not, the first pitch of the Minnesota Twins's home opener this week was thrown out from the Middle East by a group of Minnesota soldiers. Josh Tverger, a U.S. Army specialist from Norwood Young America, MN, threw out the first pitch from the Kuwaiti desert. In the Metro Dome, Army SP Greta Lind of Le Sueur, MN, was on the receiving end. It was all accomplished through the spectacular technical satellite links similar to what our military has put to such stunning use on the battlefield, and now on the ballfield.

Yes, there is much love at home. There is also much sadness in many homes and villages of those who have given their lives. We thank them. Our thoughts and prayers are with those who are on the front line today. Our thoughts and prayers are with the families of those who have given the ultimate sacrifice. If we could hug every one of them, moms and dads and sisters and brothers, I would do it and I know the Senator from Georgia would do the same.

They have our love. They have our prayers. They have our thoughts. God bless them all.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank the Senator from Minnesota for a wonderful statement. Certainly, every single life that is lost over there is appreciated and will be appreciated forever in the hearts of Americans because those young men and women are protecting the freedom we enjoy.

David Bloom, a constituent of the Senator from Minnesota, was also protecting our way of life. He was protecting the freedom of the press. He was serving so well to do that. I knew David personally, as most Members did, because he was such a special person and he did his job, worked hard, and was here a lot. We very much miss him and we know so many of his colleagues miss him, as well.

Mr. President, I wish to talk about T.R. Fehrenbach, a constituent of mine, who wrote what many think is the definitive book on the Korean war called ''This Kind of War.'' It is appropriate today. We have been amazed at the technological capability of our military in the war in Iraq. They have launched missiles, dropped bombs, and delivered other ordnance on the battlefield with pinpoint accuracy. I came across a picture today reminiscent of our soldiers from an earlier era that reminds me of some basic truths that apply no matter how much technological capability we might acquire.

I have a picture of American troops from the Army's 101st Airborne Division marching into Bastogne during World War II. This was the counterattack against the Germans. We see the 101st Airborne Division. I have another picture taken last week of the 101st Airborne Division, nearly 60 years later—a column from the First Brigade march into Najaf, Iraq, on Wednesday, April 2, 2003, doing basically the same thing.

These photographs demonstrate an old axiom about military operations that was written by Ted Fehrenbach in ''This Kind of War,'' a book about the Korean war:

> Americans in 1950 rediscovered something that since Hiroshima they had forgotten: You may fly over a land forever; you may bomb it, atomize it, pulverize it and wipe it clean of life—but if you desire to defend it, protect it, and keep it for civilization, you must do this on the ground, the way the Roman legions did, by putting your young men into the mud.

I know Ted Fehrenbach and I know he would have said today, by putting your brave young soldiers and marines in the mud, because what he is saying essentially is the same today as it was in 1950. And that is, if you want to protect a land and keep it for civilization, you must have our young men and women willing to go in on the ground. The truth is still the same today.

I yield the floor.

MORNING BUSINESS CLOSED

The PRESIDING OFFICER (Mr. COLEMAN). Morning business is closed.

EXECUTIVE SESSION

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

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar 86, which the clerk will report.

The assistant legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Mr. HATCH. I rise today to express my unqualified support for the confirmation of Justice Priscilla Owen to the Fifth Circuit Court of Appeals. Last evening I talked about the importance of this debate and this vote. I talked about this vote as an opportunity to remedy the mistreatment Justice Owen received last September when she was voted down in committee, along party lines, and blocked from receiving a Senate vote. We know she would have been confirmed in the Senate by both Democrat and Republican Members, but unfortunately she was never allowed to make it to that point. I talked about this vote as an opportunity for the Senate to show we can be fair to a well-qualified nominee and provide him or her a simple up-or-down vote.

Finally, I talked about this vote as an opportunity to place a great judge, Justice Owen, on the bench. I convened a hearing for Justice Owen last month because I wanted to provide all of my colleagues an opportunity to ask questions of her and to hear her answers. I want to clear up misstatements and misrepresentations of her record dating back to last year. I was confident Justice Owen would again demonstrate her intelligence and capacity for Federal judicial service. To put it mildly, she certainly did not disappoint. She handled questions with insightful and substantive answers. She was a superb witness, one of the best we have ever had before the Senate Judiciary Committee.

We heard valuable testimony from Senator CORNYN, a new Senator, but no newcomer to Justice Owen's record or the workings of the Judiciary. In fact, he served with Justice Owen on the Texas Supreme Court for a period of 3 years, serving side by side with her. He had been a Texas trial judge before that time. He also served as a Texas State attorney general for the last 3 years. Senator CORNYN answered a frequent criticism leveled at Justice Owen, a criticism that is false, that she is out of the mainstream on her own court. If anyone would know whether Justice Owen, in fact, fits this characterization, Senator CORNYN would know. He worked next to her, heard the very same oral arguments she did, examined and debated the same law and facts with her, and decided the very same cases she did.

There is no doubt, then, Justice Cornyn disagreed with Justice Owen at times. I can reel off a few case names as well as anyone. But the significant thing is that he supports her confirmation despite attempts by some to create division where none exists.

Former Texas Supreme Court Justices John L. Hill, Jack Hightower, and Raul Gonzalez, all Democrats, are united in concurring with Senator CORNYN's opinion calling Justice Owen unbiased and restrained in her decisionmaking and applauding her for her impeccable integrity, for her great character and great scholarship. The diverse and formidable group, made up of 15 former presidents of the Texas State bar, wrote in a letter of support: Although we prefer different party affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a true, unique, and outstanding candidate for the appointment to the Fifth Circuit.

There is no dissent from Hector De Leon, immediate past president of Legal Aid of Central Texas, who applauds Justice Owen's commitment to improving the quality of legal services for the poor, or from Mary Sean O'Reilly, lifelong member of the NAACP, pro-choice Democrat who worked with Justice Owen on gender and family law issues. They are joined in support by E. Thomas Bishop, president of the Texas Association of Defense Counsel, who writes: I cannot imagine a more qualified, ethical, and knowledgeable person to sit on the Fifth Circuit; and William B. Emmons, self-styled Texas trial attorney, Democrat, and ''no friend of Priscilla

Owen''—those are his words—who, nevertheless, said: Justice Owen will serve the Fifth Circuit of the United States exceptionally well.

Those who have been in support of Justice Owen are familiar with her record of service, but it deserves brief review in the Senate. Priscilla Owen is a native of Palacios, Texas, a town located on the southern coast of Texas, grew up in Waco, TX, and attended school there. Following graduation from high school, Justice Owen enrolled in Baylor University where she received a bachelor of arts degree cum laude. She attended Baylor University School of Law with a scholarship, again excelling in studies by achieving cum laude and serving as a member of the law review. She scored the highest score in the State on the Texas bar exam after finishing school, a terrific accomplishment in a State the size of Texas.

Justice Owen worked for the Houston firm Andrews & Kurth as a commercial litigator for 17 years, gaining seasoning in appearances before Texas State and Federal courts and courts elsewhere.

Besides extensive work in oil and gas litigation, she handled securities matters and did work on cases heard by the Texas Railroad Commission. She became a partner with the firm in the mid-1980s.

