

these are not controversial people. They are mild-mannered, brilliant, fair, evenhanded, temperamentally sound people. We are putting them through the political meat grinder.

I have to ask: Who are we going to get, as we go down the road and good people watch what has happened to Priscilla Owen and Miguel Estrada? Who is going to submit themselves to be a Federal judge, if they have to go through this kind of political process?

I hope the Senate can amicably resolve the issue of nominations, especially judicial nominations where the Constitution and the balance of power are at stake. I hope we will allow these votes for these two people who deserve an up-or-down vote and deserve to be on the bench. They will both make excellent judges.

May 9 is Friday. We are going to have cloture votes tomorrow, May 8, the day before the 2-year anniversary of these qualified nominations. I hope those who are filibustering them will see their way clear to let the majority rule. Both of these nominees have now gotten 52 and 54 votes respectively. They have the majority. In any other case they would be on their way to sitting on the circuit courts of appeals. That is where they ought to be. That is where they deserve to be.

I hope my colleagues will allow Miguel Estrada and Priscilla Owen to take their rightful place on the bench. They have earned the majority vote. They have received a majority vote, which is what is required by the Constitution. They should be allowed to be confirmed.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CORNYN. Mr. President, I ask unanimous consent that in the period for morning business, I be allotted 20 minutes to speak.

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

#### JUDICIAL CONFIRMATION PROCESS

Mr. CORNYN. Mr. President, I rise today to say a few more words about our broken judicial confirmation process. This week the Senate marks a dismal political anniversary: 2 years of partisan obstruction of President Bush's judicial nominees, culminating in two unprecedented filibusters, and more are threatened.

The current list includes Justice Priscilla Owen, with whom I served on the Texas Supreme Court, whose nomination is now subject to a filibuster before the Senate. This 2-year anniversary indicates the true breadth of the

failure of the judicial confirmation process, an increasingly bitter and destructive process, a process that does a disservice to the President, to the Senate, to the nominees, and ultimately to the American people.

Today a partisan minority of Senators are forcing a supermajority requirement of 60 votes on the judicial confirmation process. They are using the filibuster not simply to provide for adequate debate—a reasonable and laudable goal—but to prevent many of our Nation's most talented legal minds, in this case at least two of them, from filling our Nation's judicial vacancies. These obstructionist activities continue to undermine the constitutional principles of judicial independence and majority rule.

My colleagues should not think the American people do not know what is going on here. They see when a nominee's well-recognized abilities are ignored in favor of scare tactics and revisionist history, and they see when some Senators eschew the interests of the States from which they were elected, and, indeed, our Nation, and instead kowtow to special interest groups.

I am confident that Members of the Senate are wise enough to reject, I guess, what can only be called an inhuman caricature that has been drawn of Justice Priscilla Owen by special interest groups intent on vilifying, demonizing, and marginalizing an admirable nominee.

If we were allowed to hold a vote today, a bipartisan majority of this body stands ready to confirm Justice Priscilla Owen to the Fifth Circuit Court of Appeals.

I would like to take a few moments to talk about my own observations while serving with Justice Owen on the Texas Supreme Court for a period of 3 years during which our terms overlapped, from the time she joined the court in January 1995 until the time I left the court after serving 7 years in October of 1997.

During those 3 years, I had the privilege of working closely with Justice Owen. I had the opportunity to observe on a daily basis exactly how she approached the task of judging, how she thinks about the law and, indeed, her responsibilities, and how she thinks judges should perform once given the awesome responsibility that confers.

I spoke with and debated with Justice Owen in conference on countless occasions about how to faithfully read and follow statutes passed by the legislature and how to interpret precedents; that is, cases that had been previously decided that are binding on courts in terms of their guidance on deciding the same issues in the future.

I saw how hard she worked to faithfully interpret and apply what the legislature had written. I saw her take notes. I saw her tireless attention to detail, her zeal for studying the law, her dedication and her diligence. Not once did I see her attempting to pursue a political or personal agenda at the

expense of what the law said or what the law required.

Indeed, some of my colleagues have taken her to task for disagreeing, and the fact that appellate judges, particularly at the highest court in my State, would actually disagree with one another, and suggesting that somehow there is something wrong with that.

Well, to the contrary. That is exactly what the job of a judge is. If we did not have judges occasionally disagree with each other, that would mean somebody was not doing their job, because by the time cases get to the top echelons of our judicial system, they are the hardest cases. They are the cases that cannot be solved by lower levels of the judiciary or indeed by settlement between the parties. These are important issues and must be decided. Indeed, a judge, unlike a member of this body, cannot choose to simply walk away. They must decide the case in the posture as presented by the litigants.

From experience and from observation, Justice Owen believes strongly that judges are called upon not to act as another legislative branch, not to act as a politician trying to read the polls or trying to assess what public opinion may say about this question or another. A judge's job is to faithfully read the statutes on the books and then apply them to the case before him or her or to interpret the precedents by earlier courts and to faithfully apply those, not in a lawmaking fashion but in a law interpretation and law enforcement fashion.

Indeed, that is the difference between what judges do and what members of the executive or legislative branches do. Judges are not supposed to make law. They are supposed to interpret and enforce the law written by the legislature.

I can testify from my personal experience as her former colleague that Priscilla Owen is an exceptional judge and one who understands and internalizes her duty to follow the law and enforce the will of the legislature. That is why the American Bar Association gave her a unanimous rating of well qualified. That is why she has strong bipartisan backing, including Democrats in the State of Texas and Democrat practitioners who have seen her in action. That is why she had enthusiastic support from her fellow Texans in her last election to the court. Some 84 percent of the voters voted to return her to office when she ran for that election.

