

our values are universal. Speaking on Darfur last year, he asked:

How can a citizen of a free country not pay attention? How can anyone, anywhere, not feel outraged? How can a person, whether religious or secular, not be moved by compassion? And above all, how can anyone who remembers remain silent?

Mr. President, I just returned from the region. Unfortunately, the Government of Sudan denied me the visa that I needed to visit the camps inside Sudan. Instead, I went to Chad, where there are about 200,000 displaced refugees from Darfur.

What do the Sudanese have to hide? Why would they prevent a U.S. Senator from visiting. In the camp I visited in Chad, I received reports of continued attacks on civilians, as well as a growing fear of an imminent humanitarian crisis afflicting the 2 million displaced Darfurians. But it is when monitors are denied access, when there are no reports, that the atrocities are always the most grave and can continue.

We need transparency. This is not about one Senator. The Sudanese have obstructed access by African Union monitors. Human rights advocates and journalists have been denied entry. Humanitarian organizations have been harassed and, when they actually get there, some have actually been killed.

We need to shine a light on this problem. I visited some of the victims last week in eastern Chad. Here is a picture of some of the folks in one of the camps. Hundreds of these men and women desperately want to go home. They were in Chad because of the brutal violence in their own country, brought on by the Sudanese Government. They were chased from their villages. None of them felt safe to return. None of them would return.

This sentiment matches what we hear in Darfur, where we were last fall. Hundreds of thousands of civilians were in these IDP camps, approaching 2 million. Meanwhile, the Darfur refugees in Chad are barely getting by. I can tell you that the conditions are difficult. U.N. agencies and humanitarian organizations are doing everything they can, a heroic job of getting assistance to these camps. But I have to tell you, there is a serious shortfall between a quality of life that is just sustainable and reality. The terrain in eastern Chad is dry, infertile and, frankly, the environment is bleak. It barely supports the Chadians who live in the area. There is not enough water and certainly limited amounts of food. It needs to change.

That is why we need to speak out and we have to be forceful. That is why one of the provisions in the Darfur Accountability Act I think is most important, and that is the appointment of a special envoy.

Mr. President, stopping genocide is a moral challenge that requires courage and resources. But it also requires attention every day—real diplomatic engagement to make sure we are moving the ball forward in this process. In

Chad, I met with President Deby and also with members of the joint commission—Chadians engaged in diplomatic negotiations between the Government of Sudan and the Darfur rebels. We met with the rebels themselves. People want peace. We met with people in the African Union in Addis Ababa, Ethiopia.

Bringing these players together—not to mention the parties in the north-south agreement in Sudan, the EU, NATO, and U.N. Security Council members—is a full time job. It needs the attention of an individual to make sure that those negotiations don't go adrift. We need that attention now. It is critical. The Darfur Accountability Act asked for this, encouraged this, and it is not happening. It is not sufficient enough to have a one-time trip by the Deputy Secretary of State to Sudan to think that we are paying enough attention or putting on enough pressure. In fact, we don't have an ambassador in the Sudan. We don't have an official representative to the African Union. We need to be paying attention. That is why Senator BROWNBACK and myself offered the amendment to the supplemental. That is why we have asked for additional funding, some of which was included in the supplemental, and I am grateful for the fact that Senators DEWINE and BROWNBACK, DURBIN, LEAHY, and OBAMA were able to provide \$50 million more for the African Union. But some of the humanitarian assistance was pulled back for reasons allocated to other difficult places that also demand need.

It is essential if we are going to stop this killing, stop the genocide, that we react now, that we pay attention, that we do the things that will allow the African Union's deployment to be successful—only 2,200 people in an area the size of France. We need to have a minimum of 6,000, maybe as many as 10,000. That mission needs to be financed. The supplemental was where we could do much of this. Some of that we stepped back from.

Our values as a nation and our national security require us to speak up and confront these problems.

The ACTING PRESIDENT pro tempore. All time in morning business has now expired.

Mr. CORZINE. I thank the Presiding Officer. I hope my colleagues will consider this legislation when we bring it back to the floor. It needs to be fought for.

I thank the Chair. I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR DEFENSE, THE GLOBAL WAR ON TERROR, AND TSUNAMI RELIEF ACT, 2005—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 1268, which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1268), making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of conferees on the part of both Houses.

The ACTING PRESIDENT pro tempore. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of May 3, 2005.)

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, the Senate now has under consideration the conference report to accompany H.R. 1268, the fiscal year 2005 emergency supplemental appropriations bill. This bill was requested by the President to carry forward the spending and accounts of the Department of Defense, the Department of State, and other agencies and departments of the Government through the remainder of this fiscal year which will end on September 30.

The bill was passed in the Senate on April 21, and we began conference discussions with our colleagues from the other body on April 27. A bipartisan majority of the conferees reconciled differences between the two bills and reached agreement on the provisions of a conference report on Tuesday, May 3.

The House approved the conference report on May 5 by a rollcall vote of 368 to 58. The conference agreement provides a total of \$82.041 billion, slightly less than the President's request of \$82.042 billion. Almost \$76 billion in emergency supplemental appropriations is provided to the Department of Defense to cover the costs of continuing the operations in Iraq and Afghanistan.

Title II of the conference agreement provides \$4.128 billion for international programs and assistance for reconstruction and the war on terror. Title III provides \$1.184 billion for domestic programs in the war on terror. And title IV provides \$907 million in relief for the Indian Ocean tsunami disaster.

Finally, division B of the conference agreement carries the House-passed REAL ID Act and other provisions relating to immigration issues.

This conference agreement embodies a genuine compromise between the two bodies on legislation that is of utmost importance to our troops who are deployed in the war on terror and for our allies around the world. It is supported by the administration, and I hope the bill, as reflected in the conference report, will receive bipartisan support in the Senate.

We are pleased to have the benefit of comments by other members of the committee or Senate to explain specific provisions of this conference agreement. We are prepared to try to respond to any questions that any Senators may have about the provisions of the conference report, and we will be hopeful, however, that the Senate will proceed with some dispatch to the approval of the conference report because it is an urgent supplemental appropriations conference report. The funds provided in this conference report are urgently needed by our forces in the field and by our State Department for accounts that have been depleted in connection with programs administered by that Department.

The administration is urging that we act quickly, and I hope we will not unnecessarily prolong consideration of the conference agreement in the Senate but respond enthusiastically with the challenge from the administration to act with dispatch on this conference report.

Mr. President, before I yield the floor, if I may have one more moment of indulgence from the Senator from California, on behalf of the majority leader, I ask unanimous consent that there be 3 hours and 15 minutes of debate under the control of the ranking member and 1½ hours of debate under the control of the chairman; provided further that following the use or yielding back of time, the Senate proceed to a vote on adoption of the conference report, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mrs. FEINSTEIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, the distinguished chairman of the Appropriations Committee had indicated that I would be able to speak as in morning business, that he would not object. My concern is, with the time, if I will, in fact, have the time to complete my remarks.

Mr. COCHRAN. Mr. President, I have no objection to the Senator speaking as in morning business.

Mrs. FEINSTEIN. For such time as I may consume.

Mr. COCHRAN. I do not want her to talk forever.

Mrs. FEINSTEIN. No, it will not be forever.

Mr. COCHRAN. How long does the Senator expect to talk?

Mrs. FEINSTEIN. Probably a half hour.

Mr. COCHRAN. I have no objection, and I have no objection with that being done in spite of the agreement we have reached on the time for debate of the supplemental.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi? Without objection, it is so ordered.

The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the chairman of the Appropriations Committee for his graciousness. I am pleased to serve on that committee. He has been nothing but fair always. That is very much appreciated. I would like to indicate my support for the supplemental appropriations. I do have concerns about the inclusion of the REAL ID Act in this bill, largely because it is the Judiciary Committee that is the committee of jurisdiction, and this very complicated act has not had the opportunity of a hearing or discussions or markup by members of that committee. That having been said, it is my intent to vote for the emergency supplemental.

I wish to speak during the remainder of my time on the so-called nuclear option and the majority leader's intention to remove the ability of the minority party to filibuster judicial nominations.

#### JUDICIAL NOMINATIONS

Mr. President, I speak today as a member of the Judiciary Committee for the past 12 years. In this capacity, I have worked with Members from both sides of the aisle and on nominations from both Democratic and Republican Presidents. In all, I voted to confirm 573 judges and have voted no on the Senate floor on 5 and voted against cloture on 11.

I evaluate each candidate on a case-by-case basis and thoroughly examine their writings, opinions, statements, temperament, and character. The fact that Federal judges are lifetime appointments weighs heavily. They do not come and go with an administration, as do Cabinet appointments. Rather, they cannot be removed from the bench except in extremely rare circumstances. In fact, in our Government's over 200-year history, only 11 Federal judges have been impeached, and of those, only 2 since 1936.

Over the years, we have had heated debates and strong disagreements over judicial nominees; however, that debate is what ensures the Senate confirms the best qualified candidates.