Priscilla Owen successfully ran for a seat on the Texas Supreme Court in 1994 and was reelected in the year 2000 for another 6-year term. Her reelection run in 2000 was supported by every major Texas newspaper. She won with 84 percent of the popular vote.

Based on this shining record of academic and professional achievement, the American Bar Association awarded Justice Owen a unanimous well-qualified rating. That is after sending representatives into the State, talking to people on all sides of various issues; talking to people on both sides of the political spectrum, both Democrats and Republicans; talking to fellow members of the bar, those who knew her the best. They came up with a unanimously well-qualified rating, the highest rating the American Bar Association can give.

This rating does mean that Justice Owen is at the top of the legal profession in her legal community; that she has outstanding legal ability, breadth of experience, and the highest reputation for integrity, and that she has demonstrated or exhibited the capacity for judicial temperament. Only a few people achieve that select highest rating.

Justice Owen is a member of the prestigious American Law Institute, the American Judicature Society and the American Bar Association, and a Fellow at the Houston and American Bar Associations. She has taken a genuine interest in improving access to justice for the poor while serving on the bench as a liaison to State committees on pro bono and legal services for the indigent. She worked with others to successfully petition the Texas State Legislature to provide better funding for organizations devoted to helping the poor with legal support services.

Earlier, I mentioned a letter of support for Justice Owen, which was sent by Hector De Leon, past President of Legal Aid of Central Texas. Let me just quote a small part of that letter, because it makes the point better than I can, regarding Justice Owen.

> Justice Owen has an understanding of and a commitment to the availability of legal services to those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit.

Justice Owen is active in her church and respected in her community. She is a mentor to young women attorneys, having made it to the top of the legal profession during a period of time when relatively few women went to law school—fewer were hired by preeminent firms—and even fewer are advanced thereafter to partnership. Justice Owen did all three.

As a judge, Justice Owen is an advocate for breaking glass ceilings in the legal field. She has served on the Texas Supreme Court Gender Neutral Task Force, a working group seeking to promote equality for women in the Texas legal system, and addressing problems of gender bias in the profession. And, she served as one of the editors of the Gender Neutral Handbook, a guide made available to all Texas lawyers and judges, and intended to educate and create awareness about gender bias.

If you look at her record, it is hard for me to imagine why my colleagues on the other side of the floor, on the Judiciary Committee, voted against her in any way. I don't see how they could possibly vote against her with the record that she has. But they did. I suspect that politics had a little bit to do with it.

Justice Priscilla Owen is an excellent choice for the Fifth Circuit. There is no doubt that some will pull isolated bits and pieces out of Justice Owen's rich and textured background in an attempt to discredit and diminish her accomplishments and abilities and jurisprudence. There is no doubt some will avoid mentioning the positive aspects of Justice Owen's career, and despite this fact, it bears noting once more that those who know Priscilla Owen best know what a terrific judge she is now and will be on the Federal court.

I have come to know Justice Owen and her record and I agree she has been an excellent State judge, and she promises to be an excellent Federal judge. I ask my distinguished colleagues in the Senate to join me in voting for the confirmation of Justice Priscilla Owen to the Fifth Circuit Court of Appeals, and I certainly hope this great justice is not going to be filibustered, as Miguel Estrada has been.

Nevertheless, we are prepared for whatever happens here. She stands in a unique position as one of the finest women lawyers in the country, one of the finest women justices in the country, and one of the finest people who really has worked so hard for women and women's issues and gender issues who has ever served in any court in this country. It is very difficult for me to see how anybody could vote against her.

I hope we can have this vote, up or down, within a relatively short period of debate. I hope everybody will get to the floor and say what they have to say about Justice Owen, and we will be happy to enter into debate at any time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I want to say first how much I appreciate Senator HATCH, the chairman of the Judiciary Committee, who has done an incredible job under very trying circumstances on the nomination of Priscilla Owen.

Senator HATCH saw early on what an outstanding person we have in Priscilla Owen, and though on a straight party-line vote she was turned down by the committee last year, and was unable to get to the floor even for a vote this year, with Senator HATCH's leadership she has been able to come out of committee, again on a straight party-line vote. I am very hopeful she will get a fair chance for a floor vote because she is one of the most outstanding people I know.

She has waited 1 year and 11 months. That is when the President first nominated her for the Fifth Circuit Court of Appeals. Priscilla Owen was among the group of 11 judicial nominees announced by President Bush on May 9, 2001. She is the kind of judge the people of the Fifth Circuit need on the bench, an experienced jurist who follows the law and uses good common sense. She has been nominated to a vacancy that has been classified as a judicial emergency and that should be filled expeditiously.

Justice Owen is an 8-year veteran of the Texas Supreme Court. She is highly qualified. She graduated cum laude from Baylor Law School in 1977. Thereafter, she earned the highest score on the Texas bar exam. Before joining the Texas Supreme Court in 1994, she was a partner in a major Texas law firm where she was a commercial litigator for 17 years.

She has used her legal talents to help those in need. She has worked to improve access to legal services for the poor. She fought to increase funding for these programs.

She has also helped organize a group known as Family Law 2000, which seeks to educate parents about the effects of divorce on children, and to lessen the adversarial nature of legal proceedings when a marriage is dissolved.

Justice Owen enjoys broad support. The American Bar Association Standing Committee on the Federal Judiciary has voted her unanimously well

qualified. To merit this ranking, the ABA requires that 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.

I would say her judicial temperament has been proven in the 1 year 11 months that she has waited for confirmation because the way she has conducted herself has been exemplary. She has been available to meet with any Senator. She has answered every question. She has gone back into records to make sure that she was answering exactly correctly. She has maintained complete silence about this process about which I am sure she has some strong opinions. But I think she has shown her judicial temperament by being very much on an even keel, basically saying: I would love to be on the Fifth Circuit, but I am very happy on the Texas Supreme Court.

Of course, she is well regarded by those who know her best. We do elect judges in Texas. In 2000, Justice Owen was reelected to the Supreme Court with 84 percent of the vote. She was endorsed by every major newspaper in Texas—every one.

The Dallas Morning News called her record one of ''accomplishment and integrity.'' The Houston Chronicle wrote she ''has the proper balance of judicial experience, solid legal scholarship, and real world know-how.''

Despite the fact that she is a well-respected judge who has received high praise, her nomination has been targeted by special interest groups that have mischaracterized her views.

Let me read the words of former elected attorney general and Texas Supreme Court Chief Justice John L. Hill, Jr., a lifelong Democrat, denouncing the false accusations about Priscilla Owen's record by special interest groups.

> Their attacks on Justice Owen in particular are breathtakingly dishonest, ignoring her long-held commitment to reform and grossly distorting her rulings. Tellingly, the groups made no effort to assess whether her decisions are legally sound. . . . I know Texas politics and can clearly say that these assaults on Justice Owen's records are false, misleading, and deliberate distortions.

That is a quote from former chief justice of the Texas Supreme Court, John Hill, elected as a Democrat.

Senator HATCH has taken the extraordinary step of holding a second hearing on Justice Owen in order to get the record straight and because Senator LEAHY, the ranking member, really insisted that she have another hearing. She did so well in those hearings. I watched them after I introduced her. Once again, her evenhandedness and her legal brilliance came through.