Simply put, she is a brilliant legal scholar and a warm and engaging person. Knowing the individual, the human being, as I do, it causes me great pain to see her treated the way I believe she has been treated, unfairly, during the judicial confirmation process, and to hear Senators describe her in a way that nobody who knows her would recognize.

Not many in this body have had the privilege of knowing her personally and so that is why I think it is important

for me to say the picture that has been painted of this highly qualified and highly talented human being and great judge in our State of Texas is more than just a little disappointing. It is beneath the dignity of this institution and deserves not only this institution but the constitutional requirement of judicial confirmation and, indeed, ultimately the American people.

The beltway special interest groups are not interested in trying to understand or evaluate Justice Owen by her real record, because if they were, they would see it as a sterling record of intelligence, accomplishment, and bipartisan support. The special interest groups are not interested in the confirmation of nominees who merely interpret the law and render judgment responsibly. They are only interested in confirming people who they believe are advocates of their interests, something that is totally at odds and conflicts with the role a judge is supposed to perform.

Sadly, it is clear that these same special interest groups are interested in obstructing as many of President Bush's judicial nominees as they possibly can. Those who oppose Justice Owen's confirmation appear to have really no stomach for debate and talking about the facts. They choose instead to filibuster and engage in the worst kind of mean-spirited and destructive political attacks.

Let there be no doubt left in the matter. Allow me to quote one of the leaders of the special interest groups opposed to Justice Owen's nomination quoted in the Los Angeles Times last week, when they said: It is sad that not all of these nominees can be filibustered.

So it is clear who is playing the tune and who is giving the instructions. Unfortunately, too many are heeding those instructions to filibuster the President's nominees, to prevent a bipartisan majority of this body from voting to confirm those nominees as they would today in the case of Priscilla Owen and Miguel Estrada.

I can only hope that at some point my colleagues will understand what is going on and reject this special interest influence on the judicial confirmation process. I can only hope that ultimately what we will all strive for is a process that is fair and consistent with our constitutional duty. Yet by blocking a vote on Priscilla Owen, they make themselves allies to these groups, groups that rejoice at the prospect of a Senate in constant gridlock when it comes to the judicial confirmation process.

These shrill attacks are inaccurate, dishonest and unfair. It is not the first time. These are the same people and the same groups that claimed during the nomination of Supreme Court Justice John Paul Stevens that he "expressly opposed women's interests." They found Supreme Court Justice Anthony Kennedy "a deeply disturbing candidate." They testified that Justice

Lewis Powell's confirmation would mean that "justice for women will be ignored." And they described Supreme Court Justice David Souter as "almost neanderthal."

Those attacks and the current attacks of these same special interest groups are neither accurate nor, after they have long been exposed as untrue, should they be deemed credible. Lending credence to these tactics should be beneath this body. They have no standing for their arguments to be considered legitimate by this body. Like the little boy who cried wolf one too many times, they should be ignored by this body.

It is hard to recognize the caricatures that opponents of these nominees have drawn. As a member of the Senate Judiciary Committee who has voted on a number of President Bush's nominees for the Federal bench, I have seen the politics of personal destruction are fast becoming a commonplace activity for our judicial nominees. Indeed, I began to wonder whether there are enough good and honorable people with distinguished records left in the legal profession or in the judiciary who will volunteer to submit their names to this destructive process who, knowing the facts, regardless of the truth, they will be painted as some horrible caricature of their principal beliefs. Nominees who are so well recognized for their ability should not be required to serve an indefinite period of time in the stocks as targets for these special interest groups that attack them on a regular basis.

It pains me to see what can only be called the politics of personal destruction played out in the course of the judicial confirmation process.

This Friday the clock will run on into a third year of gridlock and obstruction. The special interest groups must be very proud.

These obstructionist tactics abuse the power of the filibuster. It not only violates the bedrock principle of democracy and majority rule itself but arguably offends the Constitution, as well. Indeed, prominent Democrats such as former White House Counsel Lloyd Cutler and, indeed, colleagues in the Senate currently serving, such as TOM DASCHLE, JOE LIEBERMAN, and TOM HARKIN, have condemned filibuster misuse as unconstitutional. An abuse of filibusters against judicial nominations uniquely threatens both the Presidential power of appointment and the principle of judicial independence.

Whether unconstitutional or merely obstructive of our political system, the current confirmation crisis calls out for reform. As all 10 freshmen Senators, myself included—including the distinguished Senator now presiding—stated last week in a letter to the leadership: We are united in our concern that the judicial confirmation process is broken and needs to be fixed. We believe the Senate must find an end to the downward spiral of accusations, obstruction, and delay.

In the face of this consensus that the process is broken, I stand before this body today and say, once again, it is time for a fresh start. In that spirit, the Senate Subcommittee on the Constitution yesterday held a hearing to consider proposals that have been offered to try to restore both the integrity of the confirmation process and the strength of our most cherished constitutional values. We explored and debated a variety of reform proposals at yesterday's hearing, including one from Senator ZELL MILLER from Georgia, who suggests what Senator HARKIN and Senator LIEBERMAN and 17 other Democrats did in 1995; that the 60-vote rule for any debate be reduced incrementally with each succeeding vote until the rule reaches 51 votes. There would be 2-day intervals between each cloture vote so that the whole process would last less than 2 weeks while ensuring adequate time for delay and debate, if necessary, but in the end allowing the majority to do what they are entitled to do in this body and elsewhere in a democracy, and that is to have their will reflected in the law and, in this case, in the confirmation of highly qualified nominees.

