The Senator from Texas said—and I quote—there has been ''an unprecedented act of obstruction.'' He is referring to President Bush's nominees being withheld, not allowing votes on judges.

Mr. President, I do not know—and I do not mean this to be cute or smart or mean spirited, but I do not know what kind of math my friend from Texas is using if he is talking about unprecedented acts of obstruction.

Right now in the Federal judiciary there is a 5-percent vacancy rate. We have four judges on the calendar now, and they will be approved within the next, probably, 24 hours. So that will bring the number of judges approved during the Bush administration to nearly 170. I do not have the exact number. I have lost track of it but nearly 170.

Three judges have been turned down: Bill Pryor from Alabama, Miguel Estrada from the District of Columbia, and Priscilla Owen from Texas.

Unprecedented obstructionism? We are talking about 170 to 3. So my math indicates that is pretty good.

When Senator DASCHLE took control of the Senate as majority leader, a decision was made that there would be no payback. It would not be payback time. In fact, a decision was made that we would do everything we could to get the nominations approved that were sent to us by President Bush. We have done that. The record is clear.

However, my friend from Texas should go back and look at how President Clinton was treated. People waited for years and years and were not even allowed a hearing. As we know, it was necessary on a number of occasions to file cloture. Cloture was invoked, and the judges were approved.

It is easy to come on the Senate floor and throw out terms such as ''unprecedented acts of obstructionism,'' but it is not true. No matter how many times you say it, it still is not true.

PAT LEAHY, who has been the chairman and ranking member of the Judiciary Committee during the approximately 3 years of the Bush Presidency, has done an outstanding job of moving these judges. I don't know how we could do better. I guess we could be a rubber stamp for the President's nominees. That is not what the Founding Fathers envisioned. They believed these names should be submitted to the Senate. The Senate should evaluate them and make a decision at that time whether or not the nominees are what the country should have in the way of judges.

A decision was made in the case of Miguel Estrada. He didn't answer questions. He would not supply his memoranda from his time as Solicitor General. For those and other reasons, he was not approved. Priscilla Owen was criticized by the President's own lawyer, Mr. Gonzales, who is now the White House chief lawyer. He and Priscilla Owen served together on the Texas Supreme Court. She was criticized very heavily by Mr. Gonzales at that time. That is just a little bit of her problem. We know that she, by almost any standard, was quite radical—an activist, for lack of a better word. And we know Attorney General Pryor from Alabama was someone whose record was not such that he should become a lifetime appointment on the Federal bench.

That is 3, 3 to approximately 170. I do not know the exact number, but that is fairly close. By any math course you ever took, 170 to 3 is pretty good. In fact, it is real good. I wish we had had that kind of treatment when Bill Clinton was President.

I again remind everyone the vacancy rate in the Federal judiciary is now 5 percent. It is the best it has been in decades. Rather than having people come and push these little barbs at the Democrats on the Judiciary Committee, they should be giving them accolades for the cooperation they have maintained during President Bush's tenure.

Mr. President, it is my understanding the distinguished Senator from North Carolina wishes to speak as in morning business. Her time is gone.

Mrs. DOLE. Mr. President, I ask unanimous consent to proceed for up to 1 minute.

Mr. REID. And let us have a minute on our side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from North Carolina is recognized for up to 1 minute.

THANKING BOB SCHIEFFER

Mrs. DOLE. Mr. President, I want to publicly thank our friend, Bob Schieffer, of CBS for revealing the story of his battle with bladder cancer. His going public will save the lives of countless others, especially men. In most every cancer case, early detection of and proper treatment can save your life. Bob Schieffer had a problem and immediately sought medical advice. The result was that in less than 8 months, he is cancer free. Thank you, Bob, for giving others direction and hope.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time? The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, the Senate is in morning business?

The ACTING PRESIDENT pro tempore. The Senate is in a period of morning business. The minority side has 25 minutes remaining.

Mr. HARKIN. I thank the Chair.

CALL FOR APPOINTMENT OF SPECIAL COUNSEL

Mr. HARKIN. Mr. President, many of my colleagues and I have been urging the Justice Department to appoint a special counsel to review and investigate the leak that revealed the identity of an undercover CIA agent. Some of my colleagues on the other side of the aisle have responded by saying that we are blowing things out of proportion, that our motives are political. I have to disagree. This is a serious issue, and it is not just those on my side of the aisle who have concerns about the obvious conflict of interest for the Justice Department to investigate this matter on its own.

I am referring to the Washington Post-ABC poll that was released. The poll found that nearly 7 in 10 Americans believe a special type of prosecutor should be named to investigate allegations that the Bush administration officials illegally leaked the name of an undercover CIA agent. The survey found that 81 percent of Americans considered the matter serious, while 72 percent thought it was likely that someone in the White House leaked the agent's name. It's clear the people of this country want a full, fair and independent investigation.

I would also like to take a minute to respond to comments from my colleague from Minnesota that were made earlier Wednesday. I believe he may have been misinformed. I wanted to make sure my colleague from Minnesota was clear on the difference between an independent counsel and a special counsel. Yesterday I had again stated the need for the Attorney General to appoint a special counsel to investigate this leak regarding an undercover CIA agent. We all know that a Federal law was broken—that is clear—a law that provides for stiff penalties, imprisonment, and fines. It is a Federal crime, under the Intelligence Identities and Protection Act of 1982 to intentionally disclose information identifying a covert agent to anyone not authorized to receive this classified information.

Columnist Robert Novak printed that information. We need to know who the senior administration official or officials were that gave him that information. But we also need to find out who gave that information to the administration officials.

Let me be clear about this. There is a cancer spreading in this administration. Most have focused only on who it was who gave the name of the undercover agent to Mr. Novak, the columnist. Clearly that is illegal. But there is another question behind that. How did that individual or individuals get access to this classified information about this undercover agent? Who gave that individual this information? Did it come from the National Security Council? Did it come from the State Department? Did it come from the CIA itself? Did someone in the White House request this dossier on Mr. Wilson and his wife? Or was it voluntarily given to them by someone in the CIA or the National Security Council or somewhere else? This is an even deeper question because it goes to what they wanted this information for. Why would individuals high in the administration want the information about who was