirmed the first Congress they were nominated, including Judge Paez, who waited 1,520 days to be confirmed, as well as Judge Tagle, who waited 943 days to be confirmed. Cloture was also sought to bring the nominations of Judge Paez and Judge Barkett and others to vote,

although scores of others were never allowed hearings due to secret Republican holds.

I am proud that did not happen on my watch. I am glad to say that we quickly considered and confirmed nominees such as Christina Armijo to the District Court in New Mexico, Philip Martinez and Randy Crane to the District Courts in Texas, Jose Martinez to the District Court in Florida, Alia Ludlum to the District Court in Texas, and Jose Linares to the District Court in New Jersey. In addition, this year we have pressed for expedited consideration of Judge Prado of Texas to the Fifth Circuit, as well as Judge Otero of California and Judge Altonaga of Florida to the Federal district courts. This week the Committee included Judge Consuelo Callahan of California in a hearing and I expect her nomination to the Ninth Circuit to be confirmed promptly with strong Democratic support, as well.

The Senate has this week reduced the number of Federal judicial vacancies to the lowest level it has been in 13 years. The 110 vacancies I inherited in the summer of 2001, vacancies that rose by 65 percent under Senate Republican control, have been more than cut in half. In the 17 months I chaired the Judiciary Committee we not only kept up with extraordinary attrition in the form of an additional 40 vacancies, but reduced all those vacancies from the 160 there would have been had we done nothing, down to 60 by last December. Senator HATCH used to argue when President Clinton was in office that 67 vacancies on the Federal courts amounted to "full employment". We reached Senator HATCH's standard for a full Federal bench during the 17 months in which the Democrats led the Senate.

We have continued our efforts this year and this week we reached the lowest level of judicial vacancies in 13 years—the lowest level since judge-ships were significantly expanded in 1990. We now are working to reduce the remaining 47 vacancies even further.

Since the beginning of this year, in spite of the fixation of the Republican majority on the President's most controversial nominations, we have worked hard to reduce judicial vacancies even further. As of today, the number of judicial vacancies is at 47. That is the lowest it has been in two decades. That is lower than it ever was allowed to go at any time during the entire eight years of the Clinton administration. We have reduced the vacancy rate from 12.8 percent to 5.45 percent, the lowest it has been since 1990. With some cooperation from the administration think of the additional progress we could be making.

Our Senate leadership, both Republican and Democratic, have worked to correct some of the problems that arose from some of the earlier hearings and actions of the Judiciary Committee this year. Last week we were able to hold a hearing on the nomination of John Roberts to the District of Columbia Circuit. We are all working

hard to complete Committee consideration of that nomination at the earliest opportunity. Thus, a number of additional, controversial nominations are in the process of being considered and will be considered by the Senate in due course.

My point is to underscore that we have made and are making real progress from the thoroughgoing obstruction from 1996 until 2001. While "the glass is not full," it is more full than empty and more has been achieved than some want to acknowledge. One hundred and twenty-three lifetime confirmations in less than two years is better than any 2-year period from 1995 through 2000. We have reduced judicial vacancies to 47, which is the lowest number and lowest vacancy percentage in 13 years. During the entire 8-year term of President Clinton it was never allowed by Republicans to get that low. We have made tremendous progress. These achievements have not been easy.

The administration has chosen confrontation with the Congress, with the Senate and with this committee. We are now proceeding at three to four times the pace Republicans maintained in reviewing President Clinton's judicial nominees. We have reached the point where the Judiciary Committee and the Senate are often moving too fast on some nominations and we risk becoming a racing conveyor belt that rubber stamps rather than examines these lifetime appointments. Democrats have worked hard to repair the damage to the confirmation process and achieved significant results. Republicans seem merely results oriented and interested in ideological domination of the Federal courts.

As Republicans turn their sights on the propriety of the filibuster in connection with judicial nominations and speculate about changing the rules and suing the Senate, I trust the Republican majority will not overlook the precedent on this question. Republicans not only joined in the filibuster of Abe Fortas to be Chief Justice of the United States Supreme Court, they organized the filibuster of Stephen Breyer to the 1st Circuit, Judge Rosemary Barkett to the 11th Circuit, Judge H. Lee Sarokin to the 3rd Circuit, and Judge Richard Paez and Judge Marsha Berzon to the 9th Circuit. The truth is that filibusters on nominations and legislative matters and extended debate on judicial nominations, including circuit court nominations, have become more and more common on the initiative of Republicans working against Democratic nominees. Now that a Republican President, intent on packing the courts with ideologues, has seen two nominees delayed by filibusters, and even though the other 123 judges he nominated have been confirmed, partisans want to change the rules to make it easier for this President to get his way.