One issue that came up during the hearings involves Texas's parental notification statute. I believe Justice Owen has demonstrated that she is a judge who follows and upholds the law, and in this line of cases she has consistently applied Supreme Court precedent to help interpret uncertainty in the statute. The cases in question deal strictly with statutory interpretation of Texas law, not with constitutional rights.

These are not abortion cases. They are issues of parental involvement. They are notification—not consent—laws. Forty-three States have passed some form of parental involvement statute. During two lengthy committee hearings, Justice Owen defended her decisions as consistent with U.S. Supreme Court rulings.

In addition, almost all of the cases that came to the supreme court were cases in which she voted to affirm the district court and the circuit court of appeals rulings. So it would have been highly unusual for the supreme court to overturn the trier of fact and the first appellate court.

I hope my colleagues will see that her methods of statutory interpretation are sound and that she is an exemplary judge.

I urge my colleagues not to filibuster this well-qualified nominee but to give her an up-or-down vote. I hope we will confirm this outstanding supreme court judge from Texas who has waited almost 2 years now for the Fifth Circuit Court of Appeals appointment.

If there were anything in her record against integrity or competence or judicial demeanor, it would be a different case, but that is not the case about Priscilla Owen, whom I know well, whom I have been with on many occasions. I know the people who appear before her court. She is rated outstanding by all who know her, who are giving any kind of an objective view.

I hope this Senate will not do to Priscilla Owen what has happened to another well-qualified nominee, Miguel Estrada, who also has a sterling academic record, who also has a record of integrity and experience. I hope this Senate will not start requiring 60 votes, where the Constitution requires a simple majority for qualified nominees.

Let's have a vote up or down. We do not need a new standard. In fact, if we had a new standard, it should go through the constitutional process. We should have a constitutional amendment that says Supreme Court and circuit court and district court judge nominees will be required to have 60 votes. It would take a constitutional amendment to do that. But Miguel Estrada is being required to have 60 votes. I hope that is not the standard we put on Priscilla Owen.

Mr. President, I yield the floor.

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

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

The senior assistant bill clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, today the Senate has begun an extraordinary, actually unprecedented, debate to reconsider the nomination of Priscilla Owen to the United States Court of Appeals for the Fifth Circuit. In the history of the country, there has never been a time when a President has resubmitted a circuit court nominee already rejected by the U.S. Senate Judiciary Committee for the same vacancy. Until 4 weeks ago, never before had the Judiciary Committee rejected its own decision on such a nominee and granted a second hearing. We have a case where the Senate Judiciary Committee, having decided not to give even one hearing to President Clinton's nominees to the Fifth Circuit from Texas, Enrique Moreno and Jorge Rangel, in fact having decided not to give a satisfactory hearing to President Bush's nominees to the DC and Sixth Circuits, John Roberts and Deborah Cook, the committee nonetheless proceeded with another hearing for Justice Owen.

It is unprecedented both in its procedures but also in its political partisanship.

What did we learn in that second hearing? We learned that given some time, Justice Owen was able to enlist the help of the talented lawyers working at the White House and the Department of Justice in their political arm to come up with some new justification for her activism. We learned that given six months to reconsider the severe criticism directed at her by her Republican colleagues, she still admits no error. Mostly, I think we learned that the objections expressed last September were sincerely held then, they are sincerely held now. Nothing Justice Owen amplified about her record—indeed, nothing anyone else tried to explain about her record—actually changed her record.

In September, when we considered this nomination in the committee the first time, I said I was proud the Democrats and some Republicans had kept to the merits of the nomination and chose not to vilify or castigate or unfairly characterize and condemn without basis Senators working conscientiously to fulfill their constitutional responsibility.

After hearing some of the ugly things that were subsequently said at that business meeting, some of the accusations made against my colleagues and those interested citizens across the country who expressed opposition to Justice Owen's nomination, I was sorely disappointed that some in the Senate had not kept solely to the merits.

I continue to believe what Senator FEINSTEIN said that day is true. By doing its job on the nomination, by exercising due diligence, by examining records, by not just rubber stamping every nominee the President sent us, the Judiciary Committee showed itself to be alive and well.

We confirmed the overwhelming majority of the President's judicial nominees, 100 out of 103 considered while I was chairman—incidentally, setting an all-time speed record. We took the time to look at their records. We gave each person who was nominated to this lifetime seat on the Federal bench the scrutiny he or she deserved. We did not have the assembly line which seems to be in overdrive since this last Congress took over.

The rush to judgment on so many of the nominees before us does not change the fact that we fully and fairly considered the nomination of Priscilla Owen last year. The record was sufficient when we voted last year. It did not need any setting straight.

I voted ''no'' the last time this nomination was before us. In sharp contrast to the record of the district court nominee Cormac Carney who was just confirmed by the Senate—he came to us with strong bipartisan support—Justice Priscilla Owen is a nominee whose record is too extreme in the context of the very conservative Texas Supreme Court. Her nomination presents a number of areas of serious concern to me.

The first area is her extremism even among a conservative Supreme Court of Texas. The conservative Republican majority of the Texas Supreme Court has gone out of its way to criticize Justice Owen, the dissents she wrote and the dissents she joined in ways that are highly unusual, and highlight not a law-oriented activism but an ends-oriented activism.

A number of justices on the Texas Supreme Court have pointed out how far from the language of statutes she has strayed in her attempts to legislate from the bench, to go far beyond what the legislature intended.

One example is a majority opinion in a case called Weiner v. Wasson. In this case, Justice Owen wrote a dissent advocating a ruling against a medical malpractice plaintiff, a plaintiff who was injured while he was still a minor. The issue was the constitutionality of a Texas State law requiring minors to file medical malpractice actions before reaching the age of majority or risk being outside the statute of limitations. Of interest is the majority's discussion of the importance of abiding by a prior Texas Supreme Court decision, a decision that was now stare decisis, unanimously striking down a previous version of the statute.

In what reads as a lecture to the dissent, one of the very respected members of the Texas Supreme Court, then-Justice John Cornyn, explains on behalf of the majority:

> Generally, we adhere to our precedents for reasons of efficiency, fairness and legitimacy. First, if we did not follow our own decisions, no issue could ever be considered resolved. The potential volume of speculative relitigation under such circumstances alone ought to persuade us that stare decisis is a sound policy. Secondly, we should give due consideration to the settled expectations of litigants like Emmanuel Wasson, who have justifiably relied on the principles articulated in the previous case. . . . Finally, under our form of government, the legitimacy of the judiciary rests in large part upon a stable and predictable decision-making process that differs dramatically from that properly employed by the political branches of government.

That Justice Cornyn sure knows how to write. He did a great job on this one. Now, I may not agree with him on all other things, I may not even agree with him on the issue before us now, but I sure agree with his decision there.

Actually, I speak of it as being a conservative Supreme Court. In the 30 years I was practicing, we had a pretty conservative Supreme Court in Vermont, and I suspect they would have written the same thing. I suspect most supreme courts would have written the same lines about stare decisis. I do not think that is a case whether one is conservative or liberal on their supreme court. I suspect we could go through all 50 States, whether it is Wyoming, Vermont, Texas, or anywhere else, and find similar language.

