

Professor Bibas has been prolific in his academic writings, publishing numerous articles on all aspects of criminal law. His academic work culminated in the publication of his book entitled “The Machinery of Criminal Justice.” That book was published in 2012. In this book and in many of his articles, Professor Bibas criticized the current model of bureaucratic “assembly line” justice and America’s high incarceration rate. Much of his work is devoted to finding solutions to these problems. His academic work has certainly had an impact on the law. In fact, Professor Bibas is one of the most cited law professors in judicial opinions. One study shows that he is the 15th most cited legal scholar by total judicial opinions, and he is the fifth most cited in the area of criminal law—not bad for a relatively young professor.

Professor Bibas has also had a positive impact on colleagues and students. The Judiciary Committee received a letter from 121 law professors throughout our country representing a diverse range of viewpoints. These professors support Professor Bibas’s nomination, pointing to his—and this quote comes from the letter—“influential contributions to criminal law and procedure scholarship,” as well as his “fair-mindedness, conscientiousness, and personal integrity.”

Professor Bibas also received a letter in support of his nomination from many colleagues at the University of Pennsylvania. They stated that he has been “an outstanding scholar, teacher, and colleague” at Penn.

Professor Bibas also has extensive litigation experience. He is currently the director of the University of Pennsylvania Law School’s Supreme Court Clinic. In this role, he and his students have represented numerous litigants who could not otherwise afford top-flight counsel. He has argued numerous cases before the Supreme Court, and he obtained a significant victory in the landmark case of *Padilla v. Kentucky*, which established a defendant’s Sixth Amendment right to accurate information about deportation before pleading guilty.

One of our Supreme Court Justices, Ruth Bader Ginsburg, in a personal letter to Professor Bibas that the Judiciary Committee received, called him one of the “very best lawyers presenting cases to the Court.” It is kind of nice, if you are considered kind of a strict constructionist, that you get a letter like that from one of the more activist members of the Supreme Court.

Some of my Democratic colleagues criticize Professor Bibas during his confirmation hearing for two really isolated events in the long and illustrious career he has had.

First, Democrats criticized Professor Bibas for prosecuting a minor theft of only \$7 when he was an assistant U.S. attorney. This case took place nearly 20 years ago. But it was Professor Bibas’s supervisor who made the deci-

sion to charge the defendant and, of course, required an underling by the name of Bibas to pursue the case even after it started to fall apart.

In his hearing, Professor Bibas readily acknowledged that the defendant should not have been prosecuted, and the professor stated this to our committee:

I learned from that mistake, and as a scholar, I have dedicated my career to trying to diagnose and prevent the causes of such errors in the future—inadequate Brady disclosure, new prosecutor syndrome, tunnel vision, jumping to conclusions, partisan mindsets. And I have testified before this committee on those very issues. And so I made a mistake. I apologized. I learned from it, and I have tried to improve the justice system going forward.”

Some of my colleagues have also criticized Professor Bibas for a single article that he wrote but never published. This article endorsed limited forms of corporal punishment as an alternative to lengthy prison sentences. But Professor Bibas reconsidered this idea soon after completing the article. He concluded that it was a bad idea and did not publish it. He completely disavowed the position in his book published shortly thereafter.

When asked about corporal punishment at his hearing, Professor Bibas stated:

It is wrong. It is not American. It is not something I advocate. I categorically reject it.

Additionally, Professor Bibas’s position on corporal punishment was well-intended. He was motivated to address overly harsh and unproductively long prison sentences. As he said at his hearing, he wanted to offer an answer to the question, “Is there some way, any way, we can avoid the hugely destructive effect [of imprisonment] both on prisoners’ own lives and on the families, the friends, the communities?”

In the time since Professor Bibas wrote the article, he has offered more creative solutions to the disruptions caused by lengthy prison sentences. As an example, instead of suffering through forced indolence, prisoners could work and develop work-related skills in anticipation of their release from prison.