Of course, when they are in the majority Republicans have more successfully defeated nominees of a Democratic President by refusing to proceed on them and have not publicly explained their actions, preferring to act in secret under the cloak of anonymity. From 1995 through 2001, when Republicans previously controlled the Senate majority, Republican efforts to defeat President Clinton's judicial nominees most often took place through inaction and anonymous holds for which no Republican Senator could be held accountable. Republicans held up almost 80 judicial nominees who were not acted upon during the Congress in which President Clinton first nominated them and eventually defeated more than 50 judicial nominees without a recorded Senate vote of any kind, just by refusing to proceed with hearings and Committee votes. These are just the sorts of stealth tactics Democrats have rejected.

Beyond judicial nominees, Republicans also filibustered the nomination of executive branch nominees. They successfully filibustered the nomination of Dr. Henry Foster to become Surgeon General of the United States in spite of two cloture votes in 1995. Dr. David Satcher's subsequent nomination to be Surgeon General also required cloture but he was successfully confirmed.

Other executive branch nominees who were filibustered by Republicans included Walter Dellinger's nomination to be Assistant Attorney General. Two cloture petitions were required to be filed on that nomination and both were rejected by Republicans. We were able finally to obtain a confirmation vote for Professor Walter Dellinger after significant efforts and he was confirmed to be Assistant Attorney General with 34 votes against him. He was never confirmed to his position as Solicitor General because Republicans had made clear their opposition to him. In addition, in 1993, Republicans objected to a number of State Department nominations and even the nomination of Janet Napolitano to serve as the U.S. Attorney for Arizona, resulting in more cloture petitions. In 1994, Republicans successfully filibustered the nomination of Sam Brown to be an Ambassador. After three cloture petitions were filed, his nomination was returned to President Clinton without Senate action. Also in 1994, two cloture petitions were required to get a vote on the nomination of Derek Shearer to be an Ambassador. And it likewise took two cloture petitions to get a vote on the nomination of Ricki Tigert to chair the FDIC. So when Republican Senators now talk about the Senate Executive Calendar and presidential nominees, they must be reminded that they recently filibustered many, many qualified nominees.

Filibusters should be and are rare. That there are two this year is a direct result of the strategy of confrontation sought by the White House and Senate

Republicans. The administration holds the key to ending the Estrada impasse, as it has for the last year. It should cooperate with the Senate and provide access to his work papers, following the example set by all previous Republican and Democratic administrations.

The renomination of Judge Owen was most ill-advised and unprecedented. Her nomination had already been rejected after fair hearings and thorough debate and a committee vote last year. Some apparently want to rewrite the rules so that this President can have every nominee confirmed, no matter how divisive and controversial, by the Republican Senate majority.

Recently, I heard a respected Republican and senior advisor to the majority leader describe cloture as "the fulcrum on which you balance the rights of the individual and the rights of the institution." He explained how important the rights of the minority party are in the Senate and how Senate rules are deliberately constructed to reflect that and protect the minority. That Republicans are now intent on rewriting longstanding Senate rules shows just how partisan and ends-oriented they have become.

The President promised to be a uniter not a divider, but he has continued to send us judicial nominees that divide our nation. He has even managed to divide Hispanics across the country with the nomination of Mr. Estrada. He has managed to outrage disabled individuals by his nomination of Jeffrey Sutton. The nomination and confirmation process begins with the President. I, again, urge him to work with us to identify and nominate qualified, consensus, mainstream nominees who all Americans can be confident will be fair and impartial and to abandon his ideological court packing scheme.

Just yesterday an editorial appeared in the Rutland Herald noting: "[P]acking the court with right-wing ideologues is a program that Democrats may legitimately question. The Senate is required to consent to the president's judicial nominees because of the checks and balances created by the Constitution to restrain presidential power. The right wing now chafes under that restraint, but [Senators] have every reason to stand firm in order to bring balance to the judiciary." I ask unanimous consent that the full editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Rutland Herald, May 7, 2003]

A Senate Judiciary subcommittee held a hearing Tuesday to highlight what Republicans claim is an abuse of the Senate rules by Democrats seeking to hold up President Bush's judicial nominees.

The subcommittee hearing was described by one Democratic aide as a "dog and pony show." It is part of the ideological warfare unleashed by the right wing to intimidate and destroy its opposition. The Republicans' complaint about Democratic obstructionism with regard to judicial nominees

makes a villain out of Sen. Patrick Leahy, but their case is bogus and based on a foundation of hypocrisy.

