

On the JOBS bill that will soon be before the Senate today, we are near time when we have done enough. The Senate has returned to the JOBS bill now for the 14th separate day over the course of 5 separate weeks. The Senate has considered 28 separate amendments. It adopted 17 separate amendments. Many of the amendments the Senate considered, such as Senator HARKIN's amendment on overtime regulations and Senator WYDEN's amendment on trade adjustment assistance, have not been strictly germane to the bill at hand.

The modern Senate does not regularly devote such time and freedom of amendment to major bills. It is really not that normal for the Senate to consider every amendment until no other Senator seeks to offer amendments.

My colleagues will remember the Senator from Louisiana, Russell Long. Senator Long served as chairman of the Finance Committee from 1965 to 1981. When Russell Long would bring a major tax bill to the Senate floor, he would frequently file cloture early, just to require that amendments be germane.

With the advent of the budget reconciliation process in 1981, the Senate began considering major tax increases in Senate reconciliation bills. The reconciliation process, as we know, limits debate to a maximum of 20 hours, pretty much 2 or 3 days, and reconciliation restricts Senators to only germane amendments.

In 1996, the Senate began considering tax cuts under the tight rules of the reconciliation process. Since then, almost every major tax bill has been a reconciliation bill. This year, a number of Senators sought to have this JOBS bill considered in reconciliation. To his credit, the chairman of the committee, Senator CHUCK GRASSLEY, fought these efforts. He and I talked about this several times. He frankly prevailed on many on his side of the aisle in arguing that this tax bill, the FSC/ETI bill, should not be under reconciliation under those very tight conditions but should be a regularly considered bill, and he prevailed. I commend him for that.

Let us now look at this bill. This bill began as a venture of both Democrats and Republicans working together in the Finance Committee. I might add the vote was 19 to 2. Only two members in the committee voted against this bill, and they were on the other side of the aisle.

This bill's major provision, tax cuts for American manufacturing, is really a Democratic priority. Democrats have sought all along to create and keep good manufacturing jobs in America. We advanced this priority when many House Republicans sought to maximize tax breaks for international businesses or, to put this another way, the Finance Committee decided after consulting with Members on both sides of the aisle, both Republicans and Democrats, that it made more sense for the

FSC/ETI placement bill to have a deduction for manufacturing produced in the United States rather than the approach taken by the majority party in the other body, which wanted a corporate tax reduction, international tax reduction bill, not a domestic manufacturing jobs bill. So it is a very different approach.

Again, to his credit, the chairman of the committee, Senator GRASSLEY, agreed with Members on both sides of the aisle that the best solution is the Republican and Democratic approach, the bipartisan approach, to help create more jobs in America by providing for the 9-percent manufacturing deduction. Contrast that with the House majority approach, which is much different, and I am quite certain a majority of our Members, certainly on this side of the aisle, are against it.

When it comes to the question of how much and how long we need to fight for amendments on the Senate floor, I think it matters whether we are talking about a partisan bill where the majority has closed the minority out of the process or are we talking about a bipartisan bill where Senators have worked together across the aisle. This clearly has been a bipartisan bill.

Our bill advanced the Finance Committee as a cooperative venture. The chairman of the Finance Committee and I working together included many of the provisions in the bill in response to requests from Senators on this side of the aisle. I daresay many provisions in this bill are in response to a request by Senators on this side of the aisle, although a good number are in response to Members on the other side of the aisle. So therefore this bill reflects a very open and democratic process.

Once we came to the Senate floor, this Senator tried to ensure that the Senate consider the maximum number of amendments, as many as we possibly can. Twice before on this bill, I have fought cloture, worked against cloture, to ensure that the Senate could address, for example, Senator HARKIN's overtime amendment and others. The Senate did consider that amendment. The Senate adopted that amendment. Over the course of last week's Senate consideration, the chairman of the Finance Committee and I have attempted to maximize the number of amendments the Senate could consider, and now the Senate has considered 28 amendments. It adopted 17 of those. That, I believe, is a very respectable record.

Now, when the Senate appears to be stymied over whether to vote on the amendment of the Senator from Washington on unemployment insurance, I continue to work for a vote on that amendment.

So here is where we stand: If the majority can see that there is a prospect that the Senate will invoke cloture on this bill, then I believe the majority will allow a vote on the unemployment insurance amendment; but if the majority sees that Senators on this side of

the aisle are united against cloture, regardless of whether they allow a vote on the unemployment issue, then I believe the majority will not allow a vote on the unemployment insurance amendment. That is where we are. It is that simple.

If Democrats want the Senate to vote on unemployment insurance, then we need to show some prospect of bringing this bill to a close. I believe we should accept that offer to get a vote on the unemployment insurance amendment. To do so, we should support cloture.

We should acknowledge that we are near the time when we have done enough. I say "near time" because even after the Senate invokes cloture, the Senate may still consider germane amendments. There are several amendments I believe the Senate will be able to consider postcloture. For example, there is the amendment by the Senator from South Carolina, Mr. HOLLINGS, to strike the international provisions. There is the amendment by the Senator from Michigan, Mr. LEVIN, on tax shelters. There is the amendment by the Senator from Louisiana, Ms. LANDRIEU, to provide tax benefits to reservists. There are amendments by the Senator from Arizona, Mr. MCCAIN, to strike energy tax provisions. There may be other germane amendments. Based on my understanding of the intention of the two leaders and the two managers, I believe that if the Senate invokes cloture, the Senate will work through these and other germane amendments postcloture. In fact, the majority leader has publicly indicated so.

Thus, I do believe we are near time when we have done enough. I support efforts to get a vote on the unemployment insurance amendment, and I support invoking cloture thereafter. So let us make this bill as good as possible but not better. Let us advance this bill to create and keep good manufacturing jobs, especially in America. Let us invoke cloture on this bill tomorrow.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAHAM of South Carolina. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### IRAQI PRISONER RESOLUTION

Mr. GRAHAM of South Carolina. Mr. President, I would like to take a few minutes to discuss the vote that is coming up this afternoon, the resolution about the Iraqi prisoner abuse scandal.

No. 1, I would like to compliment Majority Leader FRIST and Senator DASCHLE for bringing this matter up, and the committees and those who are

involved in drafting the resolution, and allowing it to come to the floor. I think it is important for the Senate to be on record; but, more importantly, that this not just be used or seen as an opportunity for politicians to pile on and talk about the story that is hard to watch or view, that we are all on the right side here in making sure the world understands we condemn this, and it is more about us protecting ourselves politically. I think it is a symbolic gesture, but much of democracy is symbolism: The idea that an elected body—some say the most prestigious deliberative body in the world, and I can understand why people would say that about the Senate—would take some of its time to have a vote on something that goes to the core of who we are as a people.

As I travel around and listen to constituents about this prisoner abuse scandal, a couple of points are reflected back to me.

No. 1, the people there are probably not nice people; they are criminals; maybe terrorists; that other people do worse; let us not be so hard on ourselves; and people in a war environment where there is much stress sometimes overreact. That is all true. But that is not the point. The point is if we use as a standard to govern ourselves the shortcomings of a dictatorship, then the big loser is us.

I spoke at a graduation this weekend. I said never use the standard of someone else's failures to be your benchmark as to how you would like to live your life.

We know how bad people treat good people and others. We have seen it in history for thousands of years. It was a real part of Saddam Hussein's regime.

The question is, Can we prove to the world and ourselves that good people treat bad people differently? Not only can we, I think we must.

There are a lot of Iraqis who are probably not shocked by this prisoner abuse scandal nearly as much as we are. In their world, this is pretty much the way you do business. A lot worse happened in that prison under Saddam Hussein. But what happened there that we know about so far is very hard for Americans to understand and digest. That is the good thing. The fact a lot of Iraqis are willing to accept that this is usual is not a good thing.

What will have to occur for Iraq to make it as a functioning democracy is people are going to have to change what to expect from their leaders and their government and those in authority.

My question to our Nation is, If we show anything short of disgust and condemnation, would we not be reinforcing to those already disheartened Iraqis that you should not have high expectations? Even the Americans, whom we have all heard about and who tout themselves as the good guy, understand how these things can happen.

This resolution is a small step forward to prove to the Iraqi people and

others that you should have high expectations of those who are in your government—those who are given the authority to imprison, to make arrests and detain. If you start having those high expectations, you will be amazed at how things in Iraq change for the better.

I have been waiting for a demonstration to occur in Iraq against the activities that led to the death of the four contractors. I am fully aware if you join us to stabilize Iraq, to be a judge, or a prosecutor, or a police chief or the army—any symbol of authority that would bring about a transfer of democracy in Iraq—the insurgents are likely to come after you and your family.

It is easy for us to talk about demonstrating and showing disgust when we are not threatened. But in the history of our Nation, people have put their lives at risk to make us better. In my lifetime, people such as Dr. Martin Luther King risked their lives to try to make life better for us all. During the civil rights demonstrations of the 1950s and 1960s, the photos of police dogs attacking African-American men and women shocked us all and it made what segregation is about real.

I hope these photos will shock us and make us understand when we fail as a people, when our institutions fail, it is OK to apologize. It doesn't make you smaller; it actually makes you larger. It is OK to say, I am sorry. There is a moral imperative, that when we assess accountability we do not take anybody off the list because of their rank or their status.

This resolution today is a small step forward. There will be many more steps to be taken to overcome this prisoner abuse scandal and to transform Iraq into a functioning democracy. But there are voices in our country which are vilifying and undercutting the effort.

I appeared on a show this Sunday with former NATO Commander General Wesley Clark, a man who served his country in a variety of roles and honorably served in Vietnam and was wounded. But he said something that disturbed me. It took a while for me to realize the depth of the statement. When asked, Will Iraq be democratic, or the effort to transform Iraq be successful, he said, Less than 50. I will give 2-to-1 odds that this operation ends in a catastrophe, for a lack of a better word paraphrasing him. It is not good, I believe, to bet against ourselves, or to put 2-to-1 odds on the ending. People will take that wrong and think they are winning when they are really not. Whether Iraq becomes a functioning democracy or something akin to it is not only possible, it is a must.

There will never be a Mideast without turmoil and hatred until some countries in that region embrace the idea that you can worship God more than one way, that there is a role for women, a meaningful role for women, and democracy ensures the two things I have mentioned. All people can par-

ticipate and one's faith is expressed in many ways in a democracy. Not only is Iraq's transformation to a democracy a worthwhile objective, I think we have a moral imperative to accomplish that mission because it goes to the sense of whether we will ever win the war on terror. For every democracy that is formed in the Mideast, there is one less place for Osama bin Laden and his henchmen to be able to thrive; they know that. That is why they are fighting so hard and so fiercely. The people indigenous to Iraq who do not want a democracy understand their past association with Saddam Hussein will not be rewarded. They want it their way and no other way. They use this opportunity to attack us and run America and other people out as a way to create a vacuum which they will fill.

If that occurs and we fail in Iraq, the big loser will be the next generation of freedom-loving people all over the world. The international community is not only essential to transforming Iraq, it must take an active part sooner rather than later.

History tells us sometimes the international community is more worried about appeasing the problem than solving the problem. Winston Churchill virtually stood alone because so many people before him believed Hitler would be OK if you gave him just one more country. People like Hitler are never OK with just a little more. They want all you have and then some.

Osama bin Laden will never be appeased by having part of Iraq or all of it. People who think the way he does cannot be dealt with in terms that we understand and live by. That is not to say we need to throw our law and our values overboard. We need to understand the only thing that will control the Osama bin Ladens of the world is the same thing that controlled the Hitlers of the world: Good men and women from diverse backgrounds from all over the world coming together and saying, We will fight you. We will fight for freedom of religion, diversity in life. If you want to fight, that is the only way this can be resolved, you will get a fight.

The international community needs to help us yesterday. President Bush is right: a democratic Iraq is necessary to transform the Middle East as a starting point. President Bush is right: Iraq is a frontline effort in the war on terror. It is a place in the past where terrorists felt at home; a place in the past with a leader, Saddam Hussein, who fueled money to the Middle East to reward those who wanted to destroy the State of Israel and prevent a two-state solution between Palestine and Israel.

This resolution could not come at a better time. But it is only a small first step of many more steps to come. My bet is that it is not 2 to 1, it is 100 percent; that if Americans can come together and stop the partisan fighting over this war, having differences of opinion is absolutely appropriate, and the only way a free people can live.

The Iraqi prison abuse scandal is an opportunity for America to come together. Regardless of whether you are Republican or Democrat, we see this problem the same. If we work together, we can win. We will work, I am 100-percent certain of that. The only person who can defeat us is ourselves.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. What is the parliamentary situation?

The PRESIDING OFFICER. Morning business with a 10-minute time limit.

#### JUDICIAL NOMINATIONS

Mr. HATCH. Madam President, over 6 weeks ago, the Senate minority instituted what resulted in a virtual freeze on the Senate's constitutional responsibility to provide advice and consent on the President's nominees.

This is troubling to me for a variety of reasons. Nevertheless, I am slightly encouraged by the movement on a few executive nominations last week, even though I remain extremely concerned about the current and continuing freeze on judicial nominations.

The last time the Senate confirmed a judge was on March 12, about 2 months ago. So it is past time for a rollcall.

Yesterday, in addition to being Mother's Day, marked the beginning of the fourth year since the President sent to the Senate his first nominations to the Federal judiciary. Back on May 9, 2001, President Bush nominated 11 outstanding individuals to serve on the bench. The Senate has confirmed eight of those nominees. One has withdrawn, and two are still pending.

I commend Senator DASCHLE and other colleagues across the aisle, especially my friend Democratic member of the Judiciary Committee, Senator LEAHY, for working with us and the administration in confirming to date 173 of President Bush's judicial nominations. As Senator LEAHY frequently reminds us, 100 of those nomination confirmations took place during his tenure as Judiciary Committee chairman from mid-2001 through 2002.

But more work can and needs to be done so that the American public can enjoy the benefits of a more fully staffed Judiciary. Unfortunately, the old saying, "justice delayed is justice denied" is true. The Senate needs to consider the judges on the calendar and give each one an up-or-down vote, as the Constitution requires. At present, there are 32 nominations for our district and circuit courts pending before the full Senate. Among this group are 22 men and 10 women. This is an outstanding group of candidates with diverse backgrounds. These candidates include a number of impressive minority candidates such as Justice Janice Rogers-Brown of the California Supreme Court, who has been nominated to serve on the influential Circuit Court of Appeals for the District of Columbia.

The nominees being held in limbo are highly qualified. Each and every one of them deserves the consideration of the full Senate. They include sitting State supreme court justices, State and Federal trial judges, and distinguished members of the bar. Many have served as judicial clerks in our Federal trial and appellate courts and in the Supreme Court. Others have served at the highest levels of all three branches of Government. All have distinguished academic records. Twenty-four of these nominees received a Well Qualified rating from the American Bar Association. Fourteen of those Well Qualified ratings were unanimous.

While I do not take the position that the ABA ratings are or should be dispositive on judicial nominations, let me remind my colleagues what a Well Qualified rating means. According to guidelines published by the American Bar Association, standing committee on Federal judiciary:

To merit a rating of "well qualified," the nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, breadth of experience, the highest reputation for integrity, and either have demonstrated, or exhibited the capacity for, judicial temperament.

This rating accurately describes the nominees before the Senate. When votes are held, I believe we will find there is bipartisan support for all of the nominees pending before the Senate. Even those who have been previously filibustered have received an affirmative vote of support by a majority of the Senate and have supporters across the political spectrum. Yet they are being held up, for the first time in this country's history, by filibusters.

As further evidence of the qualifications and support of the nominees, I note that 22 nominees were reported out of the Judiciary Committee without a single negative vote. Eighteen district judges were reported by voice vote and with no announced opposition. Four circuit nominees received a 19-to-0 Judiciary Committee vote. I see no reason all cannot expeditiously be acted on by the Senate. That means all of the 22 Judiciary Committee consensus nominees by voice vote or by unanimous consent, and the others, as well.

I have been troubled by the practice in this Congress of demanding time-consuming rollcall votes on nominees who pass unanimously or nearly unanimously. I understand these positions are lifetime appointments, but the Senate acts on many extremely important matters by unanimous consent or by voice vote. I have been told that last year alone we took about twice as many rollcall votes on unopposed judicial nominees than in 8 years under President Clinton. That is just last year.

Like every other Senator, I took an oath to defend and support the Constitution. Every Senator has his or her view on how that responsibility is to be exercised with respect to acting on ju-

dicial nominees. In my view, the Constitution requires the Senate provide its advice and consent regarding the judicial nominees.

Fulfilling my oath means I have a stake in seeing that happen. As chairman of the Judiciary Committee, I have a special role in working with the leadership in seeing the nominees, once reported from the committee, are brought up for floor action. Vote up or down, but just vote. Every judicial nominee who reaches the Senate floor is entitled to an up-or-down vote.

I am hopeful the votes will be held on all judicial nominees presently on the Executive Calendar, as well as for nominees who may yet be reported this year by the Judiciary Committee.

Now, I intend for my remarks today to bring us closer together on considering nominations in the Senate. While I will not fully discuss this matter today, I will note I am not persuaded by arguments that suggest that President Bush's exercise of his constitutional prerogative to make recess appointments somehow justifies this current freeze on nominations. Absent the refusal to allow the simple up-or-down vote on judicial nominees that article II, section 2, clause 2 of the Constitution requires, the recess appointments would not have been made in the first place.

I am mindful that my colleagues across the aisle have also expressed an interest in seeing that minority party nominees to bipartisan boards and commissions be acted upon. For the last several weeks, I have publicly stated on a number of occasions that I understand this concern and that I would support qualified Democratic nominees such as Jon Leibowitz, a former Judiciary Committee staffer of Senator KOHL, to serve as a Commissioner on the Federal Trade Commission. Likewise, I am pleased that the White House is considering a particular Democratic attorney, also a former Judiciary Committee staffer, to serve on the Federal Sentencing Commission.

I hope that significant and mutually satisfactory progress can be made on judges and other nominees. I hope such progress will be made. I know from my experience in this body if we work together we can usually find solutions to these matters, even in an election year.

Senator LEAHY and I and other members of the Judiciary Committee have worked hard on nominations, even as we faced other difficult issues in the committee this year.

I know Senator FRIST and Senator DASCHLE are working hard with the administration, and I wish them well. I simply implore them—each and every one of them—to accelerate the pace of these discussions. But I must also state I believe the time for discussions, negotiations, and talk is drawing to a close. At some point, the Senate must do its sworn duty and vote up or down on judicial nominations. That is just right. It is the right thing to do.

The time for action is quickly coming upon us. Some believe that point