

Former representative William Danne-meyer (R-Calif.) followed Schlafly, saying the country's "principal problem" is not Iraq or the federal budget but whether "we as a people acknowledge that God exists."

Farris then told the crowd he is "sick and tired of having to lobby people I helped get elected." A better-educated citizenry, he said, would know that "Medicare is a bad idea" and that "Social Security is a horrible idea when run by the government." Farris said he would block judicial power by abolishing the concept of binding judicial precedents, by allowing Congress to vacate court decisions, and by impeaching judges such as Kennedy, who seems to have replaced Justice David H. Souter as the target of conservative ire. "If about 40 of them get impeached, suddenly a lot of these guys would be retiring," he said.

Vieira, a constitutional lawyer who wrote "How to Dethrone the Imperial Judiciary," escalated the charges, saying a Politburo of "five people on the Supreme Court" has a "revolutionary agenda" rooted in foreign law and situational ethics. Vieira, his eye-glasses strapped to his head with black elastic, decried the "primordial illogic" of the courts.

Invoking Stalin, Vieira delivered the "no man, no problem" line twice for emphasis. "This is not a structural problem we have; this is a problem of personnel," he said. "We are in this mess because we have the wrong people as judges."

A court spokeswoman declined to comment.

Mr. DURBIN. Mr. President, if you want to know the extremes which are being reached in the debate on the role of judges in America, read this article. There was a meeting in Washington, DC, of some of the more conservative groups on the Republican side. These conservative leaders met to discuss "Remedies to Judicial Tyranny."

They decided that Supreme Court Justice Anthony Kennedy—a Ronald Reagan appointee, I might add—should be impeached.

Phyllis Schlafly [originally from my home State of Illinois] said [that Justice] Kennedy's opinion forbidding capital punishment for juveniles "is a good ground of impeachment." To cheers and applause from those gathered at a downtown Marriott for a conference on "Confronting the Judicial War on Faith," Schlafly said that Kennedy had not met the "good behavior" requirement for office and that "Congress ought to talk about impeachment."

Unfortunately, hers was not the most incendiary quote. A gentleman by the name of Edwin Vieira, a lawyer-author, the article goes on to say:

. . . not to be outdone . . . told the gathering that Justice Kennedy should be impeached because his philosophy, evidenced in his opinion striking down an anti-sodomy statute, "upholds Marxist, Leninist, satanic principles drawn from foreign law."

Ominously, Vieira continued by saying his "bottom line" for dealing with the Supreme Court comes from Joseph Stalin.

I am quoting Mr. Vieira:

He [Stalin] had a slogan, and it worked very well for him, whenever he ran into difficulty: 'no man, no problem,'" Vieira said.

The Washing Post goes on to say:

The full Stalin quote [this is what Stalin really said] . . . is "Death solves all problems: no man, no problem."

This type of outrageous statement from the so-called conservative Repub-

lican right is clear evidence that what we have heard from Congressman TOM DELAY in the House of Representatives, and from even Members in our own Chamber, represents a departure from the line of civility which we have refused to assault or cross when it comes to dealing with the separate branches of Government.

There is no doubt that decisions are handed down by Federal courts across America on a daily basis with which I personally disagree and find abhorrent. But to suggest retribution against judges—first from Schlafly that it should involve impeachment and then from Mr. Vieira that it should go further—suggests an assault on the independence of the judiciary about which every American should be concerned. When the men and women who don these robes for lifetime appointments have the courage to rule in cases, even in controversial cases, they should not feel they are going to be threatened on a regular basis by Members of Congress or by those in political parties who happen to see things differently.

We know how this can reach an extreme. We have seen it happen. In my home State of Illinois, the family of one of our outstanding Federal jurists was assaulted, and two of them were murdered. This type of reaction shows that when you give comfort to this crazed mindset, it can have disastrous results. The people who sponsored this conference should be embarrassed that they came together and suggested this kind of action against Federal judges.

It is time to put an end to this. We need to have an independent judiciary in touch with the ordinary lives of American citizens, in touch with the value of our families. But we always should stand and defend the independence of our judiciary and the integrity of the men and women who serve in that branch.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Delaware is recognized.