I am deeply troubled when our legitimate differences over an individual's qualifications to be given a lifetime appointment to the Federal bench become reduced to inflammatory rhetoric. I am even more concerned when rhetoric turns into open discussion about breaking Senate rules and turning the Senate into a body where might makes right.

I am here today because some Members on the other side of the aisle have decided that despite a constitution that is renowned worldwide and used as a model for emergent democracies, despite a confirmation rate of 95 percent of President Bush's judicial nominees, and despite the other pressing priorities that the American people want us to address, that the time has come to unravel our Government's fundamental principle of checks and balances. The majority has decided the time has come to unravel the Senate's traditional role of debate and that the time has come to break the rules and discard Senate precedent.

I am very concerned about this strategy. It is important to remember that once done, once broken, it will be hard to limit and hard to reverse. In fact, just last month, Senator COLEMAN stated on CNN:

The President has a right to make appointments. They are not to be filibustered. They deserve an up-or-down vote. That's true for any kind of appointee, whether it's Under Secretary of State or a judge.

And this is exactly my point. First, the rules would be broken with regard to judicial nominees, then it is executive branch nominees, then it is legislation, and then the Senate has no rules at all and simply becomes a replication of the House of Representatives.

Every Thursday morning, I have a constituent breakfast, and at that breakfast I describe the difference between the House and the Senate based on something George Washington once said, that the House moves rapidly, is controlled totally by the party in power, and is akin to a cup of coffee. You drink your coffee out of the cup, but if it is too hot, you pour it into the saucer to cool it. And that is the Senate, the greatest so-called deliberative body on Earth, a place that fosters debate, often unlimited, and is basically based on the fact that no legislation is better than bad legislation. So the Senate by design was created to be a very different house than is the House of Representatives.

The strategy of a nuclear option will turn the Senate into a body that could have its rules broken or changed at any time by a majority of Senators unhappy with any position taken by the minority. As I said, this is not the Senate envisioned by our Founding Fathers, and it is not the Senate in which I have been proud to serve for the past 12 years.

I think it is important to take a look at history, as others have done, to understand the context of where this debate is rooted. The Founding Fathers and our early Pilgrims were escaping a tyrannical government where the average man, the common man, often did not have a voice and was often left without any say in its laws that governed him and his family. In response, these men specifically embedded language in the Constitution to provide checks and balances so that inherent in

our Government's design would be conflict and compromise, and it is precisely these checks and balances that have served to guarantee our freedoms for over 200 years.

When you read the Federalist Papers, discussions at the Constitutional Convention, and about the experience of America's first President, it is clear the Senate was never intended to be a rubberstamp. While it is often difficult to discern the original intent of a constitutional provision, the records of the Convention address the role of the Senate in the selection of Federal judges with unusual clarity.

Both the text of the appointments clause of the Constitution and the debates over its adoption strongly suggest that the Senate was expected to play an active and independent role in determining who should sit on the Nation's judiciary.

Throughout its deliberations, the Convention contemplated that the National Legislature in some form or another would play a substantial role in the selection of Federal judges. As a matter of fact, on May 29, 1787, the Convention began its work on the Constitution by taking up the Virginia plan, which provided:

That a National Judiciary be established . . . to be chosen by the National Legislature.

Under this plan, the President was to have no role at all. One week later, James Madison modified the proposal so that the power of appointing judges would be given exclusively to the Senate rather than to the legislature as a whole. This motion was adopted without any objection. So the Senate had the entire authority.

Then less than 2 weeks before the Convention's work was done, for the first time the committee's draft provided that the President should have a role in the selection of judges.

However, giving the President the power to nominate judges was not seen as ousting the Senate from a central role. Governor Morris of Pennsylvania paraphrased the new provision as one giving the Senate the power to appoint judges nominated to them by the President. In other words, it was considered the Senate was the nomination body and the President simply recommended judges to the Senate.

The Convention, having repeatedly and decisively rejected the idea that the President should have the exclusive power to select judges, could not possibly have intended to reduce the Senate to a rubber stamp, but rather it created a strong Senate role to protect the independence of the judiciary. In fact, Alexander Hamilton, considered the strongest defender of Presidential power, emphasized that the President would be required to have his choice for the bench submitted to an independent body for debate, a decision, and a vote, not simply an affirmation. He clarified the necessary involvement of the Senate in Federalist No. 77 by writing:

. . . if by influencing the President be meant restraining him, this is precisely what must have been intended.

Here is the emergence of a check, a balance, a leveling impact on the power of appointment, which is not to be unbridled.

In 1776, John Adams also wrote on the specific need for an independent judiciary and checks and balances. He said:

The dignity and stability of government in all its branches, the morals of the people and every blessing of society, depends so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checked upon that . . . [The judges'] minds should not be distracted with jarring interests; they should not be dependent upon any man or body of men.

So it is clear, when examining the creation of our Constitution, that the Federal judiciary was specifically designed to be an independent, non-partisan third branch, and the Senate was meant to play an active role in the selection process.

In addition, the experience of President Washington in appointing judges illustrates that from the outset the Senate took an active role in evaluating judicial nominees. In 1795, President George Washington nominated John Rutledge to be Chief Justice. Soon after his nomination, Rutledge assailed the newly negotiated and popular Jay Treaty with Britain. Even as Rutledge functioned as Acting Chief Justice, the Senate debated his nomination for 5 months, and in December 1795 the body rejected him 14 to 10, illustrating from the first administration that the Senate has always enjoyed a strong prerogative to confirm or reject nominees.

Now, use of procedural delays throughout history has prevented nominees from receiving an up-or-down vote. The claim that it is unprecedented to filibuster judicial nominations is simply untrue. In 1881, Republicans held a majority of seats in the Senate but were unable to end a filibuster to preclude a floor vote on President Rutherford B. Hayes's nomination of Senator Stanley Matthews to the Supreme Court. Matthews was re-nominated by incoming President James Garfield, and after a bitter debate in the Senate, was confirmed by a vote of 24 to 23. This has been described as the first recorded instance in which the filibuster was clearly and unambiguously deployed to defeat a judicial nomination.

Then, as has been stated on the Senate floor, there was the 1968 GOP-led filibuster against President Lyndon B. Johnson's nomination of Abe Fortas to be Chief Justice of the United States. At the time, a page 1 Washington Post story declared: "Fortas Debate Opens With a Filibuster."

The article read:

A full-dress Republican-led filibuster broke out in the Senate yesterday against a mo-

tion to call up the nomination of Justice Abe Fortas for Chief Justice.

So here are two specific examples of Republican-led filibusters against judicial appointments.

Last Congress, the Congressional Research Service reported that filibusters and cloture votes have been required to end debate on numerous judicial appointments. CRS reported that since 1980, cloture motions have been filed on 14 court of appeals and district court nominations. We all know a cloture vote is another kind of filibuster. It is the kind of filibuster where one does not have to stand up on the floor, but it takes the same 60 votes to close off debate. Moreover, cloture petitions were necessary in 2000 to obtain votes on the nominations of both Richard Paez and Marsha Berzon to the Ninth Circuit after Republican opponents repeatedly delayed action on them, for over 4 years in the case of Paez.

In fact, at the time, Republican Senator Bob Smith openly declared he was leading a filibuster against Richard Paez and he described Senator SESSIONS as a member of his filibuster coalition.

In addition to using the filibuster and other procedural delays, Republicans have publicly pronounced the importance of these rules and their own desire to delay or block the confirmation of judges. As recently as 1996, Senator LOTT stated:

The reason for the lack of action on the backlog of Clinton nominations was his steadily ringing office phone saying "No more Clinton Federal judges."

In 1996, Senator CRAIG said:

There is a general feeling . . . that no more nominations should move. I think you'll see a progressive shutdown.

In 1994, Senator HATCH stated that the filibuster is "one of the few tools that the minority has to protect itself and those the minority represents."

How soon they forget. Recent Republican practices using anonymous holds allowing a single Senator, not 41, to prevent a hearing or a vote on a judicial nominee, in effect, has created a filibuster of one. All told, during the last administration, more than 60 judicial nominees suffered this fate. This practice was recently commented on in the Chicago Tribune which said:

In addition, there are lots of congressional practices that defy majority rule. Under President Clinton, when Republicans controlled the Senate, they didn't have to use the filibuster to bottle up judicial nominations. The Judiciary Committee simply refused to send them to the floor for a vote.

That is true. I know. I was there. Remembering this history is important, not to point fingers or justify a tit-for-tat policy; instead, it is important to recall that Senate rules have been used throughout our history by both parties to implement a strong Senate role and ensure that Presidents do not attempt to weaken the independence of the judiciary.

The history is not new, and these examples have been cited by my colleagues in other contexts, and therefore, those on the other side have responded to the history. I believe it is important to address the differences that the other side is trying to draw.