Senator HARKIN and Senator LIEBERMAN back in 1995 originally argued that this would preserve the traditions of this body while still giving the minority plenty of time to plead its case without blocking the majority forever.

Now Senator MILLER has proposed this same rule be put into place. This strikes me, personally, as the most intriguing option that has been presented. Senator SCHUMER advocates an overhaul of the judicial confirmation process entirely by eliminating the President's appointment power and instead giving President Bush and the minority leader "equal votes in picking the judge pickers." I really think this is binding arbitration and foisting off on others what should be our responsibility and what we ought to be big enough and responsible enough to solve for ourselves. But I do give Senator SCHUMER credit for offering a reform proposal. I believe it reflects his opinion, as he has stated, both in writing and orally, that the process is broken and needs reform.

Essentially, Senator SCHUMER proposes that the President and the Senate minority leader select equal numbers of members of Senate judicial nominating positions in each State and circuit who would then select one nominee for each judicial vacancy. The President would be required to nominate, and the Senate required to confirm the individuals selected by the commission absent any evidence that the candidate is "unfit" for judicial service.

While I appreciate the spirit of reform and trying to find our way out of this gridlock that I believe Senator SCHUMER's proposal represents, there are several concerns. I have stated some of them.

White House Counsel Alberto Gonzales has called the plan "inconsistent with the Constitution, with the history and traditions of the Nation's Federal judicial appointment process and with the soundest approach for appointment of highly qualified Federal judges."

Let me be clear. While I think there are problems with the proposal, I do appreciate Senator SCHUMER's acknowledgment of the problem.

Finally, Senator ARLEN SPECTER and, indeed, Senator LEAHY, the ranking member of the Judiciary Committee, have urged the imposition of strict time deadlines for the Senate to hold hearings and votes on judicial nominees. Indeed, the President has proposed the same sort of procedure. Chief Justice Rehnquist, speaking on behalf of the Federal judiciary, has also asked the Senate to ensure prompt up-or-down votes on nominees. Senator SPECTER has fleshed out his proposal and did so yesterday, again, which would call for preset time periods for a nominee to be debated in the committee and on the floor and then finally to reach an up-or-down vote.

I hope there will be more proposals. We had a panel of constitutional scholars, some of the most preeminent legal thinkers in the Nation, and I am sure there will be others. I hope there are others paying attention to this debate and who will offer proposals because I think it will take the best legal thinking. It will take a spirit of bipartisanship. It will take putting the recriminations and the finger-pointing behind us and looking forward and not backward in trying to relive some of those battles of the past for us to be able to get to closure on some reform.

What is important in the short term is that each of these intelligent and responsible Members of the Senate have acknowledged a crisis exists and urge reform of the confirmation process.

We insist that judges be fair and impartial in deciding cases and that they shall neither fear nor favor. But clearly the requirement of fairness does not end in the judicial branch of Government. It also applies to Congress and to this Senate in performing our responsibilities. It is self-evident that this standard should apply in confirming judicial nominees. Our current state of affairs is neither fair nor representative of the bipartisan majority of this body. For democracy to work and for the fundamental democratic principle of majority rule to prevail, all this debate must eventually end, and we must bring matters to a vote.

As Senator Henry Cabot Lodge once said about filibusters: To vote without debating is perilous, but to debate and never vote is imbecile.

I can tell you from personal experience as a former supreme court justice in my home State that when you put your left hand on the Bible and you raise your right hand and you take the oath of office as a judge, you change. If you were formerly an advocate, some-

one who did battle in our courts of law, representing the position of a client, you no longer are an advocate. If you were formally a legislator, someone who would argue in a body such as this for what public policy demands in terms of representing the best interests of the people you represent, once you become a judge, you are no longer a legislator; you change.

You are, instead, entrusted with a solemn duty, and that is to interpret the law to the best of your ability in accordance with the intent of the people who wrote that law. You must interpret the law as written and not as judges or lawyers or legislators or advocates or special interest groups might like that law to be written. You must interpret the law as it has been written, consistent with the legislative intent.

My hope is that this body will ultimately abide by the constitutional requirement that majorities govern in the case of these two nominees who are being filibustered. We must not, consistent with that same Constitution, impose a supermajority requirement where the Constitution requires none and where the Supreme Court and Senate traditions and the fundamental principle of majority rule dictate that a majority vote, not a 60-vote supermajority, will prevail.

We, of course, must consider the interests of our respective States and the Nation, and I think those interests should be considered above the interests and desires of the special interest groups that seem to have grabbed hold of the confirmation process and will not let it go.

We must act, and I believe we must act soon, to reform this broken confirmation process. Of course, this task falls not on others far away, not even on the President, not on the judiciary, but this responsibility falls on us as citizens, as Senators, as Americans.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, my colleague and many other colleagues in recent weeks have spoken on the floor on the subject of judicial appointments, Federal judgeships. I want to offer a few comments on the subject, not because I think I am an expert—I don't even serve on the Judiciary Committee—but the comments that have been made on the floor of the Senate suggest to the American people that somehow one side of the Senate is blocking judicial nominations, the system is broken, it is not working, and somehow it has to be fixed. Let me see if I can at least provide some clarity.