Professor Bibas’s scholarship, as I have stated and quoted from, is a testimony to his devotion to the rule of law and the notion of equal justice before the law. It is very clear that he cares very deeply about how the criminal justice system impacts defendants, victims, families, and entire communities. As you can tell, I am very confident that Professor Bibas will make an excellent judge on the Third Circuit Court of Appeals.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

NORTH KOREA

Mr. CARDIN. Mr. President, President Trump will be leaving on a lengthy trip to Asia. He will be visiting Japan, the Republic of Korea, China,

the Philippines, and Vietnam. In each of those countries, we expect that the No. 1 national security issue that will be talked about is North Korea.

North Korea’s dangerous activities are certainly putting not only the region but the global community at risk. They have a nuclear weapons capability. They currently have the ability to explode a nuclear device. They are working on delivery systems that could very well reach not just the region but the United States. They are violating international commitments. They have done dozens of tests this year alone, all in violation of those international commitments.

We have had a strong policy to try to isolate North Korea. The United States has led in the imposition of sanctions. We introduced this year and passed the Countering America’s Adversaries Through Sanctions Act. It passed this body by a 98-to-2 vote. I notice the chairman of the Senate Foreign Relations Committee is on the floor, and he was one of the strong architects of that legislation. The United Nations Security Council passed Resolutions Nos. 2270, 2321, and 2375. The President has issued Executive Order No. 13810.

We have been asking for rigorous enforcement of sanctions. We could do more. One of the points I hope the President will be talking about during his trip is robust and rigorous enforcement of the sanctions that are out there. And I see there is activity taking place in the Banking Committee. We have legislation in the Senate Foreign Relations Committee. If additional sanction authority is needed, let’s do that. That is important.

But what additional things can we do, and what should the President be promoting as he visits Asia? First, let me give you a few unacceptable alternatives.

We cannot lead with military intervention. The casualties could be astronomical. The technology to develop nuclear weapons would still remain. Our allies are certainly not in agreement with that policy. There is no congressional authority for the use of force.

A second alternative that is not acceptable is to just continue the current course. North Korea is developing a delivery system that will threaten not just Japan and the Republic of Korea but also Guam and the United States. We will see an arms race if we do not effectively stop North Korea’s nuclear program.

President Trump’s statement, in my view, made the challenges even more dramatic. His “America first” statements isolate America and make it more difficult for us to get the type of support we need. I think his reckless statements make it more likely rather than less likely that we will use a military option.

What we need is a surge in diplomacy. A surge in diplomacy can very well start with the meeting between President Xi of China and President Trump of the United States. We have a

common agenda. Neither China nor the United States want to see a nuclear North Korea. Both China and the United States recognize that the Kim Jong Un regime in North Korea is unreliable. We are both looking for an off-ramp so we don't need to use a military option.

China has the capacity to turn the pressure on North Korea through sanctions that could change the equation in North Korea. China and North Korea have a common agenda. Both want to preserve the regime of Kim Jong Un—Kim Jong Un for obvious reasons; China, because they do not want to see a unified Korean Peninsula under Western influence.

Our objective is for North Korea to give up its nuclear weapons. China needs to be convinced that our objective is the same as theirs. With that, they could instill greater pressure on North Korea, and diplomacy could work.

What should be our objective? We have to be realistic. In the short term, it should be containment. Freeze the current program. Stop the testing. Make it clear that we cannot allow these programs to continue. Ultimately, we want to see a nonnuclear Korean Peninsula.

We know that in the past—the 1994 framework agreement with North Korea lasted for 8 years. So there is an ability to make progress, but we have to develop confidence between the parties.

In conjunction with this, let me urge us not to lose sight of the North Korean people. Let's continue our focus on the human rights problems in the country. Let's work with our allies, particularly Japan and the Republic of Korea, and let's rigorously enforce the sanctions until progress is made.

We can achieve an alternative outcome in North Korea, but it requires U.S. leadership, and President Trump needs to engage on that issue. We need confidence building, and we need to make sure that we make progress. Time is not on our side, but there is still time to make progress. Without a diplomatic surge, there are only unacceptable options. Our goal should be a more peaceful, stable, and prosperous northeast Asia community.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, all time has expired.

The question is, Will the Senate advise and consent to the Bibas nomination?

Mr. ALEXANDER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Missouri (Mrs. McCASKILL), the Senator from New Jersey

(Mr. MENENDEZ), the Senator from Florida (Mr. NELSON), and the Senator from Virginia (Mr. WARNER) are necessarily absent.