#### THE JUDICIARY

Mr. CARPER. Mr. President, yesterday I was in my State capital, Dover, DE, before I came down here. I was a short distance from a place called the Golden Fleece Tavern. It no longer exists, but it was the site of the place where Delaware became the first State to ratify the Constitution. They did that on December 7, 1787. That action took place a couple of months after a Constitutional Convention about 75 miles up the road in Philadelphia.

Some of my colleagues may recall that one of the last issues resolved at the time of the Constitutional Convention was the question of how they were going to select these judges, the third branch of our Government. How do we select these judges? There were some at that time who were fearful of creating a Presidency that would be too strong, having had a bite of the apple

of putting up with a king of England for a number of years. They did not want to create a king or someone of royalty in this country to be our leader. Our Founding Fathers worked diligently in any number of ways to create checks and balances to ensure that we didn't end up with a king but ended up with a President. Among the checks and balances they incorporated into our Constitution is one that deals with the selection of our judges. We all know how Presidents nominate and the Senate confirms or does not confirm nominees to lifetime appointments to the Federal bench.

Twice in our Nation's history we have seen instances where a President sought to stack the courts. Both were Democrats. One was Thomas Jefferson at the beginning of his second term as President, and a second was FDR at the beginning of his second term as President. Both times, both Presidents, both Democrats, were rebuffed. Today, Democrats no longer reside in the White House. Today, the Republicans are in the majority here in the Senate and in the House of Representatives.

With the election of last November, President Bush is in a position to see much—not all, but a good deal—of his legislative agenda approved; perhaps modified but ultimately approved. He is also in a position to leave an even more enduring legacy through his nomination of hundreds of judges in the Federal courts of almost every State. In President Bush's first term, he nominated over 200 men and women to the Federal bench, and 215 nominees were actually debated here on the Senate floor, and 205 were approved. That is an approval rate of about 95 percent. Of the 10 who were not approved, our side would say they were simply out of the mainstream.

As the 108th Congress concluded last year, the vacancy rate stood at the lowest, I believe, since the Reagan era. How did that compare with the Clinton era? In President Clinton's time as President for 8 years, 81 percent of his Federal nominees were approved, as compared to 95 percent of President Bush's in the last 4 years. It is kind of an irony, at least to me, that 81 percent for President Clinton was enough, it was OK, but 95 percent for President Bush is unacceptable.

While our Republican friends are prepared to change the rules of the Senate in an effort to make it a lot easier to confirm Federal judges, and are poised, I am told, to turn some 200 years of precedent on its head because 95 percent may not be enough, I think to do so would be a mistake.

We have a chance to pass not only class action legislation, but we have a chance to pass bankruptcy legislation, asbestos litigation reform, a comprehensive energy policy, restructuring of the postal system for the 21st century, and on and on. This could be the most fruitful legislative session in recent memory. I would hate to see us destroy that potential.

I say also that the slope we get on with respect to changing the way we close off debate on judicial nominations is a slippery one. Today, we may want to apply it to judicial nominations; later on we may want to apply it to nominees for Cabinet positions or nominations for other positions. It is a slippery slope.

My Republican friends would be wise to listen to former Republican Senators who served on that side of the aisle, people such as Senators Wallop, McClure, Danforth, and today Senator Dole, Robert Dole. They reminded today's Republican Senators, the majority in the Senate, that the bed we make today is one we may have to sleep in. There won't always be a Republican President. Some day there will be a Democrat President. It could be 4 years from now. There will not always be a Republican majority in the Senate. It goes back and forth.

I say to my friends on the other side of the aisle, before we go down this road, keep in mind a couple of things. No. 1, we have the potential to get so much done this year. I would hate to see us blow that opportunity.

No. 2, this is a slippery slope—a policy change that may be designed initially to make it easier to confirm judicial appointments but could easily be applied to other appointments to other positions.

No. 3, some Democrats would take some consolation in the thought that we are not going to always be in the minority, and as there was a Democrat President for the last 8 years for the last century, there will be another one in the future.

My Republican friends, be careful of the bed you make because someday you will have to chance to sleep in it.

Thank you, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Colorado is recognized.

#### JUDICIAL NOMINATIONS

Mr. ALLARD. Mr. President, I rise this morning to address one of the most important obligations that we, as Members of the Senate, are bound to fulfill—the approval or disapproval of the President's judicial nominations.