In the summer of 1991, we had 110 vacancies in the Federal courts. That has

now been reduced to 47 vacancies. Why is that the case? Because we have been processing nominations from the White House for Federal judgeships and approving new Federal judges for lifetime appointments. We have voted. We have had votes on 123 of President Bush's Federal judges who have been confirmed. I have voted for 120 of the 123.

Incidentally, of those 123, 2 of them were North Dakota Federal judges. I recognized that the openings in the Fargo and the Bismarck district would be filled by President Bush, would be filled by Republicans. The process worked the way it should work and the way I believe it should always work in that circumstance; that is, the White House and Senator CONRAD and I worked together to find candidates, a list of qualified candidates in North Dakota from which the President would select. He then selected a candidate, a Republican, to send to the Congress to say: Here is who I believe should be the new Federal judge for a lifetime in the Fargo district. Here is who I believe should be the Federal judge for a lifetime in the Bismarck district.

He nominated both. I am proud to say I supported both. Both are wonderful lawyers. Both are going to be great judges. They both now sit on the bench. They do so with my vote, and I was proud to do it. That is exactly the way this ought to work.

Let me describe a bit about what the Constitution does say about judgeships. It says the President:

... shall nominate and by and with the advice and consent of the Senate shall appoint ... judges of the Supreme Court and all other officers of the United States. . . .

What that means is the President shall nominate and the Senate in its process shall make a judgment about whether it advises and consents to that nomination. So the President has no inherent right under the Constitution to send us a name and say: Oh, by the way, this is who I aspire to appoint to the Federal bench, district court, or circuit court, and you must accept this nominee. That is not what the Constitution says.

The Constitution says there is a two-part process: The President proposes and we dispose. The President nominates and we give our advice and consent. A President not of my political party has the right to nominate members of his political party to sit on the Federal bench. When it worked as it worked in the circumstance with North Dakota, I was proud to be someone who said: Count me in. I vote for these nominees because I think they will be great Federal judges.

When it doesn't work is a circumstance where the White House says: We don't care what you think down in the Senate. Here is a name, and we are going to shove it down that pipe, and if you don't like it, tough; we are going to fight like the dickens to get it.

You have the right to fight, I would say to the White House. You have a

right to fight for your nominees. But if you don't have a process where there is some agreement and understanding of working together on lifetime appointments, sometimes nominees are going to get snared and caught in a web down here.

We have approved 123 of the nominees sent to us by President Bush. As I indicated, I have voted for 120 of them. This so-called breakdown or collapse in the process is over two nominations at this point.

This is not new. We have two nominations that are caught in the web, and I will explain why in a moment. The fact is this web has been a much tighter web for a long period of time in which we have reduced far more than half of the vacancies in the Federal bench. Why? Because we are in the business of approving the President's nominees. In a circumstance where we have approved 123 of them, it can hardly be said that this process is broken.

But it has been broken. There were times when this process was broken. One of the judgeships, the nominations that were sent here that is caught, is in the Fifth Circuit. Let me describe what happened in the Fifth Circuit just so we have some history.

In the Fifth Circuit, from 1995 on we had three nominations by the previous administration—three nominations—Judge Rangel, Enrique Moreno, and Alston Johnson. They never got a hearing—not one hearing, not a day, not a minute. They were dead when they got here. There were going to be no hearings because there wasn't going to be a judge on the Fifth Circuit Court appointed by that administration, by the Clinton administration.

What happened? The administration changed. So did the control of the Senate for a while. Judge Clement was confirmed in 6 months; Judge Pickering had two hearings, had a negative vote in the committee. Perhaps—I guess it was a negative vote. I was thinking perhaps he pulled his nomination from consideration. But in any event, there was action in the committee for Judge Pickering.

Judge Priscilla Owen: two hearings, a vote in the committee.

Judge Edward Prado: a hearing, a vote.

Do you see the difference? Under the previous administration, the Republican Senate would not even allow a hearing—not 1 minute of hearing, let alone bring a candidate to the hearing room and have a discussion and have a vote and bring it to the floor—not even a hearing, not 1 day. That was when the system was really broken.

Now we have a circumstance where we are told that because we have two nominations on the floor of the Senate that have not moved—and I will explain why—that the system has somehow completely collapsed and we should change the rules of the Senate.

Let us take a look at the DC Circuit Court. There was not any intention to add a judge to the District of Columbia

Circuit Court under the previous administration. We had the nomination of Allen Snyder. He was never given a vote. Elena Kagen was never given a vote because they said the District of Columbia Circuit doesn't have enough work. We shouldn't add a judge to the DC Circuit. Now, all of a sudden, the administration changes, and there is room for more. We need more, and we need to add someone to the District of Columbia Circuit.

You go up and down over the recent years, and you see, in the circuit court especially, candidate after candidate who was never given a vote and was never given a hearing. That is when the process was broken and had collapsed.

It can hardly be said that the process doesn't work at this point when we have reduced the vacancies on the Federal bench by confirming 123 of the President's nominees. And I have voted for almost all of them. That is not a process that has collapsed.

Let me talk about the two that are at odds that Members have come to the floor of the Senate and talked about how the system has collapsed.

The first is Mr. Estrada. Mr. Estrada was nominated by the President to the second highest court in the land. Mr. Estrada had been asked for certain information: No. 1, to answer the questions posed to him by the Judiciary Committee when he appeared; and, No. 2, to have the information released—that is, information about his work when he was with the Solicitor General's Office.

The fact is, until and unless Mr. Estrada releases that information and provides that information, in my judgment he will never get a vote in the Senate. He just won't. One might not like that. Fine, you do not have to like that. But if we are talking about putting people on the Federal bench for a lifetime, we had better discharge our responsibility in a serious way and be serious when we seek information from a candidate. That candidate has an obligation to provide the information. If it is not forthcoming, there is no entitlement and no inherent right under our Constitution to proceed to a vote on a nominee sent to us by the President.

It is interesting that Mr. Estrada testified before the Senate Judiciary Committee the same day Judge Hovland from North Dakota testified before the committee. I referenced him before—a Republican who now sits on the bench in Bismark, ND. He is someone for whom I was proud to have voted. The same questions that were asked of Mr. Estrada were asked of Mr. Hovland that day. Mr. Hovland answered them. Mr. Estrada did not. That is why Mr. Estrada's nomination is caught in a net here in the Senate. It is why he has not had a final vote. He has not released the information from the Solicitor General's Office. He did not respond to the questions.

As soon as all of that is available to the Senate, as I have said repeatedly

on this floor, I think he ought to be given a final vote, up or down. Until that time, no Senator ought to aspire to give a final vote to a candidate, to a lifetime appointment of judgeship, or on the circuit or district court who says "I am not going to provide the information you requested." No Senator should insist on proceeding to final vote in that circumstance.

That is not discharging the obligations of the Senate.

Let me talk for a moment about an article that I read in the San Antonio Express News which I thought really described exactly the same circumstance we face here in the Senate, "A Tale of Two Texas Judges." It happens to deal with the nomination of Judge Priscilla Owen and Judge Prado. I am going to read this because I think it is important.

In the nomination of U.S. District Judge Edward Prado for the Louisiana-based 5th Circuit Court of Criminal Appeals, President Bush has found a fail-proof strategy for selecting federal judges. Prado faced no opposition from the Senate Judiciary Committee—or anyone else for that matter—because, unlike some of the President's other recent nominees, Prado is well-qualified with a long record of fairness and moderation.

Unfortunately, the full Senate will be consumed this week with bitter debate over another White House judicial nominee—Texas Supreme Court Justice Priscilla Owen, who has a different kind of record. Instead of moderation, Owen is known for her conservative activism.

Opposition to Owen was so strong that her nomination was rejected last year. This year's Republican-led Judiciary Committee resuscitated it, giving Owen a slim 10-9 party-line vote.

It is not as though Democrats are opposed to all White House nominees. After all, the same committee voted 19-0 in favor of Prado. Now Democrats in the Senate appear likely to filibuster Owen's nomination. Once again, the battle over the White House's judicial nominees is gridlocked.

To avoid this kind of partisan strife, the Bush administration should employ the Prado strategy for future judicial nominees.

That strategy is to choose moderate nominees with long experience who understand that the role of the judge is not to legislate from the bench.

There is a solution to all of this. It has nothing to do with changing the rules. In fact, I submit that when we have confirmed 123 judges submitted by President Bush—and I voted for 120 of them—this process is hardly broken. But the solution to this is for the President and Mr. Gonzales to engage with the Senate and work with the Senate with respect to the kind of nominee that we will put on the circuit court. There is no inherent right in the Constitution that says the President shall nominate and somehow the Senate must consider expeditiously every nomination.

In fact, the Republicans for years and years since I have been in the Senate refused to hold hearings—not even one hearing for nominee after nominee after nominee.

We did not hear the discussion on the floor of the Senate so much about changing the rules and the system

being broken with Mr. Enrique Moreno, who, I believe, is from Texas. I have met him. He would have been a terrific judge. Unfortunately, he wasn't given the time of day by the Senate. We have not done that. This side has not done that. The fact is that even the two nominees who are in dispute at this point had their hearings. They had their day before the committee. They had their vote before the committee. But Mr. Moreno is an example of so many others who never got any consideration at all.

Let me be quick to say that despite the miserable failure of dealing with these judgeships back in the 1990s in the previous administration, I don't think this is at all payback. I don't think this is what this is. Payback would mean we would not have approved 123 of the nominations sent to us by President Bush. We have done that because we think the selection of judges is a process that requires the opportunity for both of us to work our will. The President can send a nomination to us and we can consider that and the options that we have to deal with that nomination.

The way to avoid the pitfalls and the problems that exist with the two nominations that are causing such angst and people coming to the floor saying the sky is falling and the system has collapsed is for the President to work with the Members on the nominees they send to the Senate. There are some—not many—who are simply not going to be confirmed. It is almost automatic that this President's nominees are going to sit on the Federal bench—not quite automatic but almost—evidenced by the fact that 123 we have approved with the votes of almost all Democratic Senators.

There is a way to solve this problem. If you don't believe me, then believe this editorial which is exactly on the mark.

If they say our strategy is simple, we are going to pack the circuit courts with philosophical extremists, and they send us names that reflect the desire to pack the circuit courts with extremists, I am sorry; this process isn't going to work. This process is going to slow down and perhaps stop because, in my judgment, this Senate is not going to allow that to happen. We insist if someone is going to sit for a lifetime on the Federal bench that they be qualified and not be judicial activists who bring an aggressive agenda to the bench.

With respect to the Owen nomination, I was not on the Judiciary Committee and was not part of the hearings, but I have read the record. I have certainly heard from a lot of people who know and who have worked with Judge Owen. I have read the statement of Mr. Gonzales himself from the White House exercising his great angst at her judicial activism on the bench in Texas. But the fact is, she had her day in the Senate last year, and she was turned down by the Senate Judiciary

Committee. Now that nomination comes back to us. The fact is, she is one of those few who clearly is a very aggressive judicial activist.

The Gonzales quote is very telling to me. It is not just Judge Gonzales. That same quote about the disposition of Judge Owen and what she does on the bench in the State supreme court is not just from Mr. Gonzales, it is from a range of sources, which I think persuades many in the Senate not to want to proceed with this nominee.

But do not—do not—take the two instances of Mr. Estrada, who has refused to provide the information that is requested by the Senate, and Judge Owen, who was turned down last year by the Senate Judiciary Committee, to say somehow the sky is falling and the structure is broken and we ought to change the rules of the Senate, and how awful this is. Nonsense, total nonsense.

Mr. President, 123 judges sitting on the Federal bench are testimony to the fact that we are approving President Bush's judges. It is just that there are two who stick in the craw of people because they say we have a responsibility, somehow, to rubberstamp all these nominations. I am not going to rubberstamp anybody who is going to serve for a lifetime, especially on a circuit court. If they are not going to provide the information, then they ought not sit on the Federal bench—simple, just open and shut. It has nothing to do with politics, nothing to do with Republicans, nothing to do with Democrats. If you don't provide the information, you are not going to sit on the Federal bench.

Maybe those of us who think that way are in the minority. If so, eventually, I guess, those people will get to the Federal bench. They will say to Congress: I'm sorry, I have a Presidential nomination, and I have no obligation to give you additional information. If there are enough Senators who believe that is discharging our responsibilities, by saying, yes, sir, absolutely, well then maybe these nominations will happen, but they won't happen with my vote, not with a Republican or with a Democrat.

This is what Judge Gonzales said. In Jane Doe, Judge Alberto Gonzales—incidentally, a then-supreme court justice, who is clearing these nominees through the White House—stated that to interpret the law, as Justice Owens did in this case “would be an unconscionable act of judicial activism.”

I will tell you what. It is not just this phrase. If we had time and I had the interest, I would show you other examples of exactly this sort of activism which persuades me this is not the kind of judge I want to put on a circuit court.

Let me make the point, once again, that the Constitution provides two things: The President shall nominate, and the Senate shall advise and consent. If a President, any President, decides he is going to try to stack a cir-

cuit court with people of extremist views, then this Senate—I guarantee you, this Senate—whether it is Republicans against a Democratic President or Democrats stopping a Republican President—this Senate is going to say: I am sorry, it is not going to happen.

Perhaps we should get a long list out here, perhaps a list of 123 names. We could start with North Dakota with Justice Erickson or we could start with any one of a number of the others on that list of 123 who are now Federal judges because President Bush said, “I want them,” and because the Senate said, “You bet. We have taken a look at these judges and they deserve to be on the Federal bench.”

Perhaps going through 123 of them, reducing the number of vacancies by well more than half, we would define that as success rather than a calamity. But if we do not want to take a look at the success, then let's take a look at the two who exist that are causing these problems and these difficulties.

I will tell you, we have, in my judgment, every right to say to the President, in these circumstances: Work with us to send us nominees who we can put on the DC Circuit, who we can put on the Fifth Circuit. Work with us to do that, just as you worked with us with 123 other Federal judges who now are on the Federal bench.

Mr. REID. Will the Senator yield for a question?

Mr. DORGAN. I am happy to yield for a question.

Mr. REID. During the years when President Clinton was sending nominees down here, there was a period of time when the Democrats controlled the Senate. Does the Senator recall that?

Mr. DORGAN. That is correct.

Mr. REID. If that were the case, every person he sent down would have been approved, is that right, using the logic used by the majority now?

Mr. DORGAN. Right.

Mr. REID. The fact is, a relatively small percentage of the people he sent down were approved because the Republicans did not like the people he sent down; is that right?

Mr. DORGAN. That is correct.

Mr. REID. Now, I personally disagreed with what the Republicans were doing at that time.

The PRESIDING OFFICER. The Senator has used his allotted time in morning business.

Mr. DORGAN. Mr. President, what is the allotted time under morning business?

The PRESIDING OFFICER. The allotted time is 10 minutes.

The Senator from Nevada.

Mr. REID. Mr. President, under my time, I will ask the Senator a question and would appreciate him responding.

The PRESIDING OFFICER. The Senator does not have the floor.

Mr. REID. He yielded the floor. Of course I have the floor. Who else has it? He yielded the floor. I asked permission to be recognized.

The PRESIDING OFFICER. The Senator from North Dakota is out of time. Mr. REID. I know. And I asked—

The PRESIDING OFFICER. The Senator from Texas.

Mr. REID. What do you mean: "The Senator from Texas"? I asked to be recognized, and I was recognized. What do you mean: "The Senator from Texas"? What are you talking about?

The PRESIDING OFFICER. I recognize the Senator from Nevada.

Mr. DORGAN. Mr. President, might I ask a parliamentary inquiry for the moment? I now understand we were under a period of morning business. When I came, the Senator from Texas was speaking, I assume, perhaps, under morning business as well. I don't know whether I consumed more time than he did or whether it was about even. Could you tell me how much time the Senator from Texas used?

The PRESIDING OFFICER. The Senator from Texas asked to speak for 20 minutes and did speak for 20 minutes.

Mr. DORGAN. Mr. President, how much time did I consume?

The PRESIDING OFFICER. Twenty-two minutes.

Mr. DORGAN. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, thank you very much.

Now, if the Senator from Texas wishes to go someplace or something, I would be happy to yield the floor to the Senator. I don't have much to say, but I have a few things to say.

Mr. CORNYN. Certainly. I would like the opportunity to respond to some of the remarks of the Senator from North Dakota.

Mr. REID. Fine. I will not be long at all. I appreciate that.

I say to my friend from North Dakota, the point I was making, when the Chair indicated time was up, was that there were procedures by the majority that stopped President Clinton's nominees from going forward. Does the Senator recall that?

Mr. DORGAN. Yes, including filibusters, of course.

Mr. REID. I recall, very clearly, there were hearings not held in the Judiciary Committee; is that right?

Mr. DORGAN. Well, many of the nominees never got a hearing—ever—under any circumstance.

Mr. REID. And we, the minority at the time, did not like it, and we had a Democratic President; is that not true?

Mr. DORGAN. That is correct.

Mr. REID. I also ask the Senator this question: During the time you have been in the Senate and I have been in the Senate, we have seen changes of the majority—whether it was Democrats or Republicans—it switches back and forth; is that right?

Mr. DORGAN. Yes. The Senator is correct, yes.

Mr. REID. Now, I say to my friend from North Dakota, in the form of a question I ask you to respond to, we

did not like what happened, but the Senate went on just fine; the country survived; did it not?

Mr. DORGAN. Absolutely. I remember Mr. Paez, who is now a Federal judge, his nomination was here 1,500 days. I remember the number of times people came to the floor of the Senate expressing great angst about that. It took forever.

But unlike Mr. Paez, many nominees never got a hearing, let alone a vote, never got called to Washington, being told: All right, your nomination is before the Senate. This is the date of your hearing. Many nominees never ever got a hearing.

But I say to the Senator from Nevada, this ought not be, and should never be, payback for "this side did this, that side did that, so for the last 20 years, let's get even." That ought not be what the case is. And I demonstrate and I assert it is not the case because we have approved 123 of President Bush's nominations. I said: I am proud to do that. I was proud to support the two Republican nominees from North Dakota because I think they are terrific judges.

I think we have had great success here. I admit that there is a hangup with two of the judgeships.

I say to my colleague from Texas, who spoke before I did, I do not mean to be pejorative about this. I do not mean to question anyone's motives. I only say that when one asserts that the sky is falling, the system is broken, and nothing is working, there is another view. I was trying to express another view, respectfully.

I respect the opinion of the Senator from Texas, but I have a very different view about our responsibilities, our obligations, and our accomplishments with respect to these nominations.

If I might make one additional comment, I say to the Senator from Nevada, I am not on the Judiciary Committee. I do not pretend to be an expert in these circumstances with these issues. I have studied enough and learned enough to know that many of the nominations that are sent here have been excellent. I have been proud to support them.

But I also understand there are circumstances where we have an obligation and a right to assert our rights. That is exactly what is happening in two circumstances that I think have caused great angst among some and caused them to say the sky is falling. But the sky is not falling at all.

Mr. REID. Mr. President, I simply wanted to acknowledge the statements of the Senator from Texas and the Senator from North Dakota. I am trying to make a point that things change around here: Democrats are in control; Republicans are in control. The Democrats will be back in control of the Senate sometime. It may not be in the next election cycle; it may not be in the next election cycle, but it will happen. We will be in control sometime, and we will have a Democratic Presi-

dent sometime. I think we have to look into the future, that we don't jam the system.

I appreciate very much the Senator from North Dakota indicating this is not payback time. When we took control of the Senate, we said at that time, this is not payback time. We have proven that. There have been hearings held. If there is somebody who has been held up, that should be brought to the attention of the body. Senator DASCHLE and I have stated on many occasions that this is not payback time. If it were, things would be in desperate shape.

We have approved a lot of judges that don't meet what many people over here feel is in the best interests of the country, but we have felt that the President has to have great leeway in the people he has chosen. That is indicated by the 123 we have approved.

I understand the power of concern of the chairman of the Judiciary Committee, Chairman HATCH. His feelings about Miguel Estrada have been made very clear. I know Senator HATCH. I know how strongly he feels about this matter. But I would hope that those on the other side will understand that Miguel Estrada's problem could be solved so easily. Let us see the documents from the Solicitor's Office, and I think it could be solved very quickly.

With Justice Owen, it is a different problem. But remember, we are talking about 123 to 2. I don't think it is fair to try to tell the American public that the system is broken. I really don't think it is.

I want also to apologize publicly for raising my voice to the Chair. I rarely do that. I did and I apologize to the Chair for that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I will take a few moments to respond to some of the comments made by the Senator from North Dakota and the Senator from Nevada.

First, I certainly respect their right to have an opinion and to express an opinion that this system of judicial confirmation is not broken. I disagree with them. Reasonable observers, outside of the bubble in this Chamber and perhaps inside the beltway, looking at this system will say: The system is broken and disagree with them. Indeed, to date, over 134 editorials in 94 newspapers have called for the confirmation of Miguel Estrada and Priscilla Owen and have called for an end to the filibuster. Indeed, the preponderance of the views is in favor of those who believe that the system is broken and sorely in need of reform.

I pointed out the bipartisan letter of the 10 freshmen. I pointed out even Senator SCHUMER and others who have been here for quite a while believe the system is broken. So I think we need a fresh start.

In many ways, the Senator from North Dakota makes my case for me.

When he goes back through all of the grievances of the past in the judicial confirmation process, real or perceived, he says the system was broken back then but it is not now.

