

ignored." John Paul Stevens was charged with "blatant insensitivity to discrimination against women." Anthony Kennedy was scrutinized for his "history of pro bono work for the Catholic Church" and found to be "a deeply disturbing candidate for the United States Supreme Court." And David Souter was described as "almost Neanderthal," "biased," and "inflammatory." One senator said Souter's civil rights record was "particularly troubling" and "raised troubling questions about the depth of his commitment to the role of the Supreme Court and Congress in protecting individual rights and liberties under the Constitution." That same senator condemned Souter for making "reactionary arguments" and for being "willing to defend the indefensible," and predicted that if confirmed, Souter would "turn back the clock on the historic progress of recent decades." At Senate hearings, witnesses cried that "I tremble for this country if you confirm David Souter," warning that "women's lives are at stake" and even predicting that "women will die."

The best apology for these ruthless and reckless attacks is for them never to be repeated again. Unfortunately, the record is not promising. Even before President Bush took office in January 2001, the now-Senate Democrat Leader told Fox News Sunday that "we have a right to look at John Ashcroft's religion," to determine whether there is "anything with his religious beliefs that would cause us to vote against him." And over the last four years, this president's judicial nominees have been labeled "kooks," "Neanderthals," and "turkeys." Respected public servants and brilliant jurists have been called "scary" and "despicable."

Unfortunately, honest debate about a nominee's record has not always been the standard, either. Records and reputations have been distorted beyond recognition. Rulings that stated one thing have been characterized to say precisely the opposite. For example, during the debate over the nomination of my former Texas Supreme Court colleague, Justice Priscilla Owen, I chronicled numerous examples of her previous rulings that were blatantly misrepresented by partisan opponents of her nomination.

Moreover, in recent weeks, we've begun to see a particularly odd tactic take form. Some lower-court nominees have been attacked for belonging to a movement that, to my knowledge, does not even exist—the so-called "Constitution in Exile." What's more, opponents of this fictional movement seem to talk out of both sides of their mouth. Senate Democrats excoriated Justice Owen in part for her refusal to adhere to an allegedly central tenet of the Constitution in Exile—the nondelegation doctrine. And it was four Ninth Circuit judges appointed by Presidents Clinton and Carter who recently used another alleged doctrine of the Constitution in Exile—the Commerce Clause—to strike down federal laws prohibiting the use of marijuana and the possession of child pornography. If a "Constitution in Exile" movement really exists, its membership seems to include Senate Democrats and Democrat-appointed federal judges.

Reasonable lawyers can and do often disagree with one another in good faith. They do so respectfully and honestly—without distortions and false charges of being "out of the mainstream." We should likewise demand that the Senate restore respectful and honest standards of debate to the confirmation process.

And whoever the nominee is, the Senate should apply the same fair process that has existed for over two centuries—and that is confirmation or rejection by majority vote. The rules governing the judicial confirmation process should be the same regardless of

which party controls the White House or the Senate. Since our nation's founding over two centuries ago, the consistent Senate tradition and constitutional rule for confirming judicial nominees—including nominees to the Supreme Court—has been majority vote. (In the case of Abe Fortas, his nomination to be chief justice was withdrawn, after a procedural vote revealed that his nomination did not command the support of a majority of senators.)

Indeed, throughout history the Senate has consistently confirmed judges who enjoyed majority but not 60-vote support—including Clinton appointees Richard Paez, William Fletcher, and Susan Oki Mollway, and Carter appointees Abner Mikva and L. T. Senter. Yet for the past two years, a partisan minority of senators tried to impose a 60-vote standard on the confirmation of President Bush's judicial nominees. Thankfully, that effort was recently repudiated, when the Senate restored Senate tradition by confirming a number of this president's nominees by majority vote.