The Republican majority on the Texas Supreme Court followed precedent. They followed stare decisis.

In Montgomery Independent School District v. Davis, Justice Owen wrote another dissent which drew fire from a conservative Republican majority, this time for her disregard for legislative language. In a challenge by a teacher who did not receive reappointment to her position, the majority found the school board had exceeded its authority when it disregarded the Texas Education Code and tried to overrule a hearing examiner's decision on the matter. Justice Owen's dissent advocated for an interpretation contrary to the language of the applicable statute.

The majority, which included Alberto Gonzales, now counsel at the White House, and two other appointees of then-Governor Bush, was quite explicit about the view that Justice Owen's position disregarded the law:

> The dissenting opinion misconceives the hearing examiner's role in the . . . process by stating that the hearing examiner ''refused'' to make findings on the evidence the Board relies on to support its additional findings. As we explained above, nothing in the statute requires the hearing examiner to make findings on matters of which he is unpersuaded.

The majority also noted the dissenting opinion's misconception, speaking of Justice Owen's opinion:

> The dissenting opinion's misconception of the hearing examiner's role stems from its disregard of the procedural elements the Legislature established in subchapter F to ensure that the hearing-examiner process is fair and efficient for both teachers and school boards. The Legislature maintained local control by giving school boards alone the option to choose the hearing-examiner process in nonrenewal proceedings. . . . By resolving conflicts in disputed evidence, ignoring credibility issues, and essentially stepping into the shoes of the factfinder to reach a specific result, the dissenting opinion not only disregards the procedural limitations in the statute but takes a position even more extreme than that argued for by the board. . . .

Then we have Collins v. Ison-Newsome, another case where a dissent, joined by Justice Owen, was roundly criticized by the Republican majority of the Texas Supreme Court. The court cogently stated a legal basis for its conclusion that they had no jurisdiction to decide the matter before it, and as in other opinions where Justice Owen was in dissent, took time to explicitly criticize the dissent's position contrary to the clear letter of the law.

At issue was whether the Supreme Court had the proper ''conflicts jurisdiction'' to hear the interlocutory appeal of school officials being sued for defamation. The majority explained that it did not because published lower court decisions do not create the necessary conflict between themselves. The arguments put forth by the dissent, in which Justice Owen joined, offended the majority, and they made their views known, writing:

> The dissenting opinion agrees that ''because this is an interlocutory appeal . . . this Court's jurisdiction is limited,'' but then argues for the exact opposite proposition. . . . This argument defies the Legislature's clear and express limits on our jurisdiction. . . . The author of the dissenting opinion has written previously that we should take a broader approach to the conflicts-jurisdiction standard. But a majority of the Court continues to abide by the Legislature's clear limits on our interlocutory-appeal jurisdiction.

Listen to what they said. Justice Owen says because this is an interlocutory, the appeals court's jurisdiction is limited, but as the majority point out, she then argued for the exact opposite proposition.

They go on to say, ''[W]e cannot simply ignore the legislative limits on our jurisdiction. . . .''

She was defiant of legislative intent, a total disregard of legislatively drawn limits.

I agree with what President Bush said during the campaign, he wanted people who would interpret the law on courts and not make the law. We have someone here who, time and again, substitutes her judgment for the legislature's judgment. In fact, she wants to be both the legislature and the judiciary.

You can be one or the other. You cannot be both, not in our system of government.

We are already saddled with an activist Supreme Court, the U.S. Supreme Court. We are creating more activist courts of appeals. This is someone who fits into the absolute motto of being an activist judge.

Frankly, I am opposed to the idea of having activists judges either on the liberal side or the conservative side. I want judges who interpret the law who do not make the law, justices who are fair and open to all litigants. I want litigants to be able to walk into a courtroom and look at the judge and say, it really does not make any difference whether I am plaintiff, defendant, rich, poor, liberal, conservative,

what political party I belong to, what color I am, what religion I practice, that judge will hear my case fairly. That judge will either rule with me or rule against me but it will be based on the facts and the law before the judge and not because of their particular ideology or their particular bent or their desire to substitute themselves and their opinion, either for the executive or for the legislative branch of Government.

Some of the most striking examples of criticism of Justice Owen's writings, or the dissents and concurrences she joins, come in a series of parental notification cases heard in 2000.

In the case of Jane Doe I, the majority included an extremely unusual section explaining the proper role of judges, admonishing the dissent joined by Justice Owen for going beyond its duty to interpret the law in an attempt to fashion policy. Giving a pointed critique of the dissenters, the majority explained that:

> In reaching the decision of granting Jane Doe's application, we put aside our personal viewpoints and endeavored to do our jobs as judges—that is, to interpret and apply the Legislature's will as has been expressed in the statute.

In a separate concurrence, Justice Alberto Gonzales wrote to construe the law as the dissent did ''would be an unconscionable act of judicial activism.''

I will speak further on this. I see the distinguished Senator from Texas, who I understand may have a differing view than I do on this nomination, and I do want to make sure he is given a chance. I will speak for a few more minutes and then yield.

I note one thing. Justice Owen has been nominated to fill a vacancy that has existed since January 1997. We are now in the year 2003. This vacancy has existed for 6 years. One might wonder why nobody was nominated during that time. Actually, they were. President Clinton first nominated Judge Jorge Rangel, a distinguished Hispanic attorney from Corpus Christi, to fill that vacancy. He had one of the highest ratings of the American Bar Association, a majority found him well qualified. He was strongly supported by so many across the political spectrum who wrote to me. It was not a question of being voted down; he was never even allowed to have a hearing.

Finally, after 15 months, out of frustration, he asked the President to withdraw his nomination. He said, if I am not going to be allowed to have a hearing, to say nothing about a vote, I am leaving.

Then September 16, 1999, 4 years ago, President Clinton nominated Enrique Moreno, another Hispanic attorney, to fill that same vacancy. This Harvard-educated lawyer also received a rating of well qualified from the ABA, and his was a unanimous well qualified.

Members may be wondering what the vote was on him. Well, there wasn't a vote. There was not even a hearing. He waited for a year and a half and never got a hearing. So both of these people were carefully rejected by not having a hearing.

For years, as I have spoken before, we needed 100 votes to get any nominee through. Unless every single Senator, every single Senator agreed, the nominee would not get a hearing. Time and time again, dozens upon dozens upon dozens of cases, every single Democratic Senator agreed they should at least have a hearing and a vote, and at least one Republican would disagree, and they would never be given a hearing. As Allen Snyder, DC Circuit, never given a vote. Elena Kagan, just named the dean of the Harvard Law School, never given a hearing or a vote; Robert Cindrich, Third Circuit, never given a hearing or a vote by the Republicans; Steven Orlofsky, Third Circuit, never given a hearing or a vote by Republicans; James Beatty in the Fourth Circuit, never given a hearing or a vote by Republicans because not all of them agreed. If one disagreed, if one objected, they were not given a hearing or a vote. Andre Davis, Fourth Circuit, never given a hearing or a vote because at least one Republican disagreed. They needed 100 votes to make it. Elizabeth Gibson, Fourth Circuit, never given a hearing or a vote because one Republican disagreed.