Perhaps no other constitutional duty vests as much responsibility in the executive, or this body, than article II, articulating the President's power of appointment, a power that is only realized when the Constitution works as it was intended to, when we fulfill our obligation as laid out in the clause requiring this body's advice and consent.

This fundamental duty carries with it the weight and responsibility of generations, a lifetime appointment to a position that requires a deep and mature understanding of legal thought, and a solemn oath to uphold the law.

This debate is not about numbers. It is not about percentages, how many judges that Republicans confirmed or how many judges Democrats con-

firmed. To frame the debate as nothing but a statistical argument is to betray the American people.

We were not sent to Congress to focus on a numerical count but instead to make sure that limited government allows for opportunity and promise without stifling individual freedom and liberty.

We were sent here to build a stronger Union and to uphold our obligations under the Constitution.

The Founding Fathers referred to judges as "the guardians" of the Constitution and gave to the President the responsibility to appoint them.

Alexander Hamilton once wrote that, in order to maintain the health of the three branches of government, all possible care is requisite to enable the judiciary to defend itself.

It is frightening to think that a minority in the Senate is eroding the foundation of the third branch by perpetuating obstruction and endangering the citadels of justice.

No where does the Constitution give Congress the ability to ignore the appointment process.

By refusing to give judicial nominations an up or down vote, it is nothing more than a Congressional veto with a fancy name.

James Madison characterized the appointment of judges as the remote choice of the people.

Failure to provide an up or down vote deprives the people of the United States the choice selected by their representatives, denying choice to the very same people who elected us to office and the same people who live under the Constitution that we have sworn to protect.

The legal prowess of a nominee is obviously an important factor to consider when confirming a judge.

The Constitution calls upon the Senate collectively to determine whether or not a particular nominee is qualified to serve. This determination is made in one gesture, the approval or disapproval of the nomination itself.

In 2003 and 2004, a series of votes were held on various nominees. Some were approved, while others were denied a vote altogether, even though they were clearly supported by a majority of Senators.

Procedural processes do not fulfill the advice and consent requirement. Advice and consent does not mean avoiding the question on a judicial nominee entirely by employing a filibuster.

If a Member of the Senate disapproves of a judge, then let them vote against the nominee. But do not deprive the people of the right to support a nominee through their elected representative.

It is our vote, the right of each Member to collectively participate in a show of "advice and consent" to the President, that exercises the remote choice of the people.

The burden of obstruction is borne by the American people. Empty seats on

our highest courts delays the recourse and justice guaranteed by the Constitution.

As so many of my colleagues have stated before me, such justice delayed is justice denied.

In the shadow of September 11, 2001, we now recognize the efforts being made by the enemies of the United States to destroy the liberties and freedom of our great Nation. The most basic of our country's values and traditions are under attack.

Congress responded by enacting new laws and by providing financial assistance to businesses, families and defense; we acted swiftly to suffocate terrorists and destroy the hateful organizations that work to undermine our society.

Through strong and courageous leadership, the President has stood firm against terrorist and terrorist regimes.

But our government cannot function without an equally strong judiciary, the third branch of government. It is through the judiciary that justice is served, rights protected, and that law breakers are sentenced for their crimes.

The Senate cannot willingly refuse to provide an up or down vote on judicial nominees without acknowledging that irreparable harm may be done to an equal branch of government.

Judges must take an oath to uphold the law, regardless of their personal views.

Time after time, a nomination has been blocked by a minority of Senators because they feel that they are better judges of a nominee's ability to fulfill that oath than a majority of the Senate.

The result of this obstruction is a broken nomination process.

I sincerely hope we can work through the impasse on the judicial nomination process.

I hope those opposed to the President's nominees will vote against them and speak their mind about it. But I also hope that we will be allowed to provide the guidance we are required to provide under the Constitution.

As I have said so many times before, "vote them up or vote them down, but just vote."

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I am the Senator from Tennessee, and we know something about country music in our State. There is an old country music song with the line that goes something like this: There is light at the end of the tunnel and I hope it ain't no train.

I am beginning to think it is a train and that there is not much way to avoid a train wreck. The train wreck I am talking about is a threat by the minority to "shut the Senate down in every way" if the majority adopts rules that will do what the Senate has done for 200 years, which is to vote up or down the President's appellate judicial nominees.