The effort to change our 200-year custom and tradition by imposing a new and unprecedented supermajority requirement for confirming judges is dangerous to the rule of law, because it politicizes our judiciary and gives too much power to special interest groups. As law professor Michael Gerhardt, a top Democrat advisor on the confirmation process, has written, "the Constitution also establishes a presumption of confirmation that works to the advantage of the president and his nominees." According to Professor Gerhardt, a supermajority rule for confirming judges "is problematic because it creates a presumption against confirmation, shifts the balance of power to the Senate, and enhances the power of the special interests."

Senate Democrats have recently asked to be consulted about any future Supreme Court nomination—even though the Constitution provides for the advice and consent of the Senate, not individual senators, and only with respect to the appointment, not the nomination, of any federal judge. If senators want such a special role in the Supreme Court nomination process, the president should first insist on their commitment to the three principles described above.

After years of unprecedented obstruction, and destructive politics, we must restore dignity, honesty, respect, and fairness to our Senate confirmation process. That is the only way to keep politics out of the judiciary.

#### TRIBUTE TO JOAN PIERMARINI

Mr. ROBERTS. Mr. President, I would like to take a moment to recognize Joan Piermarini, who is retiring after 20 years of service to the Senate Select Committee on Intelligence. Joan has served the committee under seven chairmen—a testament to her dedication and loyalty. I thank Joan for her many tireless efforts and the significant contributions she has made to the committee. We congratulate her on a job well done and wish her many years of happiness with her family, especially her grandson Luke.

#### HONORING OUR ARMED FORCES

A COLORADO HERO: ARMY SFC CHRISTOPHER W. PHELPS

Mr. SALAZAR. Mr. President, I rise today to take a moment to remember

one of Colorado's fallen heroes: Army SFC Christopher W. Phelps. Sergeant Phelps was killed last week in Baghdad, Iraq, while serving this Nation. He was 39.

Sergeant Phelps was a native of Louisville, KY. He graduated Male High School in 1984 where he was a standout athlete, helping to lead the Bulldogs to the State football playoffs. Sergeant Phelps went on to Kentucky State and a junior college in Mississippi before he enlisted in the Army.

In the Army, Sergeant Phelps served in the first Gulf war, where he drove a tank. This past spring, he was deployed to Iraq as a member of the Third Armored Cavalry Regiment based out of Fort Carson in Colorado. He enjoyed serving in the Army and was proud to be serving his country so honorably. He was a natural leader, a trait reflected by the nickname the members of his platoon gave him: "Dad."

While serving in Iraq, Sergeant Phelps was deeply moved by what he saw. He wrote home of the terrible poverty he witnessed and how much work was left to be done in Iraq. But Sergeant Phelps knew, as so all of our men and women in uniform, that our efforts were making Iraq a better place.

In his high school yearbook, an 18-year-old Christopher Phelps selected as a quote: "Do all you can while you can before it is too late." Sergeant Phelps embodied this sentiment in everything he did, from his days as a high school athlete to his exemplary service to our Nation and to the cause of freedom.

SFC Christopher Phelps served this country with honor and distinction and we are all humbled by his sacrifice. To his wife, Bobbi, and his daughters and son, my prayers are with you, as are those of an entire nation. Christopher's service to and sacrifice on behalf of this Nation will never be forgotten.

#### DETENTION CENTER AT GUANTANAMO BAY, CUBA

Mr. LEAHY. Mr. President, at a Defense Department news briefing in December 2001, a reporter asked Secretary Rumsfeld why we should use Guantanamo Bay to hold detainees. Secretary Rumsfeld's answer was that he "would characterize Guantanamo Bay, Cuba, as the least worst place we could have selected." This was hardly a ringing endorsement. Now, 4½ years later, the administration and its defenders have been trying to change the subject from the legal morass that Guantanamo has become, and to argue that Guantanamo is like an island resort, with great food, top-notch medical care, and a view of the ocean.

These arguments are distractions from the real issue, which is the needless way that the administration's unilateralism in its decisions about Guantanamo have compromised American principles and ideals and weakened our moral leadership in the world. If the administration has improved conditions at the prison, I am glad to