The Fifth Circuit, Alston Johnson, never given a hearing or a vote, because at least one Republican disagreed. Kent Markus, in the Sixth Circuit, Kathleen McCree Lewis, eminently well qualified, at least one Republican disagreed, never given hearings, never given votes. James Duffy in the Ninth Circuit, never given a hearing or a vote, because at least one Republican disagreed. And the same could be said about so many others. James Lyons in the Tenth Circuit. Interestingly enough, in the Tenth Circuit never given a hearing or a vote because one Republican disagreed, and Democrats had helped move forward somebody who many disagreed in that same circuit.

I might point out that of all these people, and so many others, there are dozens of others, but all of these had ratings of well qualified from the ABA. But at least one Republican disagreed, and if just one Republican disagreed, they were never allowed to have a hearing or a vote.

Interestingly enough, it wasn't until May of last year, in the hearing chaired by Senator SCHUMER, that this committee heard from any of President Clinton's three unsuccessful nominees for the Fifth Circuit. Last May, Mr. Moreno and Judge Rangel testified, along with other of President Clinton's nominees, about their treatment by the Republicans, when the Republicans were in charge of the Senate Judiciary Committee. These nominees were told by at least a couple of the members, senior members of the Republican Party, that if somebody in their caucus disagreed, that was too bad. It had nothing to do with their qualifications. They were not going to fill that vacancy.

This happened in a number of circuits, including the Fifth Circuit. In fact, when the committee held its hearing on the nomination of Judge Edith Clement to the Fifth Circuit in 2001, it was the first hearing on a Fifth Circuit nominee in 7 years. By contrast, Justice Owen was the third nomination to the Fifth Circuit on which the Judiciary Committee, under my chairmanship, held a hearing in less than 1 year. In spite of the treatment by the former Republican majority of so many moderate judicial nominees of the previous President, we proceeded last July with a hearing on Justice Owen.

So Justice Owen was the third nominee to this vacancy. She was the first to be afforded a hearing before the committee. Actually, I set that hearing. I even set the vote on a day that President Bush personally asked me to set the vote. After having set it on the day he asked me to, the political arm of the Justice Department immediately started calling all these editorial writers and others, saying: It is terrible she is being set for a vote on that day.

It was interesting. They then, as they had the right to do, put it off for several weeks, the vote. I almost wonder what the vote would have been had it been on the day the President asked to have the vote, and the day I agreed with the President to have the vote, and then was castigated by the White House for going along with what President Bush wanted. It is, with this administration, sort of: No good deed goes unpunished.

But then I think it is interesting what happened. Because after the Republicans put it off and we did not have the vote on the day the President asked, there was so much partisan politicking that went on on her behalf that I think it solidified at least a couple of votes against her on that committee. We will never know.

But, even though Republicans had blocked many of President Clinton's nominees for the Fifth Circuit, we moved forward in a hearing for Priscilla Owen. At her hearing a couple of weeks ago, her second hearing, her unprecedented hearing, the chairman was very dismissive of our concerns and our efforts to evaluate this nomination on the merits. But the irony is, she has been before this committee twice now and neither time did the explanations change the facts before us. The President has said, and I am sure all his pollsters will tell him, people agree with this, as they should, the standard for judging judicial nominees would be that they ''share a commitment to follow and apply the law, not make law from the bench.''

Everybody agrees with that. I agree with that. I don't know anybody who disagrees with that. But that is not Priscilla Owen's record. She is ready to make law and legislate from the bench.

She is not qualified for a lifetime appointment to the Federal bench. This

is something that affects all of us, these decisions. To put somebody in a lifetime appointment like that who has already shown she is an activist judge, I think is wrong. The President spoke of judicial activism without acknowledging that ends-oriented decision-making can come easily to ideologically motivated nominees. In the case of Priscilla Owen, we see a perfect example of such an approach to law. I do not support that. I will not.

I am perfectly willing to consent to the confirmation of consensus, mainstream judges. I have on hundreds of occasions. When I was chairman, I did not allow the past rule—the past practice of anonymous holds. We even had a number I did not support, but brought them to a vote. When they got through the committee they came on the floor.

Justice Owen was plucked from a law firm by political consultant Karl Rove. She ran as a conservative pro-business candidate for the Texas Supreme Court. She certainly got a lot of support from the business community. Then she fulfilled her promise; she became the most conservative judge on a conservative court. She stood out for ends-oriented, extremist decision-making.

Now she is being asked to be placed in a lifetime appointment one step below the Supreme Court. I do not support that.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CORNYN. Mr. President, I want to take the next few minutes to respond to some of the comments the ranking member of the Judiciary Committee has made with regard to the process by which we confirm judicial nominees of the President, and to specifically respond to some of the areas of criticism that he and a handful of special interest groups have directed at the nomination of Priscilla Owen.

I believe, even though I am a new Member of the Senate—having been a Senator for all of about 4 months now—I have, at least in this area, some special knowledge I would like to share with my colleagues with regard to this particular nominee because for 7 years I served on the Texas Supreme Court and for 3 years concurrently with Justice Priscilla Owen.

So during that time I had the chance to work with her on a daily basis, learn her work habits and her frame of mind when it came to addressing her responsibilities as a judge on the highest court of my State. I believe in each instance the criticism the ranking member has lodged—really repeating that which special interest groups have lodged unfairly against Priscilla Owen since her nomination on May 9, 2001—can be refuted, or at least explained in a way that I think demonstrates she should be given the opportunity for an up-or-down vote in the Senate, where I am convinced that a bipartisan majority of this body stands ready to confirm her nomination.

Senator LEAHY has gone through some history of the Clinton administration and the nominees of that administration and the treatment—unfair treatment, in his eyes—of President Clinton's nominees. I think what we are supposed to conclude from that is that somehow this game of tit for tat, or what is sauce for the goose is sauce for the gander, somehow rises to the high level of performance that the American people have cause to expect of us whom they send to the Senate.

I contend that rather than serve the interests of the American people, the way in which the Senate Judiciary Committee proceedings have been conducted for some time now—particularly as evidenced now by the filibuster being imposed against the nomination of Miguel Estrada—have been a disservice to the American people.

I have supported—and Senator LEAHY has said he agrees with me—that we need to find some way to bring a conclusion to this downward spiral, in a way that serves the interests of the American people and does credit to this institution. I hope, in the days that lie ahead, we will find an opportunity to do that. I trust we will. I only hope the Senate does not grab defeat from the jaws of victory in terms of our opportunity to reform this broken system of judicial confirmation, one that does not reflect well on this institution.

Senator LEAHY talked about how unprecedented this nomination is, pointing out that last year, during Senate Judiciary Committee hearings, Justice Owen was voted down in a strict party-line vote, and that she would now be renominated by the President and then brought to the floor. I guess these are unprecedented times when it comes to judicial confirmation proceedings.

As I mentioned just a moment ago, we have an unprecedented filibuster by the Democratic minority of Miguel Estrada, someone who, I believe, would receive a majority vote from a bipartisan group of Senators on this floor should the Senate just be allowed to vote. Of course, we have been through, I think, four cloture motions, which have failed, which means that debate continues on that nomination. Here again, unprecedented in the annals of this institution: a circuit court judge being filibustered for no good reason, I would contend.

Senator LEAHY says Justice Owen is an activist, someone who would impose her own will or political judgment on the people regardless of what precedent had established earlier decisions by the highest court in the land or what the legislature says. But the way he explains what he means by ''activism'' I think equates with: I don't agree with the results of the decision.

If that is the definition of ''activism,'' then activism has no meaning, or certainly no commonly understood meaning, because, of course, any reasonable person might disagree with the outcome of any judicial decision and thereby label that judge who made the decision an activist. But that is certainly not the commonly understood meaning: just the fact that judges may, in fact, disagree with each other from time to time.

I think some have pointed out, as an example of Justice Owen's failings, that some judges at different times have had cause to disagree with her decision. But, in fact, that is what we expect of judges—certainly at the highest levels of our judiciary—that they will do their very best to research the law, to comb the record, to try to discern what precedents might apply, what statutes that have been passed by Congress might apply, and then to apply that law to the facts as decided by the fact finder in order to reach a decision.

At the highest levels of our judiciary we commit that decision to nine people, and frequently they disagree with each other. We do not point that out as a fault or a failing; we view that as a strength because in the debate, the dialog, the back and forth—the conversation really—these judges have, we believe the public purpose for which the judiciary was created is served. I believe that to say it represents a failing or represents a reason a judge should not be confirmed turns the whole purpose of that body on its head.

Senator LEAHY claimed that Justice Owen is simply too extreme to be confirmed—this notwithstanding the fact that in her last election to judicial office in the State of Texas, 84 percent of the voters voted in her favor.

She has been endorsed by a bipartisan group of the leadership of the bar in my State, Republicans and Democrats alike, former presidents of the Texas Bar Association. She has received the highest endorsement, the highest recommendation given by the American Bar Association. How, in any fair-minded person's view, could Justice Owen be characterized as too extreme in light of those simple facts?

As some evidence of his argument that Justice Owen is somehow an activist, somehow too extreme, Senator LEAHY has pointed to language in a number of opinions where she has been criticized for rewriting statutes. As somebody who has, for better or worse, served for 13 years as a judge before I came to this institution, I can tell you, that is simply the way judges talk to each other when they disagree about the outcome in any case. They do their very best to research the law, to try to ascertain what the legislative intent is in any particular case, and then they reach a conclusion. Someone who disagrees with that judge may say: Well, I disagree. I believe you are rewriting the statute. It is not as serious nor certainly as consequential a statement as Senator LEAHY might suggest. It is just another way of saying: I disagree.

Here again, judges disagree, particularly on the most difficult questions that confront our States or this Nation. We expect judges to speak their mind. We expect judges to enter into intelligent debate and discussion, and when they disagree, so much the better. But finally—finally—there has to be a decision. That is where the majority comes into play and makes a final decision.

So judges being accused of rewriting statutes does not have nearly the sinister connotation that some might suggest and, in fact, to me just represents judges trying to do their jobs to the best of their ability.

I just have to mention that Senator LEAHY pointed to one case where Justice Owen and I disagreed when I was on the Texas Supreme Court, the Weiner v. Wasson case, and it was one of a number of cases where she and I disagreed. But, here again, the fact that we disagreed does not make her incompetent to serve on the Fifth Circuit Court of Appeals or unqualified or somehow activist. It means simply that we had different opinions of how the law ought to be ascertained, what that law was, and how it should be applied to the facts.

The language Senator LEAHY read, with which he said he agreed, about the importance of stare decisis, adheres to the precedents set out by our highest court in terms of setting expectations of the litigants, achieving finality of a decision rather than relitigating the same legal questions over and over again. That was no lecture but merely an explanation to the one who was challenging the constitutionality of the statute in that case or the one who claimed the statute was constitutional; in fact, it was important that we adhere to an earlier decision where we had held a similar statute unconstitutional. It was certainly not a lecture.

It just goes to prove that when you read the written record in black and white, sometimes it fails to impart enough information to make an informed decision about what is going on. That is why we have juries, to listen to witnesses, confront witnesses face to face in court. That is why, as appellate judges, we defer to the facts found by juries and lower courts, because they are in the best position to determine the veracity of the testimony and the credibility of the witness. That is why a written record can sometimes simply mislead you into a wrong conclusion, which has happened in the case of Justice Owen.

I could not support the nomination of Justice Owen to the Fifth Circuit Court of Appeals more strongly. This court, of course, covers the States of Texas, Mississippi, and Louisiana and all Federal appeals that come from those States. I firmly believe Justice Owen deserves to be confirmed. She will be confirmed by a bipartisan majority of the Senate as long as the Senate applies a fair standard and as long as we continue to respect Senate traditions and the fundamental democratic principle of majority rule by permitting an up-or-down vote on her nomination.

The American people desperately need the Nation's finest legal minds to serve on our Federal courts, particularly vacancies such as those on the Fifth Circuit, which have been designated judicial emergencies by the U.S. Judicial Conference. We must ensure that all judicial nominees understand that judges must interpret the law as written and not as they personally would like to see them written.

Justice Owen satisfies both of these standards with flying colors. She is, quite simply and by any measure, an impressive attorney and jurist. She graduated at the top of her class at Baylor Law School and was an editor of the Law Review at a time when few women entered the legal profession. She received the highest score of her class on the bar examination, and she was extremely successful as a practicing attorney in Houston, TX, and across the State for 17 years before she began her service on the Texas Supreme Court, where she has served with distinction for 8 years.

I alluded to this a moment ago, but in her last election not only did she receive the overwhelming majority of the statewide vote, she was endorsed by virtually every Texas newspaper editorial board—hardly the record of an out-of-the-mainstream nominee. She has the support of prominent Democrats in Texas, including former members of the Texas Supreme Court such as former Chief Justice John Hill, former Justice Raul Gonzalez, and a bipartisan array of former presidents of the State bar association.

The American Bar Association has given her its unanimous and highest well-qualified rating, which some in this Chamber have called the gold standard.

I cannot understand nor fathom how any judicial nominee can receive all of these accolades from legal experts and public servants across the legal and political mainstream unless that nominee is both exceptionally talented as a lawyer and a judge who respects the law and steadfastly refuses to insert his or her own political beliefs into the decision of cases.

Based on this amazing record of achievement and success, it is no wonder that Justice Owen has long commanded the support of a bipartisan majority of the Senate while her nomination has lingered since May of 2001.

I would like to talk about my own personal perspective on this nominee, having worked with her for 3 years. During that time, I had the privilege of working closely with Justice Owen. I had the opportunity to observe on a daily basis precisely how she approaches her job as a jurist, what she thinks about the job of judging in literally hundreds, if not thousands, of cases. During those 3 years, I spoke with Justice Owen on countless occasions about how to read statutes faithfully and carefully and how to decide cases based on what the law says, not how we personally would like to see it read or to have come out.

I saw her take careful notes, pull the law books from the shelves and study them very closely. I saw how hard she works to faithfully interpret the law according to her oath and to apply the law as the Texas Legislature has written.

I can testify from my own personal experience, as a former colleague and as a former fellow justice, that Justice Owen is an exceptional judge, one who works hard to follow the law and enforce the will of the legislature, not her will.

Not once did I see her try to insert her own political or social agenda into her job as a judge. To the contrary, Justice Owen believes strongly, as do I, in the importance of judicial self-restraint, that judges are called upon not to act as legislators or as politicians but as judges, to faithfully read statutes and to interpret and apply them to the cases that come before the court.

It is because I have such a deep admiration for Justice Owen that I have taken such a personal interest in talking about her nomination and hoping, not beyond hope, that Senator LEAHY and others who, I am convinced, have profoundly misjudged this nominee will reconsider their views and perhaps will take what I have to say today in the overall context of the nominee and reconsider her nomination.

On the morning of Justice Owen's confirmation hearing in the Judiciary Committee last month, I published an op-ed in the Austin American-Statesman discussing Justice Owen's qualifications for the bench.

I ask unanimous consent to print that op-ed in the RECORD.

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

[From the Austin American-Statesman, Thursday, Mar. 13, 2003]

THE REAL PRISCILLA OWEN

(By John Cornyn, U.S. Senate)

After 22 months of obstruction, the record on Texas judicial nominee Priscilla Owen will finally be set straight this morning in a U.S. Senate Judiciary Committee hearing. For the second time, Owen comes before the committee and will prove, once again, that she deserves to be confirmed to the 5th U.S. Circuit Court of Appeals. The Circuit's jurisdiction encompasses Texas, Louisiana and Mississippi.

Owen is an impressive attorney and jurist. She graduated at the top of her class from Baylor Law School and edited the Law Review there, during a time when few women entered the legal profession. She received the highest score on the bar exam.

After practicing law in Texas for 17 years, Justice Owen won a seat on the Texas Supreme Court, and Texans re-elected her in 2000 with 84 percent of the statewide vote. Her nomination has received broad, bipartisan support, including former state Supreme Court justices and prominent Texas Democrats such as John Hill and Raul Gonzalez, 15 former presidents of the State Bar of Texas and many other leading Texans.

Owen's qualifications and record of accomplishment caused the American Bar Association to unanimously rate her ''well-qualified'' for the Federal bench—its highest rating—which some Democrats have called the ''gold standard.'' But even that was not enough for the 10 Democrats on the Senate Judiciary Committee last year who blocked a vote on Owen by the full Senate.

Democrats on the Judiciary Committee used Owen as a political football last year in an attempt to embarrass President Bush and ridicule Texas during key elections. They tried unfairly to brand the native Texan as an extremist.

Partisan opponents point out that other judges sometimes disagree with Owen. But there is nothing wrong with disagreement; no two judges agree all the time—which is precisely why the Texas Constitution establishes a Supreme Court of nine justices. When the law is unclear, a good judge like Justice Owen searches in good faith for the right answer.

As a former justice on the Texas Supreme Court, I often agreed with Owen. When we disagreed, I always found her professional and her rulings based on a fair reading of the law.

Abortion advocates criticize her rulings on Texas's parental notification law. Unlike more restrictive states, Texas generally requires minors only to notify one parent before an abortion. The criticism is misplaced: Owen did not write the law, the state Legislature did.

Her opponents claim, disingenuously, that her interpretations of that law are out of the mainstream. Yet the author of the parental notification law, Texas state Sen. Florence Shapiro, filed briefs supporting Owen's view and endorses her nomination to the Federal bench. And among the few parental notification cases heard by her court, Owen dissented less frequently than two other justices. Owen's record is hardly one of an extremist.

When we set the record straight, it will be obvious in Washington—as it has long been in Texas—that Priscilla Owen is an outstanding person and well-qualified judge who deserves confirmation to the Federal court of appeals. After 22 months, Texans and the 5th Circuit have already waited long enough.

Cornyn, a Republican, is a member of the Senate Judiciary Committee.

Mr. CORNYN. Senator HATCH, chairman of the committee, also gave me the opportunity to chair a portion of the hearing at which Justice Owen's nomination was voted out. I publicly thank him for that special opportunity to not only express my strong support but to demonstrate it at that hearing.

At the same time I have taken a deeply personal interest in this nomination, I also want to step back and carefully consider the arguments that have been presented by opponents of the nomination.

I have mentioned some of those at the outset, particularly in response to what Senator LEAHY had to say. I am forced to conclude Justice Owen's opponents have no real arguments—none that stand up under scrutiny; at least none that will withstand scrutiny under any reasonably fair standard.

It bears noting, by the way, that Justice Owen's opponents are the same folks who predicted Lewis Powell's confirmation to the Supreme Court of the United States would mean ''justice for women will be ignored.''

Her opponents, the special interest groups who oppose her nomination, are the same folks who argued Judge John Paul Stevens had demonstrated ''blatant insensitivity to discrimination against women'' and ''seems to bend over backward to limit'' rights for all women.

Amazing as it may seem, her opponents are the same folks who testified that confirming David Souter to the Supreme Court would mean ''ending freedom for women in this country.'' Then the same folks who said they ''tremble for this country, if you confirm David Souter,'' even described now-Justice Souter as ''almost neanderthal'' and warned ''women's lives are at stake'' if the Senate confirms Souter.

Well, the rhetoric and the histrionics and the lack of credibility of those outlandish verbal assaults on judicial nominees sound all too familiar because, of course, these are many of the same accusations being made against Justice Owen, which are equally unfounded.

This reminds me of the story of the little boy who cried wolf. After these repeated charges, accusations, and shrill attacks—and we have heard many of the same directed against Miguel Estrada, without foundation—it makes you wonder just how credible these special interest groups really are that oppose some of President Bush's highly qualified nominees. It also makes you wonder whether these special interest groups makes these claims not because they believe they are truthful, but because they have another agenda, some other reason for making these claims, for scaring people.

In the particular case of Justice Owen, the attacks are, I am sad to say, true to form and conform to past patterns and practice, for they are, like the attacks of the past on the judges whose names I have mentioned, unfair and without foundation in either fact or law.

I mentioned just a moment ago how I believe the critics—people like the distinguished Senator from Vermont—point out judges sometimes disagree about the interpretation of statutes. You may read one judge's criticism of another judge's interpretation as ''rewriting a statute.'' I hope you will consider those comments and take them into account, as I hope others will who currently oppose Justice Owen's nomination. But if that is the standard—and I don't think it should be—then such a standard would also disqualify numerous U.S. Supreme Court justices, whom Owen's opponents are known to adore.

For example, in a 1971 opinion, Justices Hugo Black and William O. Douglas sharply criticized Justices William Brennan, Harry Blackmun, and others, stating that the ''plurality's action in rewriting the statute represents a seizure of legislative power that we simply do not possess.''

In a 1985 decision, Justice John Paul Stevens accused Justices Lewis Powell, Sandra Day O'Connor, and Byron White of engaging in ''judicial activism.'' Of course, these are not the only examples that pervade the U.S. Reports.

Would Justice Owen's opponents apply the same standard and exclude from consideration or confirmation their own favorite justice from Federal judicial service? I imagine not. Fairness only dictates that Justice Owen not be made to suffer from this same absurd and unreasonable standard either.