He also says that because Democrats have voted or allowed a vote—they haven't necessarily voted for them, but they have allowed a vote—on 123 of the President's judicial nominees and disallowed votes on only 2, that it somehow makes it all right.

There is an important point that needs to be made. When 123 of President Bush's judicial nominees have been confirmed and 2 have been blocked by unprecedented filibusters—and please understand there has never been a filibuster before, a true filibuster of judicial nominees before in the history of the Senate before Miguel Estrada and Priscilla Owen—how can some of these same people stand on the floor of the Senate or in the Judiciary Committee or in front of TV cameras and say President Bush is nominating only ideologues. Back in my State, some of the names I have heard these nominees called would be fighting words. If somebody called you some of the names I have heard these nominees called, indeed the President for nominating some of these same people, those would be simply fighting words.

We are not fighting here today. I am simply trying to make the point that the sort of harsh, shrill, unreasonable, emotional allegations being made by some of these special interest groups that are being repeated by some Members of this body when it comes to these nominees simply don't stand up to any test of reason.

Two years for a judicial nomination is not a sign of a healthy judicial confirmation process. It is a sign that the system is broken and needs to be repaired.

I yield to the distinguished Senator from Kentucky.

Mr. MCCONNELL. I say to my friend from Texas, if he will yield the floor and let me get the floor, we will do this very quickly.

Mr. CORNYN. I am happy to do so.

The PRESIDING OFFICER. The Senator from Kentucky.

#### UNANIMOUS CONSENT REQUEST— H.J. RES. 51

Mr. MCCONNELL. Mr. President, the assistant Democratic leader and I have been working over the last few hours to come up with a consent agreement with regard to handling the debt limit. We have now reached agreement.

Therefore, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, the Senate proceed to the consideration of Calendar No. 80, H.J. Res. 51, the debt limit extension; that first-degree amendments be limited to 12 per side, with relevant second-degree amendments in order; provided that no amendments with respect to gun liability or hate crimes be

in order on either side; that upon disposition of all amendments, the joint resolution as amended, if amended, be read the third time, and the Senate then vote on passage of the joint resolution without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator does not have the floor.

Mr. REID. Would the Senator from Kentucky withdraw his consent at this time?

Mr. MCCONNELL. Mr. President, I withdraw the unanimous consent request for the time being.

I yield the floor.

#### OWEN NOMINATION

Mr. CORNYN. Mr. President, I have some further remarks I want to make with regard to the Owen nomination. I know there are other Senators who will be coming to the floor. I certainly want to give them an opportunity to speak on that subject if they wish.

As I was saying, the comment of the Senator from North Dakota that 123 Bush judicial nominees have been confirmed and only 2 obstructed, as these 2 fine ones have been, and that is a sign that the system is not broken really is at odds with the caricature I have heard and the Nation has heard about the type of person President Bush has nominated for judicial office. The truth is that they are uniformly highly qualified, able, and experienced, and should be, and are the same type of people who should be confirmed; and why they have picked out these 2 nominees against whom to engage in an unprecedented filibuster is, frankly, beyond me.

I see the Senator from Kentucky and the Senator from Nevada here. I yield the floor to them.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

#### UNANIMOUS CONSENT AGREEMENT—H.J. RES. 51

Mr. MCCONNELL. With apologies to the Senator from Texas for the interruption, we would like to try one more time to reach an agreement on something Senator REID and I have been working on for the last few hours.

I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, the Senate proceed to the consideration of Calendar No. 80, H.J. Res. 51, the debt limit extension; that first-degree amendments be limited to 12 per side, with relevant second-degree amendments in order; provided that no amendments with respect to gun liability or hate crimes be in order on either side; that upon disposition of all amendments, the joint resolution, as amended, if amended, be read the third time, and the Senate then vote on pas-

sage of the joint resolution, without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

#### UNANIMOUS CONSENT AGREEMENT—S. 113

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, Calendar No. 32, S. 113, the Foreign Surveillance Act, be referred to the Senate Intelligence Committee and that the committee be automatically discharged from further consideration of the measure and the Senate then proceed to its immediate consideration under the following limitation: That there be 2 hours of general debate equally divided between Senator KYL and Senator SCHUMER, or their designees; that the only amendments in order, other than the committee-reported substitute, be the following: Feingold amendment regarding reporting be considered and agreed to; Feinstein amendment regarding permissive presumption, with 4 hours of debate equally divided.

I further ask unanimous consent that following the disposition of the above-listed amendments and the use or yielding back of the debate time, the committee amendment be agreed to, the bill, as amended, be read the third time, and the Senate proceed to vote on passage, with no further intervening action or debate.

Further, I ask unanimous consent that following passage of the bill, the title amendment be agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, on the paragraph indicating the Feingold amendment regarding the report being considered and agreed to, is there any time on that?

Mr. MCCONNELL. No.

Mr. REID. No time. Just reported and agreed to. No objection.

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

Mr. MCCONNELL. Mr. President, I apologize again to the Senator from Texas for the continued interruptions. I have no anticipation that I will be doing that again.

The PRESIDING OFFICER. The Senator from Texas is recognized.

#### OWEN NOMINATION

Mr. CORNYN. Mr. President, I notice the Senator from Alabama is here, and I believe he wants to speak on the Owen nomination. I will turn the floor over to him in a few minutes.

There are a couple of things I want to finish responding to regarding what the Senator from North Dakota and the Senator from Nevada have said, and the way they characterize Justice Owen—as an activist, as somebody who is out of the mainstream, and in terms of judicial qualifications.