The Democrats have kindled Republican wrath because the Democrats have had the temerity to block two nominees. Two. In the meantime, the Senate has confirmed 123 Bush nominees. The vacancy rate in the judiciary is at a 13-year low. When the Democrats took control of the Senate in 2001, the Republicans had left open 111 judicial vacancies. Now there are 43.

Members of the judiciary have remarked on how the Bush administration has staffed the Justice Department with fiercely uncompromising ideologues intent, not just on dealing with the opposition, but on destroying it. How else can one account for the war declared by Republicans over two judicial nominees who failed to pass muster?

The subcommittee hearing is ostensibly meant to examine the question of whether the Democrats' use of the filibuster to block judicial nominees is constitutional. The filibuster is a delaying tactic in which one side refuses to end debate on a particular question. According to Senate rules, the Senate can end a filibuster with 60 out of 100 votes. Certainly, the filibuster is anti-majoritarian, but over the years it has been used effectively by both Republicans and Democrats.

Now that the Democrats have shown they are adept at using the filibuster, the Republicans have begun to froth that it is unconstitutional. They are even claiming there is some kind of exception to the filibuster rule for judicial nominees, though it is a claim without any basis in law that the Republicans would quickly abandon as soon as they found themselves in the minority.

It is hard to defend the filibuster as a democratic method. But for the Republicans suddenly to wax indignant about the filibuster now that it has been turned against them is hypocrisy enough to shock and awe. From 1995 to 2000 Republicans blocked one-third of President Clinton's judicial nominees by a variety of methods that were as anti-majoritarian as the filibuster, including the failure of the Judiciary Committee even to schedule hearings and including the secret hold, by which a senator can block a nominee merely on his or her say-so.

If anger and self-righteousness signify the rightness of one's cause, the Republicans are making a good show of it. But packing the court with right-wing ideologues is a program that Democrats may legitimately question. The Senate is required to consent to the president's judicial nominees because of the checks and balances created by the Constitution to restrain presidential power. The right wing now chafes under that restraint, but Leahy and his allies have every reason to stand firm in order to bring balance to the judiciary.

Mr. LEAHY. The vote is scheduled for what time?

The PRESIDING OFFICER. The time for the vote is 1:45.

Mr. LEAHY. Have we reached that time?

The PRESIDING OFFICER. We have about a minute and a half.

Mr. LEAHY. I can understand the confusion. We seem to have a number of clocks facing different places.

I tell the distinguished occupant of the chair that I have been around here long enough to recall a time when we were going to end at a certain time in a very late session, and the time stood still. We were very close to finishing. I think the time we had to finish was at midnight. I remember the clock getting all the way up there to 3 minutes

to midnight. For the next hour, the clock was there at 3 minutes to midnight. Suddenly we worked out the last thing, the clock magically sprung forward—not totally magically, somebody pulled it forward. We were at midnight and, with a sigh of relief, we went out. Now I believe we are at the time.

I yield the floor.

Mr. HATCH. Mr. President, tomorrow is the 9th of May, which marks the beginning of the third year that the nominations of Miguel Estrada to the DC Circuit and Priscilla Owen to the Fifth Circuit have been sitting in the Senate. This truly is not a good record for the Senate.

On May 9, 2001, the President sent to the Senate 11 nominations, including those of Miguel Estrada and Priscilla Owen. I regret that a minority of Senators in this body continue to deny a final vote on the confirmation of these nominees. It is troubling that we have not yet been able to confirm these nominees who now are facing unprecedented filibusters in the Senate.

Let me again quote a recent editorial, published in the Atlanta Journal-Constitution, which discusses the filibusters of Priscilla Owen and Miguel Estrada, noting “the first time simultaneous filibusters against judicial nominees have occurred in the U.S. Senate.” The editorial continues:

Both Owen and Estrada are superbly qualified in every respect. Yet on Owen, those who complain that a “glass ceiling” exists for women of achievement are busily constructing one to keep her in her place. And those who complain that the federal bench lacks “diversity” find Estrada to be too much diversity for their taste. He is considered to be a conservative, and the interest groups that drive the Democratic Party nationally fear Owen is, too, at least on their abortion litmus test.

The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credentials to serve on the U.S. Supreme Court.

As the editorial points out, some Senate Democrats appear willing to use whatever obstructionist tactics it takes, based on any convenient rationale, to defeat the President’s nominees. While the rationales may be different, the motivation in both cases is the same—it is to block this Senate from expressing the will of the majority with regard to these nominations.