This whole issue reminds me of the scene from the movie ''Jerry Maguire,'' when Cuba Gooding, Jr., tells Tom Cruise: ''See, man, that's the difference between us. You think we're fighting, I think we're finally talking.''

Well, simply put, this is the way judges talk in opinions, and it certainly does not disqualify Justice Owen from confirmation.

Those who emphasize critical quotes about Justice Owen from other justices on the Texas Supreme Court think they are fighting, but actually the justices are just talking. They are just judging and they are just doing the duty they were asked to do and took an oath to perform.

Mr. President, I note we have about 5 minutes remaining on the clock, so I will cut short the remainder of my remarks. I will be back on the floor as needed, depending upon how this debate continues. It is my hope we will see a unanimous consent agreement to achieve a limit on debate, an adequate time certainly, where everybody who wants to be heard can be heard on this highly qualified nominee. I hope during that debate the people listening—both colleagues in the Senate and those listening across this country—will take all of the debate into account, both the charges and the answers, some of which I have given today, and make their own assessment of the credibility of some of these charges—charges which I believe are unfair and unfounded and without any merit as regards Justice Owen.

Finally, let me just say I hope the Democratic minority in this body does not choose to make the same ill-considered decision to filibuster Justice Owen as they made in the case of Miguel Estrada. I believe debate is important. But, of course, sooner or later, we have to, and we should, do what the voters of our States have sent us here to do, what the Founders of this country, the Framers of our Constitution, expected us to do—that is, to vote. They expected the Senate to be a body where debate would be favored—and certainly it is that—where nothing happens precipitously—and certainly it is that—and where enough debate and time can be taken to cool tempers and emotions and passions and make the very best decisions we can possibly make on behalf of the American people.

But after everything has been said once, or twice, or five times, or 10 times, or a hundred times, you would

think the Senate should vote. I believe the Senate should vote. I believe that is what the Framers expected, and I believe they never considered a minority of this body could obstruct the will of a bipartisan majority when it comes to the nomination of a highly qualified judicial nominee.

I hope at the appropriate time there will be that unanimous consent agreement and we will continue to debate Justice Owen's nomination for a reasonable period of time—as long as anyone has anything new to say—but, in the end, that we will have an up-or-down vote, which is something currently being denied to Miguel Estrada. I certainly hope the precedent that has been set now in the case of Miguel Estrada—which I believe is a black mark on the record of this institution—will not be repeated in the case of Priscilla Owen.

I thank the Chair, and I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:29 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BURNS).

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

The assistant legislative clerk proceeded to call the roll.

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

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

LEGISLATIVE SESSION

CARE ACT OF 2003

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now return to legislative session and proceed to the consideration of S. 476, the CARE Act, as provided under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (S. 476) to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low-income Americans to gain financial security by building assets, and for other purposes.

The Senate proceeded to consider the bill.

Mr. GRASSLEY. Mr. President, I have a few remarks on the legislation. I am sure my good colleague, Senator BAUCUS, has remarks as the manager for the Democratic Members. We would also like to take quick action on a managers' amendment that is in order under a unanimous consent agreement. There are a few issues that have to be cleared on the amendment.

I rise to speak on the CARE Act of 2003. I will first talk generally about the charitable provisions in the bill and then talk about those provisions designed to combat corporate tax shelters.

The CARE Act seeks to support that great American tradition—helping a neighbor in need. Our Nation's tradition of caring and charitable support goes back to the founding. When faced with tragedy or hardship in our communities, we have always been a people who have rolled up our sleeves to pitch in, rather than leaning on a shovel waiting for the government to show up.

The charitable tradition in America has certainly been for the common good. Unfortunately, there are not many K Street lobbyists for charities and for the common good.

That is why this legislation is a direct testimony to the leadership of President Bush. There is no question that but for his efforts, this legislation for the common good would not have seen the light of the Senate floor.

Let me note that commentators have rushed to state that the President's efforts to strengthen America's charitable tradition has been watered down. Nothing could be further from the truth. This legislation goes far in meeting the President's ambitious goals for a greater role for charities in assisting those most in need.

And legislation is only part of the story. The President's speeches and visits have done even more to energize the charitable sector of this country. Hardly a week goes by when I am not stopped by someone who runs a charity, or is active in a charity, and they ask me how they can get involved in the President's proposal, how they can help. Clearly, President Bush's words have been heard by America's charities and they are eager to turn his words into deeds of compassion and aid.

In addition to this legislation being a tribute to President Bush's leadership, let me also note the tremendous efforts of Senators SANTORUM and LIEBERMAN to bring this bill to the Senate floor. I commend them for their energy in making the CARE Act a reality. Finally, I'm pleased to have worked with Senator BAUCUS, the ranking member of the Finance Committee. This legislation continues our bipartisan efforts as to tax legislation.

Mr. President, for the benefit of my colleagues let me now highlight some of the major tax provisions of the CARE Act that encourage charitable giving.

First, is the creation of a charitable deduction for nonitemizers. Given that over half of Americans do not itemize their tax return, this provision will encourage taxpayers to give to charities, regardless of income. The legislation allows for charitable deduction of up to $500 for a married couple giving over $500 per year. For an individual filing single, it is a deduction of up to $250 for a person who gives over $250 per year. For example, an individual who doesn't itemize and gives $400 to charity, could deduct $150 from their taxes. This provision was designed to encourage new giving and also limit possible abuses.

Next is a major provision that will provide for tax-free distribution from Individual Retirement Arrangements, IRAs, to charities. This is a provision that is important to many major charities, particularly universities. The Finance Committee heard testimony from the President of the University of Iowa about the importance of this provision in encouraging new giving. The legislation provides that direct distributions are excluded from income at the age of 70½ and distributions to a charitable trust can be excluded after the age of 59½.

We then have language that encourages donations of food inventory, book inventory and computer technology. I would note that my colleagues, Senator LUGAR, and Senator LINCOLN, a member of the Finance Committee, were strong advocates for the legislation involving food donation. I'm particularly pleased that this legislation will give farmers and ranchers a fairer deal when it comes to donation of food.

Conservation is also a part of this bill. Efforts to conserve our land and limit development benefit our Nation as well as farmers and ranchers who work on the land. The CARE Act contains language I have long supported that will encourage conservation of land through a 25-percent reduction in the capital gains tax of the sale of undeveloped land, or conservation easements. The sale must be to a charitable organization and the land must be dedicated for conservation purposes. I am pleased that President Bush also included this proposal in his budget.

The bill also encourages gifts of land for conservation purposes. This is an issue long advocated by Senator BAUCUS, which I am pleased to support.

These are the major tax provisions that encourage charitable giving contained in this bill. I would note that I am pleased that the legislation does contain provisions requiring greater sunshine and transparency in the work of charities. It is my belief that just as we are encouraging people to write more checks, we need to ensure that those checks are being cashed for a charitable purpose. In addition, the bill authorizes a serious increase in funding for the Exempt Organizations Office at the IRS to better police the few bad apples among the nonprofits.

My colleagues should also be aware that this legislation addresses the abuse of charities by terrorist organizations, making it easier to shutdown or suspend such organizations.

Let me note also that this bill contains $1.4 billion in new funding for Social Services block grants, SSBG. This is a very important provision that will greatly benefit the States and, more