Some have argued that the nomination by President Hayes of Senator Matthews of Ohio was not a filibuster because there was no cloture vote. This is true, however, a procedural delay denying a nominee confirmation to a court still has the result blocking a nomination. Trying to make a distinction about the procedures used to deny a nominee confirmation is a distinction without a difference.

As for the nomination of Abe Fortas—colleagues on the other side of the aisle have made various arguments including: that's only one isolated example; it was a Supreme Court, not a Circuit Court nominee; or Fortas' nomination was withdrawn after a failed cloture vote showed he did not have majority support and therefore its not the same situation.

Miguel Estrada and Carolyn Kuhl both withdrew their nominations after failed cloture votes, however both were used as examples of filibusters by Democrats.

Our colleagues have argued that the delays to the nominations of Richard Paez and Marsha Bershon do not count because in the end they were confirmed. This ignores that it took over four years to confirm both nominees. In addition, if a party attempts to filibuster a nomination, or legislation, and it is eventually passed that does not mean it is not a filibuster. It simply means that the filibuster or refusal to grant cloture cannot be sustained. That has happened to both parties in a variety of situations. However, failure does not undo the effort.

Finally, as to the other Clinton Administration nominees—the response given is that their nominations weren't defeated by a cloture vote on the floor. In essence the argument is because different procedural rules were used to defeat a nomination, it doesn't count. On its face, this argument doesn't hold water. To the nominee whether their confirmation failed because of a "hold" in Committee, or a failed cloture vote, the result is the same—they are not sitting on the bench.

Dozens of Clinton's nominees were "pocket filibustered" by as little as one Senator who, in secret, prevented the nominees from receiving a hearing in Committee, or a mark-up, or a floor vote. One Senator without debate or reason has stopped many Clinton nominees.

The question I have is whether the public interest is better served by one hidden filibuster without explanation, or 41 Senators debating publicly and refusing publicly to confirm the nominee. Clearly, it is the later.

I would like to go over a few nominees from the last administration who have been filibustered by Republicans,

and filibustered successfully on many occasions by as little a number as one Republican; filibustered in a way that it was secret; filibustered in a way that the individual never received a hearing or a markup in Judiciary or a vote on the Senate floor. Then I would like an answer to the question, which is better, a filibuster by 40 Members on the floor openly declared, publicly debating, discussing an individual's past speeches, an individual's temperament, character, opinions, or a filibuster in secret when one does not know who or why?

I begin with Clarence Sundram. Clarence Sundram was the chairman of the New York Commission for the Mentally Disabled. He was nominated on September 29, 1995. He had hearings on July 31, 1996, and June 25, 1997. There was no committee vote. There was no floor vote. His nomination was simply killed in committee by a filibuster of one or two, or the chairman's decision not to bring the nomination to the floor. He was supported by both home State Senators Moynihan and D'Amato. On seven occasions, Senator LEAHY spoke on the Senate floor urging that a vote be taken on Sundram, but no vote was ever taken.

James A. Beaty, Jr., was nominated to the U.S. Court of Appeals for the Fourth Circuit on December 22, 1995, and renominated on January 7, 1997. He did not receive a hearing and was not voted on in committee. His nomination languished for more than 1,000 days, almost 3 years without any action being taken. He was nominated by President Clinton to be a judge on the U.S. District Court for the Middle District of North Carolina. He was finally confirmed by the Senate in 1994.

Before that, he spent 13 years as a judge in the North Carolina Superior Court. He was blocked by Senator Helms. On November 21, 1998, National Journal reported that Senator Helms wanted President Clinton to name to the Fourth Circuit one of the Senator's proteges, Terrence W. Boyle, whose nomination to that bench was killed when the Democrats ruled the Senate and George Bush was President, but the Clinton White House refused and Senator Helms made it clear that President Clinton would not get Beaty confirmed until he nominated Boyle.

Then Senator Helms supported Beaty when he was nominated for his current position as a U.S. district court judge. But this shows how things worked, where one person could deny a nomination.

Then there is Helene White from the State of Michigan. She was nominated to the U.S. Court of Appeals for the Sixth Circuit on January 7, 1997, and renominated on January 26, 1999, and renominated for a third time on January 3, 2001. She did not receive a hearing or a committee vote during the pendency of her nomination. She had waited for a Senate Judiciary Committee hearing for 4 years, longer than any other judicial nominee in history, according to the Associated Press. She

had been a judge on the Michigan Court of Appeals. She served as a Wayne County circuit judge for nearly 10 years. She sat on the Common Pleas Court for the city of Detroit and served on the board of directors of the Michigan legal services. President Clinton thanked her for hanging in there through an ordeal that no one should have to endure. It is my understanding Senator LEVIN, one of the Michigan Senators, supported her. Senator Abraham waited 2 years before turning in his blue slip, and after turning in the blue slip did not endorse Ms. White. That, again, is how things worked. One person—not 41 people on the floor debating but 1 person—in secret holding up a nominee. That is just as much a filibuster, and even more effective a filibuster.

Jorge Rangel was nominated to the U.S. Court of Appeals for the Fifth Circuit on July 24, 1997. He did not receive a hearing or a vote in committee. He was a partner in Rangel & Chriss, a Corpus Christi law firm, and specialized in personal injury, libel, and general media litigation. He was presiding judge of the 347th District Court in Nueces County from October of 1983 to June of 1985, and a former assistant professor of law at the University of Houston. He was originally recommended to the White House by Senator Bob Krueger, but removed his name from consideration because, according to a July 25, 1997 Dallas Morning News article, he was then a member of the American Bar Association Panel that reviews federal court nominees, which made him ineligible. He was subsequently nominated after he was no longer on the ABA panel, at which time, Texas Monthly has reported, he was blocked by his two home state Senators. So, two persons there.

Barry Goode was nominated to the U.S. Court of Appeals for the Ninth Circuit in 1998, renominated January 26, 1999, and renominated a third time on January 3, 2001, just before President Clinton left office—three tries. He waited for 2½ years without a hearing or a vote in committee. He was a partner at the time at the San Francisco law firm of McCutchen, Doyle, Brown & Enersen. He had practiced law since 1974. He was an adjunct professor of environmental law at the University of San Francisco and served 2 years as special assistant to Senator Adlai E. Stevenson III. The ABA rated him as qualified. He was supported by both myself and Senator BOXER. The reason for the block was an anonymous Republican who, to this day, is not known. Senator LEAHY spoke at least eight times on the Senate floor, urging that Goode's nomination be considered, but a filibuster of one, hidden, in secret, nobody knowing who it was, essentially killed this nomination.

Legrome Davis was nominated to the U.S. District Court for the Eastern District of Pennsylvania on July 30, 1998, and renominated on January 26, 1999. He did not receive a hearing or a vote

from the Judiciary Committee during the nearly 2½ years his nomination was pending. President Bush renominated Davis to the same court at Senator SPECTER's request on January 23, 2002, and he was finally confirmed by a unanimous vote of the Senate on April 18, 2002. But the point was he was stopped for nearly 2½ years by an unknown individual.

Lynnette Norton was nominated to the U.S. District Court for the Western District of Pennsylvania on April 29, 1998, and renominated on January 26, 1999. She did not receive a hearing or a vote in committee during the more than 2½ years her nomination was pending. She died suddenly in March 2002 of a cerebral aneurysm. It is my understanding Senator SPECTER supported Norton. Senator SANTORUM, I believe, did not return the blue slip. According to a November 18, 1999 article in the Philadelphia Inquirer, a hold was placed on Ms. Norton's nomination.

H. Alston Johnson was nominated to the U.S. Court of Appeals for the Fifth Circuit on April 22, 1999, and renominated on January 4, 2001. Despite waiting over a year and a half, he did not receive a hearing or a vote in committee. His nomination was withdrawn by President Bush on March 19, 2001. He was supported by both home State Senators, Senators Breaux and LANDRIEU. According to articles in the Baton Rouge Advocate on July 10, 2000, and January 8, 2001, it is my understanding an individual Senator blocked his nomination from proceeding, even though both Republicans and Democrats appeared willing to confirm him.

James E. Duffy, Jr. was nominated to the U.S. Court of Appeals for the Ninth Circuit on June 17, 1999, and renominated on January 3, 2001. He did not receive a hearing or vote in committee. He is from Honolulu, had been a litigator for his entire legal career, been a partner in the Honolulu law firm of Fujiyama, Duffy, and Fujiyama since 1975. He was former president of both the Hawaii State Bar and the Hawaii Trial Lawyers Association. He would have been the first active Hawaii member of the Ninth Circuit Court of Appeals in 15 years, despite rules that at least 1 judge must sit in each of the States within the Ninth Circuit. He was unanimously rated as well qualified. He was supported by both Hawaii Senators. There has been no explanation forthcoming of who blocked his progress. Again, a secret hold, one person. Two home State Senators supporting this individual and the individual does not go forward. That is as much a filibuster as anything going on on the floor at this time.

Elena Kagan was nominated to the U.S. District Court of Appeals for the District of Columbia on June 17, 1999. She did not receive a vote or a hearing in committee. She is currently the dean of Harvard Law School. She was a visiting professor at Harvard Law School, former domestic adviser to

President Bill Clinton when she was nominated. She was special counsel to the Senate Judiciary Committee during the confirmation hearings of Ruth Bader Ginsburg. She served as Associate Counsel to the President from 1995 to 1996, and Deputy Assistant to the President for Domestic Policy, and Deputy Director of the Domestic Policy Council from 1997 to 1999. Prior to that she was professor of law at the University of Chicago, tenured. She worked at the Washington, DC, law firm of Williams and Connolly, and she clerked for U.S. Supreme Court Justice Thurgood Marshall. A substantial majority of the ABA rated her qualified. A minority rated her well qualified. It is my understanding three Senators argued that the DC Circuit did not need any more judges, an argument that had been used to delay the confirmation of Judge Merrick Garland between 1995 and 1997.

See, this was another thing that was happening during that time. Let me just say it like it was. Vacancies on the DC Circuit—a critical and important circuit because it reviews all of the administrative appeals—were purposely kept open, preventing President Clinton from filling that circuit, to have more openings for the next President. Here three Senators kept this very qualified and very distinguished nominee from receiving a vote or a hearing on the committee. Again, a secret, hidden filibuster.

And, nevertheless, Senate Republicans supported the nomination by President Bush of Miguel Estrada to the same circuit court in 2002.

James Wynn was nominated to the U.S. Court of Appeals for the Fourth Circuit on August 5, 1999, and renominated on January 3, 2001. As you can see, President Clinton made one last try before he left office. He did not receive a hearing or a vote in committee. President Bush withdrew Judge Wynn's nomination on March 19, 2001. He was a judge on the North Carolina Court of Appeals and had previously served on the North Carolina Supreme Court. When nominated, he was a Navy reservist in the JAG corps of the U.S. Navy with the rank of captain. He served as the ABA's first African-American chair of the Appellate Judges Conference whose membership includes over 600 Federal and State appellate judges. He was on the board of governors of the American Judicature Society and was a vice president of the North Carolina Bar Association. He was an executive board member of the Uniform State Laws Commission and a drafter of the Revised Uniform Arbitration Act, Uniform Tort Apportionment Act, and proposed Genetic Discrimination Act. He was rated qualified by the ABA screening committee. Senator Edwards supported him. The Associated Press, on December 29, 2000, reported that Senator Helms blocked Judge Wynn. One person blocks a distinguished jurist, a filibuster of one, and not a word said.

Kathleen McCree-Lewis was nominated to the U.S. Court of Appeals for the Sixth Circuit Court on September 16, 1999, and renominated on January 3, 2001. She did not receive a hearing or a vote in committee during the more than a year her nomination was pending. She was a distinguished appellate attorney with Dykema Gossett, one of the largest law firms in Michigan. She had been active in the Michigan bar from 1996 to 1999. She chaired the rules advisory committee of the U.S. Court of Appeals for the Sixth Circuit. From 1992 to 1995, she cochaired the appellate practice committee of the ABA section of litigation. From 1987 to 1998, she was editor of the Sixth Circuit section of the Appellate Practice Journal and is a life member of the Sixth Circuit Judicial Conference. She was president of the American Academy of Appellate Lawyers. She would have been the first African-American woman to serve on the Sixth U.S. Circuit Court of Appeals. She was rated by the ABA as well qualified. On March 21, 2001, the Detroit Free Press reported that she was blocked by one of her home State Senators, namely Senator Abraham. Let me quote the Detroit Free Press. McCree-Lewis never "got a hearing in the Senate, thanks to Abraham's epic obstructionism."

Now on January 8, 2001, the Detroit Free Press reported:

The Senate has been obscenely obstructionist in blocking President Bill Clinton's judicial nominations. Former Senator Spencer Abraham did nothing to help shepherd Michigan Court of Appeals Judge Helene White and Detroit attorney Kathleen McCree Lewis through the system.

Again, filibuster of one, in secret, with no floor debate.

Enrique Moreno was nominated to the U.S. District Court of Appeals for the Fifth Circuit on September 16, 1999, and renominated January 3, 2001.

He did not receive a hearing or a vote in committee. At the time of his nomination, Moreno had a longstanding and diverse legal practice in El Paso, working on both civil and criminal law. In the civil area, he represented both plaintiffs and defendants, representing both large business clients and also individuals, advocating their civil rights. In a survey of State judges, he was rated as one of the top trial attorneys in El Paso. A native of Chihuahua, he came to El Paso as a small child, son of a retired carpenter and a seamstress.

The ABA committee unanimously rated him as well qualified.

In November of 2000, Texas Monthly reported that he was blocked by both home State Senators, again without a hearing or a vote in the Judiciary Committee.

Allen Snyder was nominated to the U.S. Court of Appeals for the DC Circuit on September 22, 1999. He did receive a committee hearing on May 10, 2000. His nomination, though, was not voted on by the committee.

At the time of his nomination, he was a longtime partner and chairman

of litigation practice at the DC law firm Hogan & Hartson. At Hogan & Hartson, he represented Netscape Communications Corporation in the landmark Microsoft antitrust case.

He was a former law clerk to Chief Justice William Rehnquist. The ABA unanimously rated him well qualified. He served as chair of the Committee on Admissions and Grievances of the U.S. Court of Appeals for the District of Columbia, as secretary and executive committee member of the Board of Governors of the District of Columbia Bar, and on the board of the Washington Council of Lawyers. It is my understanding his nomination was blocked by two Judiciary Committee Senators. No reason was given.

Kent Markus was nominated to the U.S. Court of Appeals for the Sixth Circuit on February 9, 2000. He did not receive a hearing or a vote in committee. He was the director of the Dave Thomas Center for Adoption Law and visiting professor at Capital University Law School at the time of his nomination. He served in numerous high-level legal positions within the Department of Justice, including counselor to the Attorney General, Deputy Chief of Staff for the Office of the Attorney General, and Acting Assistant Attorney General for the Office of Legislative Affairs.

He also served as first assistant attorney general and chief of staff for the Ohio Attorney General's Office.

His nomination was supported by 14 past presidents of the Ohio State Bar Association, including Democrats, Republicans, and Independents; more than 80 Ohio law school deans; prominent Ohio Republicans; the National District Attorneys Association; and the National Fraternal Order of Police.

The ABA unanimously rated him as qualified.

Both Senators DEWINE and VOINOVICH returned blue slips. He was blocked by one Senator—a filibuster of one, all hidden, all quiet.

Bonnie Campbell was nominated to the U.S. Court of Appeals for the Eighth Circuit on March 2, 2000, and renominated on January 3, 2001. Her hearing was on May 25, 2000. The nomination was never voted on by the Judiciary Committee.

She served for 4 years as Iowa's Attorney General. She is the only woman to have held that office in her State, and she wrote what became a model statute on antistalking for States around the country.

She was selected by President Clinton in 1995 to head the Justice Department's newly created Violence Against Women Office. She emerged as a national leader for her work to bring victims' rights reforms to the country's criminal justice system.

In 1997, Time magazine named her one of the 25 most influential people in America. Praising her for bringing "rock-solid credibility" to her job, Time called Campbell the "force behind a grass-roots shift in the way

Americans view the victims—and perhaps more important, the perpetrators—of crimes against women."

She oversaw a \$1.6 billion program to provide resources to communities for training judges, prosecutors, and police. She was chosen to serve on the President's Interagency Council on Women, chaired by former First Lady HILLARY RODHAM CLINTON. She also headed the Justice Department's Working Group on Trafficking.

According to a statement given by Senator LEAHY to the Judiciary Committee on January 22, 2004, she was blocked by a secret Republican hold from ever getting committee or Senate consideration. Apparently, just one Senator. She had a hearing, as I said, but she never had a vote.

Roger Gregory was nominated to the U.S. Court of Appeals for the Fourth Circuit on June 30, 2000, and was renominated on January 3, 2001. He was a recess appointee of President Clinton at the end of the 106th Congress. He did not receive a hearing or a vote.

On March 19, 2001, President Bush withdrew his nomination. He was subsequently renominated by President Bush on May 9, 2001, and confirmed July 20, 2001, by a 93-to-1 vote.

According to former Senator Chuck Robb, on October 3, 2000:

Despite the well-documented need for another judge on this court, and despite Mr. Gregory's stellar qualifications, the Judiciary Committee has stubbornly refused to even grant Mr. Gregory the courtesy of a hearing.

I know Senator WARNER supported this judge.

Again, this just goes to show that we are having a major flap because 41 people feel strongly, are willing to come to the floor, and willing to debate a nominee, and all of a sudden the world is going to come to an end, when for years and years and years one or two or three Members of the Senate could prevent a hearing or a markup in the Judiciary Committee or an individual even being brought to the floor.

Which would the public prefer? I would hope it would be a discussion on the floor of the Senate. I would hope it would be laying out the case against the individual, as has been done with every one of the ten—only ten; in all of President Bush's terms, only ten—when in President Clinton's term there were 60, and one or two, in secret, kept that individual from being brought to the floor of the Senate and voted on.

Well, let me continue. John Bingler was nominated to the U.S. District Court for the Western District of Pennsylvania on July 21, 1995, and renominated on July 31, 1997. He did not receive a hearing or a vote either time he was nominated.

After waiting more than 2 years without any action on his nomination, he withdrew on February 12, 1998.

Since 1971, he has practiced law with the Pittsburgh firm of Thorp, Reed & Armstrong. He served for 6 years as chair of the firm's litigation department.

From 1970 to 1971, he was the public safety director for the city of Pittsburgh. He served for 3 years as an assistant U.S. attorney in Pittsburgh where he prosecuted Federal criminal cases, and for 2 years he was an attorney for the Civil Rights Division of the Department of Justice. He served a 3-year tour of duty in the U.S. Navy. He was rated unanimously as well qualified by the ABA.

On October 16, 1997, the Pittsburgh-Post Gazette reported that one of the two home State Senators held up his nomination for 2 years, allowing neither a hearing nor a vote, and I do not believe it was the chairman of the committee.

Bruce Greer was nominated to the U.S. District Court for the Southern District of Florida on August 1, 1995. He did not receive a hearing and he was never voted on by the committee. His nomination was withdrawn on May 13, 1996. At the time of his nomination, he was the president of the Miami law firm of Greer, Homer & Bonner, where he has a civil litigation practice.

Senator Bob Graham supported him. Senator Connie Mack's position is not known. It is my understanding the Wall Street Journal published a lengthy editorial on July 17, 1996, that made no direct allegations against Greer, but made a case for guilt by association implying that, because Mr. Greer represented unsavory defendants, he was soft on crime.

The Columbia Journalism Review reported that the day after the editorial appeared, the chairman came to the floor to denounce judges who are soft on crime and, shortly afterward, Mr. Greer received word that he would not be receiving a hearing. So Bruce Greer was denied even a hearing to see if the allegations were true.

That is what has happened, ladies and gentlemen.

Leland Shurin was nominated to the U.S. District Court for the Western District of Missouri on April 4, 1995. He did not receive a hearing and was never voted on in committee. His nomination was withdrawn at his request, because of inaction, on September 5, 1995.

He was an executive committee member and partner at the law firm of McDowell, Rice & Smith, in Kansas City, where he maintained a general practice doing plaintiff and defense litigation. He was very active in the community.

He was rated as qualified by the ABA committee. He told the Kansas City Star:

I had the sense that my confirmation is being delayed. No one could give me a clear date when anything could be done. I've sat around for two years. I can't keep doing it.

One has to come to grips with whether this was a fair process, whether this was even as fair as what is happening today. I believe no way, no how was this a fair process. I have been one who has believed that the blue slip should be done away with, that there should be no anonymous holds, and that every

appointee should be given a hearing and a vote in the committee. That does not mean that we should change the rules of the Senate to prevent, in extreme cases, the ability of the minority to register a strong point of view, when the minority of one has historically been allowed to register a strong point of view secretly and, in fact, kill a nominee.

Sue Ellen Myerscough was nominated to the U.S. District Court for the Central District of Illinois on October 11, 1995. She did not receive a hearing or a vote in committee. She was an Illinois State circuit court judge. She was an associate circuit court judge. She worked in law firms in Springfield. She formerly clerked for U.S. District Judge Harold Baker. A substantial majority of the ABA committee rated her as well qualified, while a minority rated her as qualified.

She was supported by both Senator Paul Simon and Senator Carol Moseley-Braun at the time. In 1997, Senator DICK DURBIN stated in the State Journal-Register that he believed "Judge Myerscough was caught up in a Federal stall."

On September 27, 1996, the State Journal-Register reported that Senator Simon said he believed the reason was a matter of partisanship, not because of any controversy or problems with her qualifications. Senator Simon said he escorted Myerscough for individual meetings with Senator HATCH and other members of the panel but had "not had a single member of the committee tell me he or she couldn't vote for her."

This is what has happened. So I have a hard time understanding why we are where we are today.

Charles Stack was nominated to the U.S. Court of Appeals for the Eleventh Circuit on October 27, 1995. He received a hearing before the committee on February 28, 1996, but did not receive a vote in committee.

According to the May 11, 1996, Miami Herald, he came under intense attack from then-Presidential candidate Bob Dole, and he withdrew his nomination on May 13, 1996.

Cheryl Wattlely, nominated to the U.S. District Court for the Northern District of Texas on December 12, 1995, did not receive a hearing or vote in committee. The Dallas Morning News reported in 1996 that she was supported by both home State Senators. Again, no reason—probably filibustered because one or two or three didn't like her for one reason or another.

Michael Schattman, nominated to the U.S. District Court for the Northern District of Texas, December 19, 1995, and renominated on March 21, 1997, did not receive a hearing, was not voted on in committee. His nomination at his request was withdrawn on July 1998 after 2½ years of inaction by the committee. This man was a Texas State district court judge in Fort Worth. He had previously been a county court judge. And to add insult to in-

jury, because of the lengthy delay in the nomination process, the February 11, 1998 edition of the NewsHour with Jim Lehrer reported that he lost his State court judgeship. He was unanimously rated as qualified. Again, this is the hidden filibuster of this body.

J. Rich Leonard, was nominated to the U.S. Court of Appeals for the Fourth Circuit, on December 22, 1995, did not receive a hearing or a vote in committee. Subsequently, he was nominated to the District Court for the Eastern District of North Carolina on March 24, 1999. Again, he did not receive a hearing or a vote. In total, this gentleman waited over 2.5 years before the committee for the two nominations without ever receiving a hearing or a vote. He was a judge on the U.S. Bankruptcy Court for the Eastern District of North Carolina at the time of his nomination by President Clinton. He was rated as well qualified. Again, my information is that one Senator blocked both of his nominations.

I see there are others waiting. I will be brief. But let me list some of the others.

Robert Freedberg was nominated to the U.S. District Court for the Eastern District of Pennsylvania, April 23, 1998. He never received a hearing. He was a judge on Northampton County's Court of Common Pleas. He is a former prosecutor. The January 28, 1999 Allentown Morning Call reported that he was blocked by one Senator.

Robert Raymar, nominated to the U.S. Court of Appeals for the Third Circuit, did not receive a hearing. His nomination expired at the end of the session. Former deputy attorney general for the State of New Jersey, member of the New Jersey Executive Commission on Ethical Standards. He was rated as qualified. He was supported by both State Senators. One person filibustered this individual in committee. He didn't receive a hearing or a vote.

James Lyons, nominated to the U.S. Court of Appeals for the Tenth Circuit, did not receive a hearing or a vote, and withdrew after it became clear he would not receive a hearing or a vote. He was a longtime senior trial partner at the Denver law firm of Rothberger, Johnson & Lyons, special advisor to the President of the United States and the Secretary of State for economic initiatives in Ireland and Northern Ireland. He couldn't get a hearing. He was adjudged well qualified by the ABA.

I don't see where anybody is concerned about these injustices, and that is what they were—real injustices.

John Snodgrass was nominated to the U.S. District Court, Northern District of Alabama, September 22, 1994, renominated January 11, 1995. He did not receive a hearing or a committee vote. His nomination was withdrawn on September 5, 1995.

Anabelle Rodriguez was nominated to the U.S. District Court for the District of Puerto Rico, January 26, 1996, renominated March 21, 1997. A committee hearing was held on October 1 of 1998,

but a vote was never held on her nomination during the nearly 3 years her nomination was pending. What were the reasons for this block? On October 8, 1998, the Associated Press reported that her supporters said she was opposed by Puerto Rico's prostatehood Governor and congressional representative because she is a backer of the island's current status as a U.S. commonwealth, and there was apparently some overwhelming bipartisan opposition.

Why not vote? If what is being said now has been true and par for the course, why not vote?

Lynne Lasry was nominated for the Southern District of California but did not receive a hearing or a vote. After one year of inaction, the nomination was withdrawn in 1998.

James Klein was nominated to the U.S. District Court for the District of Columbia, January 27, 1998, renominated March 25, 1999, and did not receive a hearing or committee vote during the 3 years that he was pending.

Patricia Coan was nominated to the U.S. District Court for the District of Colorado, May 27, 1999. She did not receive a hearing or committee vote in the year and a half that her nomination was pending. The May 21, 2000 Denver Post reported that one Senator blocked her nomination.

Dolly Gee was nominated to the District Court for the Central District of California, May 22, 1999. She did not receive a hearing or committee vote in the year and a half that her nomination was pending.

Fred Woocher was nominated to the U.S. District Court for the Central District of California, received a hearing on November 10, 1999, but was not voted on by the committee despite waiting for a year after his hearing.

Steven Bell was nominated to the U.S. District Court for the Northern District of Ohio but did not receive a hearing or vote in committee for more than a year that his nomination was pending.

Rhonda Fields was nominated to District Court for the District of Columbia on November 17, 1999, no hearing, no vote.

Robert Cindrich was nominated to the U.S. Court of Appeals, Third Circuit, February 9, 2000, no hearing, no vote.

David Fineman was nominated to the U.S. District for the Eastern District of Pennsylvania on March 9, 2000, no hearing, no vote.

Linda Riegle was nominated to the U.S. District for the District of Nevada on April 25, 2000, no hearing, no vote in committee.

Ricardo Morado was nominated to the U.S. District for the Southern District of Texas on May 11, 2000, no hearing, no vote.

Stephen Orlofsky was nominated to the U.S. Court of Appeals, Third Circuit, May 25, 2000, no hearing, no vote.

Gary Sebelius was nominated to the U.S. District for the District of Kansas on June 6, 2000, no hearing, no vote.

Kenneth Simon was nominated to the U.S. District for the Northern District of Alabama on June 6, 2000, no hearing, no vote.

John S.W. Lim was nominated to the U.S. District for the District of Hawaii on June 8, 2000, no hearing, no vote.

And there are those, you might say, that came under the Thurmond rule. There is sort of an informal practice that in the last few months of a President's tenure, the hearings do not go forward. Again, that is not a rule; it is a practice.

Christine Arguello, nominated to the U.S. Court of Appeals, Tenth Circuit, on July 27, 2000.

Andre Davis, nominated to the U.S. Court of Appeals, Fourth Circuit, on October 6, 2000.

Elizabeth Gibson, nominated to the U.S. Court of Appeals, Fourth Circuit, on October 26, 2000.

David Cercone, nominated to the U.S. District Court for the Western District of Pennsylvania on July 27, 2000.

Harry Litman, nominated to the U.S. District Court for the Western District of Pennsylvania on July 27, 2000.

Valerie Couch, nominated to the U.S. District Court for the Western District of Oklahoma on September 7, 2000.

Marian Johnston, nominated to the U.S. District Court for the Eastern District of California on September 7, 2000.

Steve Achelpohl, nominated to the U.S. District Court for the District of Nebraska on September 12, 2000.

Richard Anderson nominated to the U.S. District Court for the District of Montana on September 13, 2000.

Stephen Lieberman, nominated to the U.S. District Court for the Eastern District of Pennsylvania on September 14, 2000.

And, Melvin Hall, nominated to the U.S. District Court for the Western District of Oklahoma on October 3, 2000.

What I have tried to show today is that there is a certain amount of hypocrisy in what is going on today. The opposition cannot have any concern about one Clinton nominee or dozens of Clinton nominees who received no hearing, no markup, no floor vote, but suddenly they are upset because 41 of us in public, eight of us in committee, vote no and believe that our views are strong enough and substantive enough to warrant a debate on the floor of the Senate in the true tradition of the Senate. And bingo, we are going to have a change in the rules to prevent that from happening. Nobody is talking about changing the rules so one person can't filibuster; one person can't, on a pique or because they don't like the individual, condemn that individual.

I can tell you, because I have been on this committee for 12 years, I have had people call me and say: Look, I have three children. I have to know what is going to happen to me. I try to get information, can't get that information.

I ask the majority of this body, is that fair? Do you not feel aggrieved? Or is that OK because it was a different

President of a different party? I don't think so. I think what is sauce for the goose is sauce for the gander. I pointed out two uses of filibusters for judicial appointments by Republicans, one in 1881 and one in 1968.

Mr. COCHRAN. Mr. President, will the Senator yield for a question?

Mrs. FEINSTEIN. I certainly will.

Mr. COCHRAN. Mr. President, I am curious to know when the Senator plans to complete her remarks. At the beginning of her remarks, she assured the Senate that she would take about 30 minutes. We are on the conference report on the supplemental appropriations bill which is an urgent supplemental bill. We have about 4 hours divided among Senators on both sides to complete debate. I don't want to push the Senate into the evening hours, if we are going to have a prolonged discussion of this issue when we thought it was going to be 30 minutes. It is almost an hour now.

Mrs. FEINSTEIN. I appreciate the Senator's forbearance. He is a true gentleman. Out of respect for him and for the institution, I will conclude my remarks.

During the reorganization of the Senate in 2000, Senators Daschle and LEAHY worked to make the nominations process more fair and public. This refining forced Senators opposed to a nomination to be held accountable for their positions. They could not hide behind a cloak of secrecy. This step also wiped out many of the procedural hurdles that have been used to defeat nominations. So many of the tools used by Republicans in the past, and referred to as a way to draw distinctions with a public cloture vote are no longer available. This historical record is important, yet it is too often lost in our debates.

I also believe it is useful to examine the current state of judicial nominations, and what has actually occurred in this body during President Bush's tenure: 208 judges confirmed out of 218; 95 percent of President Bush's judges have been confirmed; the Senate has confirmed 35 circuit court nominees; recently, the Judiciary Committee reported out 2 District Court and 1 Circuit Court nominees; today, there are only 4 judicial nominations on the Senate calendar waiting for a vote; and there are only 45 total vacancies, both district and circuit courts, and 29 do not have nominations submitted.

What do these numbers mean? There are more judges today sitting on the federal bench than in any previous presidency. The Senate has confirmed more judges for President Bush than in President Reagan's first term, his father's only term, or President Clinton's second term.

The Senate confirmed more circuit court judicial nominees than in Reagan's or Clinton's first term. When Democrats were in the majority in 2001, there were 110 vacancies and by the end of the 108th Congress and President Bush's first term, the num-

ber had plummeted to 27—the lowest level of vacancies since the Reagan era.

Of the 8 nominees reported out of committee this year, four have already been confirmed. One, Thomas Griffith, is waiting a vote, and the remaining three are controversial nominees who were defeated last Congress: William Myers, Priscilla Owen, and Janice Rogers Brown.

In addition, President Bush has sent the Senate but one new judicial nomination this year. Brian Sandoval of Nevada is the only new judicial nomination sent to the Senate in the first five months of this year. He has bipartisan support from his home State Senators and appears to be a consensus nominee.

Again, what do these numbers mean? They mean there is no crisis on the federal bench that justifies the so-called nuclear option as some of my Republican colleagues contend.

To me, the record I just described and the reasons for opposing these limited number of nominees doesn't lead to the conclusion that the Senate should be discussing breaking our own institutional rules and unraveling the checks and balances established by our Constitution.

Some have described this debate as a strategy to change the rules. Changing the rules is not only unacceptable, but in this case it is inaccurate as well. The nuclear option is a strategy to break the rules. This isn't just my assessment; it's the conclusion drawn by the Senate Parliamentarian and the Congressional Research Service.

Last week, press reports reiterated that Senator REID had been assured by the Parliamentarian that if the Republicans go through with this strategy they would "have to overrule him, because what they are doing is wrong."

The Congressional Research Service concluded in a recent report that to employ these tactics the Senate would have to "overturn previous precedent." "Proceedings of this kind, it is argued, would both break old precedent and establish new Senate precedents. Eventually such a plan might even result in changes in Senate rules, while circumventing the procedures prescribed by Senate rules."

So, shortly, the Senate will likely be faced with a preemptive strike to break the rules. The term preemptive strike seems appropriate when there are only three controversial judges waiting for a vote—judges who were previously defeated last Congress and have drawn strong opposition.

This is a move to wipe out 200 years of precedent when this Senate has only been in session for just over 4 months, when this President has had over 200 judges confirmed, and when the Judiciary Committee reported favorably a controversial circuit court judge who was not voted on last Congress, but was renominated. This appears to me to be an escalation that is unwarranted in the reality of what has actually occurred and is happening in this session.

I find it ironic that while our country fights abroad to establish democracy,

to promote checks and balances, and institute wide representation of all people in government; here at home our leadership is attempting to erode those very protections in our own government. What kind of message are we sending? "Do as I say, not as I do"?

This debate over judicial nominees is a debate about privacy, women's rights, civil rights, clean environment, access to healthcare and education; retirement security—we may not all agree, but the beauty of our country is the freedom to disagree, to debate, and to require compromise because no one party has the corner on the market of good ideas and solutions—and no party has the corner on the market of political power.

Democrats held the House majority for over 50 years, and now Republicans have been in the majority for over a decade. Democrats held the White House for eight years, now the Republicans will have occupied the White House for eight years. Neither party will always be right when it comes to the best policies for our country, and neither party will always be in power.

There are many urgent problems the Senate needs to be focused on and Americans' want us to focus on: the war in Iraq; protecting our homeland; addressing the high cost of prescription drugs; alleviating rising gas prices; ensuring our social security system is stable and working; and reducing the federal deficit.

I am troubled that instead today we are spending much of our time on political posturing gone too far—on a strategy to unravel our constitutional checks and balances.

Cold War commentator Walter Lippman once said, "In making the great experiment of governing people by consent rather than by coercion, it is not sufficient that the party in power should have a majority. It is just as necessary that the party in power should never outrage the minority." And today, we are outraged.

I would hope that the majority would not choose to unravel that foundation over a small handful of nominees. I would hope we would continue to honor the tradition of our democracy. I would hope the President will urge others in his party to walk away from this nuclear strategy. And I know if the shoe was on the other foot, I would not advocate breaking Senate rules and precedent.

Regardless of how this debate continues to unfold, I remain committed to evaluating each candidate on a case by case basis, and I will continue to ensure that judicial nominees are treated fairly and even-handedly, but I will not fail to raise concerns or objections when there are legitimate issues that need to be discussed.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, before I make my remarks on the supplemental appropriations conference report, I commend my friend and col-

league from California. As we have come to expect, her presentation was thorough, comprehensive, factually and historically accurate. Much in the debate that has occurred around the so-called nuclear option has been heated. It has been rhetorical. It has been filled with opinion. It has been, unfortunately, often devoid of either historical or factual content. I personally appreciate greatly the Senator from California putting into the RECORD these very carefully created remarks based on facts. I hope no matter what happens with this debate—and obviously, I hope the Senate comes to its senses and realizes that we owe an obligation to the Constitution and the country—historians will be able to look back and read the very impressive statement of the Senator from California and know what the facts were. I personally express my appreciation to her.

Mr. DORGAN. Will the Senator from New York yield for a question?

Mrs. CLINTON. Yes.

Mr. DORGAN. Mr. President, I ask unanimous consent that I be recognized at 2:15 for 15 minutes to discuss the supplemental. Senator BYRD is the ranking member on the Appropriations Committee. If he is here and wishes to speak at that time, I will yield the floor to him. In the absence of that, I ask consent.

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

The Senator from New York.

Mrs. CLINTON. Mr. President, I rise to address the emergency supplemental appropriations conference report. When the vote occurs, it is likely to be, if not unanimous, very close to being unanimous. And why? Because this conference report contains the funding that is needed by our brave troops in Iraq and Afghanistan. It contains funding to provide necessary resources to equip our troops and to do the military construction that is necessary. I will vote for this conference report. But I want to record some serious reservations about this process. First, the emergency supplemental appropriations process is destined to be just that. It is a way to fund unforeseen emergencies outside of the usual budgetary process.

Unfortunately, once again, we are funding the cost of the military in Iraq, Afghanistan, and elsewhere, as well as a legitimate emergency, such as the tsunami relief provisions in the bill, through an emergency. I am privileged to sit on the Senate Armed Services Committee, which is responsible for presenting the authorization for the budget for the Department of Defense, and during several of our hearings over the last several months, I, among a number of my colleagues on both sides of the aisle, have asked our civilian and military leadership from the Department of Defense how they explain the fact that once again the costs for Iraq and Afghanistan are not in the budget; they are in the emergency supplemental.

Many of these costs perhaps were genuine emergencies, but many others are not. I would not argue with many of the decisions made because I am well aware of the importance of recapitalizing our equipment, building back up our stores of arms that have been decreased through necessary action. But a good budgeting process would take all of that into account. Having this supplemental, unfortunately, with the big title "emergency" over it appears to be an effort to rush things through to avoid congressional oversight and scrutiny. Obviously, a bill that is going to provide funding for the young men and women wearing the uniform of our country, in harm's way every single hour of every day, is going to command broad bipartisan and public support, as it should. But that doesn't, in my opinion, in any way mitigate against what should be the necessity of an orderly process, an appropriations process subject to the give and take of opinion and fact, and argument and reason and evidence, and then the presentation of a budget that includes the expenses that are necessary for our military.

I regret deeply that we are, once again, seeing an emergency bill being pushed through the Senate, as it was pushed through the House last week, when instead we should be having an orderly process looking at these matters within the budget and making decisions based on that process.

During the Armed Services Committee hearing on this supplemental request, a number of my colleagues asked why projects that ordinarily are included in the regular Department of Defense budget were being shifted to the supplemental. I really was quite taken aback when the military leadership said they didn't know, that they were just told they should put it out for the supplemental. The civilian leadership present at the hearing could not offer a much better explanation. So it is regrettable that we are making these important, literally life-and-death decisions once again in an emergency supplemental as opposed to the regular budget.

Also, it is regrettable that the administration is not providing a proper accounting of how funds are being spent in Iraq. According to recent reports, Government auditors found that American officials rushed to start small building projects in a large area of Iraq during 2003 and 2004. They did not keep the required records that would tell us how they spent \$89.4 million in cash. They cannot account for at least \$7.2 million more. This is a very serious question. If we are appropriating this money and we are sending it for both military and reconstruction purposes to Iraq, we have a right to expect that records will be kept so we can determine whether it is being spent in the appropriate manner.

We have also heard that millions of dollars of Iraqi reconstruction funds that have been appropriated have also

not been spent. A large reason for that is security. But why come back for more money when we cannot spend the money we have already appropriated? It is heartbreaking to me that there is so little oversight from this Congress with respect to this administration. There are no rigorous hearings being held to determine whether we are spending money correctly, how it is being spent, where all of the cash is going. The first time I flew into Iraq, I flew from Kuwait to Baghdad on a C-130. The back of it was loaded with cash—dollars. They were being taken into Baghdad to be spent for God knows what, and there is no accountability.

It is remarkable that this Congress, at this important moment in American history, is not exercising its constitutional oversight responsibilities. During the Second World War, Harry Truman, a Democratic President, with a Democratic Congress, held hearings about where money was going in World War II. In the 1960s, Senator Fulbright, with a Democratic President and a Democratic Congress, held hearings about our policies and actions in Vietnam. We have a Republican President, a Republican Congress—hear no evil, see no evil, speak to evil; we don't want to know. Questions are not asked—at least publicly. People have no idea where this money is going, who is getting it, and how it is being spent. These emergency supplementals have even less oversight than the typical budget, which in this Congress is practically nothing.

So while we continue to spend billions and billions of American taxpayer dollars, we don't see the requisite accountability occurring in this body to determine whether we are spending them appropriately.

I am also deeply concerned that on an emergency supplemental to fund our troops and fund the relief disaster in southeast Asia because of the tsunami, we are being asked to vote on something called "REAL ID." It is a provision meant to, in the supporters' argument, make our country safer. How do we know? We haven't had hearings about it in the Senate. We have not even had debate about it in the Senate. I joined with Senator FEINSTEIN to try to prevent immigration proposals from being tacked onto the supplemental. But we all know why that happened—because the administration backed up the House Republican leadership to give them an opportunity to put the so-called REAL ID on a must-pass piece of legislation; namely, legislation to fund our troops. So without debate, without committee hearings, without process, we have the so-called REAL ID in this emergency supplemental.

I am outraged that the Republican leadership, first in the House and now, unfortunately, in the Senate, would put this seriously flawed act into this emergency supplemental bill for our troops in Afghanistan and Iraq. Emergency legislation designed to provide

our troops the resources they need to fight terrorism on the front lines is not the place for broad, sweeping immigration reform. That is what REAL ID is. There may be parts of it that we could agree on if we ever had a chance to debate it. Other parts go too far and don't fulfill the purpose of making our country more secure.

I am in total agreement with those who argue that we need to address our immigration challenges, and we are still not doing what we should to fulfill the demands of homeland security. I think they go hand-in-hand. If we cannot secure our borders, we cannot secure our homeland. Everybody knows we are not securing our borders. Who are we kidding? We need a much tougher, smarter look at these issues. But instead we are taking a piece of legislation passed by the House, jammed into supplemental emergency appropriations for our troops, and we are going to up-end the way we do driver's licenses throughout our country, and we are going to claim we have now made America safer.

I think that is a false claim. I regret deeply that we are rushing to pass this emergency bill with this so-called REAL ID in it. We need to reform our immigration laws. We need to make our borders more secure. But we need a debate about how we are going to do that. Isn't it somewhat interesting to everyone in this Chamber that the richest, smartest country with the best technology in the world cannot secure its borders? Why would that be? Well, part of the reason is because there are many people, particularly to our south, who are desperate for a better chance. They literally risk their lives to come here. Part of it is because we have a lot of employers who want to employ them. So they know if they get here, they will have a job. We are not having a public national debate about this because, if we were, we would have to point fingers at these employers who pick up illegal immigrants every single day on street corners throughout America, or who sign them up to work in dangerous factories with very little health and safety regulation.

So come on, let's not kid ourselves. We have a serious security and immigration problem. But we are not addressing it by jamming this provision about driver's licenses into our emergency appropriations. We need to make our borders more secure. I have introduced legislation 3 years in a row to have a northern border coordinator. I met with both Secretary Ridge and Secretary Chertoff. We don't know who is in charge of the northern border. Trying to figure out who is responsible for the northern border is like playing "Where is Waldo." We cannot figure that out. We are not taking simple steps to rationalize our bureaucracy in Washington, to find out what our holes are and how they can be plugged, what policies would work if we were actually serious about improving security.

The REAL ID Act also gives total control to the Secretary of Homeland

Security to waive legal requirements that stand in the way of constructing barriers and roads along the border. The only check is limited judicial review. This is quite a tremendous grant of authority to one person in our Government. I am sure there are some reasons why we would want to expedite a process to try to have better security along our borders. But to give this unchecked responsibility to the Secretary, with limited judicial review—that is a slippery slope, my friends. We are sliding further and further toward absolute power and the removal of our checks and balances.

We also have to figure out how we are going to deal with the changes in asylum rules that are in REAL ID. I am very proud of the fact that our country has always welcomed asylum-seekers and refugees. There is a city in New York, Utica, which is known as one of the most welcoming places for refugees in the entire country. I am so proud of the people of Utica. They have taken in Bosnians, Kosovars, Somalians, all kinds of refugees—people who could not stay in their home country and were desperate for some place of refuge. Under these new rules, we will see whether America remains the place of welcome, whether we fulfill our obligations to our fellow men and women.

I hope that the failure of having a process with respect to REAL ID, the continuing use of the supplemental appropriations route for funding our troops, which avoids the budget process, will at some point come to an end because the majority will no longer tolerate it. This is not good for any of us—to have these kinds of processes that really turn our constitutional system upside down.

In the meantime, we need to send a message that we are able to have national debates about sensitive issues, to debate judicial nominations on the floor, using the rules that have really stood the test of time and been good for the Senate and our country. We don't always win, but the Senate was devised to protect minority rights. I represent a State of 19 million people. The Presiding Officer represents a much smaller State. He and I are equal. That is the whole idea behind the setup of the Senate.

Finally, let's be sure that we do not piecemeal reform immigration—I use the word "reform" advisedly—that we have the kind of debate and comprehensive reform that is so needed. I bet every one of the offices of my colleagues is faced with what my office confronts every single day. We do lots of casework. There are a lot of people who came here legally. They cannot get their relatives into this country. They cannot reunite their families. I want to have a reform that really provides benefits for legal immigrants.

Mr. President, I hope we can deal with these issues in a better way that really reflects the best of the Senate going forward.

The PRESIDING OFFICER. The Senator from Mississippi.

## UNANIMOUS CONSENT REQUEST—COMMITTEE MEETINGS

Mr. COCHRAN. Mr. President, before the Chair announces the recess for the policy luncheons, I have eight unanimous consent requests for committees to meet during today's session of the Senate. They have the approval of the majority and minority leaders. I ask unanimous consent that these requests be agreed to and the requests be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

## 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 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

## EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR DEFENSE, THE GLOBAL WAR ON TERROR, AND TSUNAMI RELIEF ACT, 2005—CONFERENCE REPORT—Continued

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I believe, by unanimous consent, I am to be recognized at 2:15 for 15 minutes.

I allocate 2½ minutes of that time to the Senator from Wisconsin, Mr. KOHL.

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

The Senator from Wisconsin.

Mr. KOHL. Mr. President, although I will vote for this conference report, I feel obliged to alert my colleagues to a serious flaw. This bill does not provide enough international food aid. And if emerging reports are correct, I fear we are about to enter a spring and summer of agony in some of the poorest parts of the world.

This situation troubles me a great deal. Here we are, the strongest nation on Earth, and we are rightfully appropriating funds to maintain that strength. But with enormous strength comes a moral obligation to respond appropriately to pain and suffering. This bill fails to respond appropriately.

When the supplemental was first considered in this body, Senator DEWINE and I and others offered an amendment to provide a total of \$470 million for PL-480 food aid. That may sound like a lot to some, but it totaled merely six-tenths of 1 percent of the total spending in the bill.

Mr. President, \$346 million of our amendment was intended to meet the U.S. share of world-wide food emergency needs as already identified by the U.S. Government. Another \$12 million was slated to restore Food for

Peace resources diverted to address the tsunami. Finally, \$112 million was intended to restore food aid development projects that the United States has already pledged to other countries this year.

It troubles me, and it should trouble everyone here, that we may not be able to deliver on those pledges. What a disturbing message that sends to the rest of the world. It says that while we may talk a good game on food aid, you cannot be too sure just where we stand when the going gets tough.

The numbers in our amendment were not pulled out of thin air. They were the result of close analysis of the world situation. In light of new reports from Ethiopia, I worry that even the amounts included in our original amendment may have been, in fact, too conservative.

Sadly, the conference reduced the food aid total to \$240 million, a level that is well below a split with the level proposed by the administration and adopted by the House.

I ask unanimous consent that an alert I received from several faith-based organizations about the situation in Ethiopia be printed into the RECORD.

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

## FLASH ALERT FROM JRP MEMBERS

ADDIS ABABA, ETHIOPIA—APRIL 2005

The three Churches and two Church-related agencies (Ethiopian Orthodox Church, Ethiopian Catholic Church, Ethiopian Evangelical Church Mekane Yesus, Catholic Relief Services and Lutheran World Federation) who make up the ecumenical Joint Relief Partnership feel compelled to bring to the public's attention a situation that if not immediately addressed in a forceful manner will bring about widespread disaster resulting in untold suffering and death for a number of people—a number that is rapidly approaching the 8-10 million mark of Ethiopian people at risk in 2005.

This humanitarian situation has thus far received little international attention for a variety of reasons, which in addition to the reluctance of the Ethiopian Government to advertise it are the following: Severe drought conditions. The late start-up of the Ethiopian government's national Productive Safety Net Program (PSNP) which is meant to provide multi-year support to over 5 million chronically food insecure people. The lack of adequate resources to provide food and non-food assistance to 3.1 million acute food insecure people.

Drought Conditions: The current reality is that the early belg rains (February/March) have failed in many areas, including East and West Hararghe and Arsi zones of Oromiya, parts of Southern Nations Nationalities and Peoples (SNNP) and parts of Tigray. The situation is severe, with many pocket areas showing high levels of global acute and severe acute malnutrition in children under 5. As an example, reports from the Disaster Prevention and Preparedness Commission (DPPC) indicate that large numbers of severely malnourished children are entering one hospital in East Hararghe from three woredas seriously affected by malnutrition.

There are rising and alarming levels of distress migration in certain areas, water is particularly scarce in some areas and cereal prices are high.

Delays in Productive Safety Net Program (PSNP): This is a program designed to overcome people's dependence on food assistance. While this is an important step, continued robust response to emergency conditions is critical to ensure the success of more developmentally oriented programs. Unfortunately, this program, which was meant to begin in January 2005, didn't start until late March in most areas of the country and, in some areas, still has not begun. Without going into details of why this foul-up occurred, the fact is that people targeted under the PSNP have, in most cases, not yet received the planned assistance and there are now deteriorating health conditions, especially in women and children. Many of the chronically food insecure now face acute conditions, themselves.

Poor Resourcing of 2005 Appeal: Current figures indicate that 66% of food needs are pledged and only 10% of non-food needs. It must be noted, however, that this includes an un-guaranteed WFP pledge. With the number of people requiring assistance continually increasing, the level of resources required is certain to increase significantly. While 66% sounds promising, it should be noted that, using current assessments going on, this figure may not adequately represent the real need.

Among the reasons for the low level of resources are: Donor attention being focused on other emergencies (Darfur and tsunami), greater emphasis being placed within the country on PSNP rather than ongoing emergency needs, pressure to demonstrate that the country is moving away from annual Emergency Appeals, misleading recent WFP/FAO crop assessment suggesting a 25% increase in yield over last year, and traditional food donors having their own constraints.

Unless commitments of food and non-food items are made immediately, the JRP will not be able to pre-position food in the most severely affected areas prior to the rainy season which starts in June because of poor road conditions at that time. This will lead to further setbacks and great loss of life.

It is with the above in mind, that the JRP is appealing to its traditional Partners to bring this situation to the world's attention and to act as promptly as possible.

With every best wish, we remain, the JRP Members:

ETHIOPIAN ORTHODOX  
CHURCH,  
ETHIOPIAN CATHOLIC  
CHURCH,  
ETHIOPIAN EVANGELICAL  
CHURCH MEKANE YESUS,  
CATHOLIC RELIEF SERVICES,  
LUTHERAN WORLD  
FEDERATION.

Mr. KOHL. This situation is not going to go away. I have grave fears that images coming out of places such as Ethiopia in the coming months may reveal a tragedy unfolding before our very eyes. And what is most troubling is that this may be a tragedy that we could have helped avoid.

I will soon be sending a letter to the President encouraging him to consider other emergency authorities to address this dire situation. Specifically, we will ask him to utilize the Bill Emerson Humanitarian Trust to address this pain and suffering. I urge all my colleagues to join us in sending this message to the President.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I commend my colleague from Wisconsin. I