I have already pointed out the double standard being applied against Miguel Estrada and Priscilla Owen. However, it may be more than a so-called double standard. I am beginning to conclude that no standards are being applied, only political tactics. This game plan of delay and obstructionism that some Democratic Senators are following is no longer surprising, but it is getting somewhat contradictory. In the case of Mr. Estrada, Democrats say they can’t vote for the nominee because they don’t know enough about him. They allege he didn’t answer their questions and therefore they must have Depart-

ment of Justice confidential memorandum he wrote while he was a line attorney in the Solicitor General’s office.

There are no such claims about Justice Owen. Democrat opponents admit they know enough about her, that she did answer the questions, and that she has a record they can review. There are no phony excuses. They simply oppose her on philosophical grounds namely, her interpretation of the Texas parental notification statute that applies to minor girls seeking an abortion.

We hear over and over that Justice Owen is a controversial or extremist nominee. Those seem to be the standard shorthand descriptions of a nominee who doesn’t toe the line drawn by the abortion-rights and trial lawyer interest groups.

In truth, Justice Owen is a consensus nominee. A bipartisan majority of the Senate supports her confirmation. The American Bar Association has awarded her a unanimous well qualified rating, their highest rating, and the gold standard formerly used by many of my Democratic colleagues. She is a well educated, highly experienced, and respected jurist.

Now, some critics of Justice Owen have fixated on a few rulings made by Justice Owen in some parental notification cases and allege that she is out of the mainstream on her court or that she is a regular dissenter in such cases. The facts show Justice Owen has been well within the mainstream of her court in the 14 decided notification cases in Texas, joining the majority judgment in 11 of those cases. The fact of the matter is that the liberal interest groups will find any excuse to employ an abortion litmus test, and they have used it with reckless abandon against Justice Owen, but that doesn’t change the facts. In fact, we don’t even know Justice Owen’s views on abortion and it is improper to make assumptions.

Justice Owen has done what a nominee must do—commit to following the law, including *Roe v. Wade*. And that is all we ask of nominees.

Turning to Mr. Estrada, the real rationale for opposing him has nothing to do with access to confidential Justice Department documents. It has nothing to do with allegations that Mr. Estrada did not answer the questions. But it has everything to do with attempts to prevent a Republican President from appointing the first Hispanic to the DC Circuit.

What the filibusters of Miguel Estrada and Priscilla Owen have in common is that they are preventing well qualified nominees from getting an up or down vote before the full Senate. They are tyranny of the minority at its worst. It is unfortunate that we must have these cloture votes at the end of this 2-year period since the nomination of Mr. Estrada and Justice Owen. There is simply no good reason to continue them. It is long past time for an up or down. I urge my colleagues to vote for cloture.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin Hatch, Judd Gregg, Norm Coleman, John E. Sununu, John Cornyn, Larry E. Craig, Saxby Chambliss, Lisa Murkowski, Jim Talent, Olympia Snowe, Mike DeWine, Michael B. Enzi, Lindsey Graham, Jeff Sessions, Wayne Allard, Mike Cap.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER (Mr. ALEXANDER). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 54, nays 43, as follows:

[Rollcall Vote No. 143 Ex.]

YEAS—54

Alexander	DeWine	McConnell
Allard	Dole	Miller
Allen	Domenici	Nelson (FL)
Bennett	Ensign	Nelson (NE)
Bond	Enzi	Nickles
Breaux	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Gregg	Smith
Chafee	Hagel	Snowe
Chambliss	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Kyl	Talent
Cornyn	Lott	Thomas
Craig	Lugar	Voinovich
Crapo	McCain	Warner

NAYS—43

Akaka	Dorgan	Leahy
Baucus	Durbin	Levin
Bayh	Edwards	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Pryor
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carper	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Conrad	Johnson	Schumer
Corzine	Kerry	Stabenow
Daschle	Kohl	Wyden
Dayton	Landrieu	
Dodd	Lautenberg	

NOT VOTING—3

Kennedy	Lieberman	Murkowski
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The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 43.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla R. Owen of Texas to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Orrin Hatch, John Cornyn, Michael B. Enzi, Jim Talent, Judd Gregg, Jeff Sessions, Wayne Allard, Mike Crapo, Thad Cochran, Mitch McConnell, Susan Collins, Don Nickles, George Allen, Kay Bailey Hutchison, Gordon H. Smith, John Warner.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Priscilla Richman Owen to be United States Circuit Judge for the Fifth Circuit shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nay 45, as follows:

[Rollcall Vote No. 144 Ex.]