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

The result was announced—yeas 53, nays 43, as follows:

[Rollcall Vote No. 261 Ex.]

YEAS—53

Alexander	Flake	Paul
Barrasso	Gardner	Perdue
Blunt	Graham	Portman
Boozman	Grassley	Risch
Burr	Hatch	Roberts
Capito	Heller	Rounds
Cassidy	Hoeven	Rubio
Cochran	Inhofe	Sasse
Collins	Isakson	Scott
Corker	Johnson	Shelby
Cornyn	Kennedy	Strange
Cotton	Lankford	Sullivan
Crapo	Lee	Thune
Cruz	Manchin	Tillis
Daines	McCain	Toomey
Enzi	McConnell	Wicker
Ernst	Moran	Young
Fischer	Murkowski	

NAYS—43

Baldwin	Franken	Peters
Bennet	Gillibrand	Reed
Blumenthal	Harris	Sanders
Booker	Hassan	Schatz
Brown	Heinrich	Schumer
Cantwell	Heitkamp	Shaheen
Cardin	Hirono	Stabenow
Carper	Kaine	Tester
Casey	King	Udall
Coons	Klobuchar	Van Hollen
Cortez Masto	Leahy	Warren
Donnelly	Markey	Whitehouse
Duckworth	Merkley	Wyden
Durbin	Murphy	
Feinstein	Murray	

NOT VOTING—4

McCaskill	Nelson
Menendez	Warner

The nomination was confirmed.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. HELLER. Mr. President, I ask unanimous consent that with respect to the Bibas nomination, the motion to reconsider be considered made and laid upon the table and the President be immediately notified of the Senate's action.

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

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. HELLER. Mr. President, I ask unanimous consent that the Senate proceed to legislative session for a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

The Senator from Nevada.

JUDICIAL NOMINATIONS AND TAX REFORM

Mr. HELLER. Mr. President, this week, we have the unique opportunity to move forward on promises we made to the American people last year, con-

firmed judges and providing tax relief to hard-working Americans. The American people sent us to Congress to complete this critical work, and we must stop at nothing to do it. We have already taken significant steps to address both of these issues by confirming 13 judges, with 5 more this week, and passing a budget with instructions for tax reform.

There is still much more that we need to do, and I stand ready to stay here until that job is done. Most people can't go home until their work is finished; I don't think we should either. Imagine dropping your car off at the auto mechanic and, instead of staying to finish the job, they leave at 3 p.m. to go home because that is convenient for their schedule; yet you still have to pay them for a full day's work. That is effectively what we have been doing here in Congress, and that needs to stop. We need to work as much as possible to ensure that the Federal judiciary is filled with judges that will uphold the Constitution and bring us closer to providing tax relief for the American people.

We need to have a fully occupied, fully functioning Federal judiciary to ensure that Americans' constitutional rights are upheld. In almost 10 months, we have started to address the issue of judicial vacancies by confirming 13 judges, most notably Justice Gorsuch, who has already served as a strong, conservative voice on the Supreme Court. As a fellow westerner, I was proud to vote for such a qualified judge to serve in our Nation's highest Court.

Beyond the vacancy we filled on the Supreme Court, there are vacancies on all levels of our Federal judiciary. We cannot forget the importance of every single court that makes up the Federal system. We must prioritize confirming judges to fill these openings, especially those deemed judicial emergencies. The fact that we have so many judicial emergencies is incredibly concerning and should be a wake-up call to all Senators, especially those who are slowing down this important process.

The President is continuing to send us well-qualified nominees, and Chairman GRASSLEY has done an excellent job of moving nominees through the committee process. I am especially encouraged that this week we are confirming five more judges, including four circuit court judges. This is the pace we need to keep. If that means working 24/7 to continue confirming these constitutionalists, you can count me in. Confirming Federal judges is a unique duty of the U.S. Senate, and we cannot allow obstructionism from the other side of the aisle to prevent us from filling vacancies throughout the country.

It is clear that when judges are brought to the floor for a vote by a healthy majority, the gridlock being caused is purely political. Because of this, leadership is having to file cloture on all of these judicial nominees, and some of my colleagues across the aisle