YEAS—52

Alexander	Dole	Miller
Allard	Domenici	Nelson (NE)
Allen	Ensign	Nickles
Bennett	Enzi	Roberts
Bond	Fitzgerald	Santorum
Brownback	Frist	Sessions
Bunning	Graham (SC)	Shelby
Burns	Grassley	Smith
Campbell	Gregg	Snowe
Chafee	Hagel	Specter
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Talent
Collins	Kyl	Thomas
Cornyn	Lott	Thomas
Craig	Lugar	Voinovich
Crapo	McCain	Warner
DeWine	McConnell	

NAYS—45

Akaka	Conrad	Harkin
Baucus	Corzine	Hollings
Bayh	Daschle	Inouye
Biden	Dayton	Jeffords
Bingaman	Dodd	Johnson
Boxer	Dorgan	Kerry
Breaux	Durbin	Kohl
Byrd	Edwards	Landrieu
Cantwell	Feingold	Lautenberg
Carper	Feinstein	Leahy
Clinton	Graham (FL)	Levin

Lincoln	Pryor	Sarbanes
Mikulski	Reed	Schumer
Murray	Reid	Stabenow
Nelson (FL)	Rockefeller	Wyden

NOT VOTING—3

Kennedy	Lieberman	Murkowski
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The PRESIDING OFFICER. On this vote the yeas are 52, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent the Senate now stand in recess until 3:20 p.m.

Mr. CARPER. Reserving the right to object, if the Senator will defer for just a moment? I ask unanimous consent to make a brief statement, maybe 1 minute.

Mr. HATCH. Of course.

VOTE EXPLANATION

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, early this morning the train I was traveling on from Wilmington to Washington experienced mechanical difficulties causing us to arrive at Union Station more than one-half hour late. As a result, I missed maybe my second or third vote in the U.S. Senate. I missed the vote on the Resolution of Ratification of the NATO expansion treaty. Had I been here I would have voted yes.

I ask unanimous consent the RECORD reflect my reasons for missing the vote and how I would have voted had I been here.

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

RECESS

Mr. HATCH. Mr. President, I renew my request to have the Senate stand in recess until 3:20 p.m.

There being no objection, the Senate, at 2:34 p.m., recessed until 3:20 p.m. and reassembled when called to order by the Presiding Officer (Mr. CRAPO).

The PRESIDING OFFICER. In my capacity as a Senator from the great State of Idaho, I suggest the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FOREIGN INTELLIGENCE SURVEILLANCE ACT—Continued

AMENDMENT NO. 536

(Purpose: To establish additional annual reporting requirements on activities under the Foreign Intelligence Surveillance Act of 1978)

Mr. FEINGOLD. Mr. President, I call up amendment No. 536.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 536.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To establish additional annual reporting requirements on activities under the Foreign Intelligence Surveillance Act of 1978)

At the end, add the following:

SEC. 2. ADDITIONAL ANNUAL REPORTING REQUIREMENTS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) ADDITIONAL REPORTING REQUIREMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

- (1) by redesignating—
 - (A) title VI as title VII; and
 - (B) section 601 as section 701; and
- (2) by inserting after title V the following new title VI:

“TITLE VI—REPORTING REQUIREMENT
“ANNUAL REPORT OF THE ATTORNEY GENERAL.

“SEC. 601. (a) In addition to the reports required by sections 107, 108, 306, 406, and 502 in April each year, the Attorney General shall submit to the appropriate committees of Congress each year a report setting forth with respect to the one-year period ending on the date of such report—

“(1) the aggregate number of non-United States persons targeted for orders issued under this Act, including a break-down of those targeted for—

“(A) electronic surveillance under section 105;

“(B) physical searches under section 304;

“(C) pen registers under section 402; and

“(D) access to records under section 501;

“(2) the number of individuals covered by an order issued under this Act who were determined pursuant to activities authorized by this Act to have acted wholly alone in the activities covered by such order;

“(3) the number of times that the Attorney General has authorized that information obtained under this Act may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding; and

“(4) in a manner consistent with the protection of the national security of the United States—

“(A) the portions of the documents and applications filed with the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted;

“(B) the portions of the opinions and orders of the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted.

“(b) The first report under this section shall be submitted not later than six months after the date of the enactment of this Act. Subsequent reports under this section shall be submitted annually thereafter.

“(c) In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

“(2) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.”

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by striking the items relating to title VI and inserting the following new items: