to the American people, and that accountability will be a sufficient check on the decisions made by each of them. That was the system by which we Americans addressed nominations for more than two centuries, until the last Congress. But judicial filibusters would replace that system with one that gave the minority a filibuster-veto in the confirmation process.

Trying to legitimize their judicial filibusters, the minority took to the floor to extol the virtue of filibusters generally. And as to legislative filibusters, I agree with them. But judicial filibusters are not cut from the same cloth as legislative filibusters and must not receive similar treatment. So, I concur with the sentiments Senator Mansfield expressed during the Fortas debate:

> In the past, the Senate has discussed, debated and sometimes agonized, but it has always voted on the merits. No Senator or group of Senators has ever usurped that constitutional prerogative. That unbroken tradition, in my opinion, merely reflects on the part of the Senate the distinction heretofore recognized between its constitutional responsibility to confirm or reject a nominee and its role in the enactment of new and far-reaching legislative proposals.

History demonstrates that filibusters have almost exclusively been applied against the Senate's own constitutional prerogative to initiate legislation, and not against nominations. Judicial filibusters put fundamental constitutional values in jeopardy, hallowed principles of checks and balances, the separation of powers and an independent judiciary.

Having exhausted all other alternatives and unwilling to acquiesce in the judicial filibusters, we in the Republican leadership looked for a solution. We recognized that article I, section 5 of the Constitution states that ''each House may determine the Rules of its proceedings''. In short, that means the Constitution gives the Senate the power to govern itself. And we proposed to draw on that power to change how the Senate ends debate on judges. We called this the constitutional option, and we built support for it.

The Senate is an evolving institution. Its rules and processes are not a straitjacket. Over time, adjustments have occurred in Senate procedure to reflect changes in Senate behavior. Tactics no longer limited by self-restraint became restricted by new rules and precedents.

In response to the tradition-shattering filibusters, we sought to create a precedent. And that precedent would guarantee that after substantial debate, each judicial nominee brought to the floor got an up or down vote.

As I said, proceeding with the constitutional option was painful to many Senators, including myself, because minority rights are deeply respected. But even longstanding rights can take new forms and become abused. And that is what happened when judicial filibusters damaged Senate traditions. We could not permit the precedent of these filibusters to take root. To restore Senate traditions, the constitutional option became a necessary last resort.

As we moved toward a vote on the constitutional option, a compromise was reached, and important Senate traditions were restored. Filibusters were confined to ''extraordinary circumstances''—an exercise of self-restraint. So some Democrats who had routinely supported the judicial filibusters began voting for cloture.

Of this I am confident: but for the constitutional option, great nominees never would have been confirmed. But for the constitutional option, judicial filibusters would have become ever more routine. And but for the constitutional option, deal brokers would have had no deal to broker.

Because we acted, the sword of the filibuster was sheathed. Highly qualified nominees who would have been blocked now sit on courts of appeals. And Samuel Alito, who was the subject of a failed filibuster, now serves on the U.S. Supreme Court.

The problem of judicial filibusters was of monumental importance. It affected the internal functioning of the Senate, the relationship between the Senate and the Presidency, and the relationship between the Senate and the courts. It was the biggest challenge I confronted as majority leader and the issue of largest consequence for our constitutional system.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

HONORING MARY ARNOLD

Mr. REID. Mr. President, in life we all have changes. They are so difficult to accept. In the last month or so, I have had a lot of changes in my life. One of the changes that has been so troubling for me is that we have lost a friend in the Senate. Ralph Waldo Emerson said:

> Sorrow makes us all children again. [It] destroys all differences of intellect. The wisest know nothing.

The family member we have lost is Mary Arnold. She was such a wonderful, pleasant, thoughtful, kind person. Anyone would recognize her even though they wouldn't know her by name, simply because of her description—beautiful white hair, elegantly dressed every day, a wonderful smile. She never drew attention to herself, but she was so good for the institution. She sat right back here every day we were in session.

She was the best when things weren't going so well. She was here for more than two decades. She was the best when things were real tumultuous here on the floor. If somebody wanted an easel for a chart, that was available. She directed the pages as to what they were supposed to do and not do. She always did it with such a pleasantness.

I first met Mary Arnold when her daughter worked here. She was a Republican floor person. She, like her mom, had this great, disarming smile. I was not in the city when the funeral took place and was unable to attend, but I saw in the program a picture of the deceased Mary Arnold. She looked exactly like her daughter. Exactly. She could have passed for her daughter.

She came to Washington over 40 years ago. Born in the late 1930s in Jonesboro, Arkansas, she attended Memphis State University. She worked as a flight attendant—a stewardess, as they used to be called. All the stewards and stewardesses are very attractive people, but in the old days that was a requirement. Stewardesses had to look real good; Mary Arnold looked real good. I am sure she was a great flight attendant, a stewardess.

She worked for a number of Members of Congress, including Congressman Harvey of Indiana and Representative Zion. She worked for the Sergeant at Arms, of course.

She was a wonderful person. I had conversations with her. She loved animals, especially the ugly little dogs people fall in love with, Boston terriers. She was in love with her Boston terriers. She was a wonderful person. Coming to the Senate today and not having Mary back there is a tremendous loss to me and to the Senate. I want her wonderful daughter Mary Elizabeth to know she will be missed. Her spirit is something all in the Senate should have a little bit of. My thoughts are with Mary wherever she might be and my love and respect for her family is paramount as a result of the wonderful person she was.

Mr. FRIST. Mr. President, as the Democratic leader has so eloquently described, it is hard to imagine the smiles and the charm of Mary Miller Arnold will no longer grace the Senate.

I have had the opportunity to talk to her daughter Mary Elizabeth several times since her mom's demise. The love and the respect, that bond a mother and a daughter together share, is magnificent; it sparkles so much in her voice today.

Mary was a fellow Tennessean. She will be remembered most for her uncanny ability to very efficiently enforce the Senate rules at this door, without sacrificing at any point in time her unfailing, consistent professionalism, her dedication, her polite demeanor.

The Senate simply could not function, we all know, without our staff and committed staff. We 100 Senators are, for the most part, the face of the Senate, but it is people such as Mary who are here, day after day, the cogs in the wheels behind it, who keep this Senate moving along, keep it ticking.

She was the pulse of the Senate, in many ways. To Mary's friends and to

her family, let me say, our thoughts and prayers are with you during these difficult days ahead. To quote Senator BYRD from the other day, she was ''one of a kind.''

She had a tangible presence in the Senate. We are lesser now with the loss of her southern grace.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, I join with the majority leader and the Democratic leader in a tribute to Mary Miller Arnold who served us so well in the Senate and recently passed away. We join in expressing our condolences to Mary Arnold's family, her husband Ed, her son Edwin, Jr., and her daughter Mary Elizabeth.

Her sudden and unexpected death comes as a shock to all of us as we return to the Senate Chamber expecting to see her smiling face as we have for so many years. I am so used to seeing her sitting near the door on the bench where the Democratic staffers sit. What an impression she made every single day I saw her. Perfect posture, impeccably dressed, every hair in place, always gracious, always professional, carried herself with such dignity and grace.

Those who watch C–SPAN across America will know her instantly because she was part of the Senate process, part of the Senate family. She sat just as straight, just as polished, even before the C–SPAN cameras. She did this because of the respect she had for the Senate and for her role, which was very important. She loved the Senate and everything it stood for. She considered it a privilege to work in the U.S. Capitol, as we all do, and especially on the Senate floor.

I didn't know until the other day that Mary actually began working for a Republican Congressman from Illinois, Roger Zion. She moved to Washington in 1960 with her husband Ed, who had taken a job with a congressman from Indiana. Her daughter Mary Elizabeth worked in the Republican cloakroom for several years while she was a law student. As for Mary's own political affiliation, I don't have any idea. She was a true professional. It is to her credit that she was in service to the Democratic side of the aisle but had equal respect for both sides of the aisle. She was beyond partisanship. She really was a part of the whole Senate family. She treated everyone with such respect and professionalism, so gracious to junior staffers and pages and Senators alike.

She performed so many countless acts of kindness in the 21 years she served here. People are now speaking out about those and I am glad they shared some of them. If a coworker needed a kind word, Mary was one of the first. Once a coworker had a financial difficulty. Mary found out about it and lent that person some money, then gently refused to accept full repayment. She was such a good and generous person. Mary will be missed.

I yield the floor.

The ACTING PRESIDENT pro tempore. The minority leader.

FINAL WEEK OF THE 109TH CONGRESS

Mr. REID. Mr. President, today we begin the final week, as I understand it, for the work created for the 109th Congress. There are only a few days left to complete a mountain of work, 2 years of work, really. The mission we have before the Senate these next few days is an impossible mission. It is truly a mission impossible, but we have to try.

The American people made it clear last month they want Members to work together. The judgment was held on whether a one-party town works and the American people said no. We have to work together. We have to work together this week and certainly when we come back after the first of the year.

To accomplish what needs to be accomplished in the next few days is mission impossible. We cannot get it all done. Appropriations bills, budget, health care nominations, conference reports for all kinds of things that, as I have said, somehow never make it to the other side of the Capitol.

I told Democratic Senators gathered recently that many of them have never, ever, participated in a conference, a conference between the House and Senate. Why? Because the Republicans would not hold them. We simply did not have them. Some of the most memorable times of my career were when I participated in conferences. A bill passed the Senate, a bill passed the House, you meet together, Democrats and Republicans, House and Senate, to work out the differences.

This administration and the Republican-dominated House and Senate did not believe in that. They did not believe in 200 years of experience. They did not hold conferences. They would bring a bill back that the Republicans in the House and the Republicans in the Senate agreed upon. We had to take it or leave it, period.

That is not the way it is going to be next year. We are going to have Senators participating in things that many of them have never participated in: a real live conference, where Democrats and Republicans from the House and the Senate meet in a room and work out the differences on a bill.

This year we have so much to do. And as I said, it is mission impossible. If we had years left, if we had months left, if we had weeks left in the 109th Congress, maybe we could do something about it. But we have days remaining to finish all the items I have mentioned, and many more.

I want to comment briefly. My friend, the distinguished majority leader, talked about the nuclear option. One reason we are here in the waning moments of the 109th Congress trying to complete the work that needs to be completed is because, again, the Republicans who control the House and the Senate—but here in this instance the Senate—decided to do away with 200 years of experience in this Senate. It was decided by the Republicans—because there were 55 Republicans and 45 Democrats—that they did not want the Senate to be the Senate. They wanted the Senate to be the House.

In the House of Representatives, if you have more than the other party, you get whatever you want. That is not how the Senate has worked for more than 200 years. The Republicans in the Senate in the 109th Congress said, we want another House of Representatives. They adopted the so-called nuclear option. They were not getting enough judges, enough of their right-wing, ideological judges. They were not getting enough—but it was well over 100. I don't know how many it is now. They were not getting enough. They wanted every one of them and they were willing to throw the traditions of this Senate overboard.

One of the negative things that happened in my political career was having to oppose the nuclear option. I said at the time, I say today, the most important thing I have ever worked on in my governmental career is the nuclear option because it was so anti-Senate, so antigovernment. I said in the Senate, why are you doing this? Why are you doing this, my friends, the Republicans? It would take a miracle for us to retake the Senate. As a result of the nuclear option and the other very bad things this Republican-dominated Senate did, the miracle occurred. One reason it occurred is because of the nuclear option. The American people knew that was beyond the pale.

We want to get our work done this year. We are willing to work up until Christmas, if necessary. We want to finish what we have to finish. I have talked to the majority leader. He knows the things I think should be done, must be done. We are leaving many things undone. However, as I said before, it is mission impossible. We cannot do it all; there is simply not enough time.

We spent too much time on the nuclear option, on estate tax, on gay marriage, on flag burning. The American people said, Why don't you work on our issues? On November 7, they said, Work together on our issues. We are committed to working together on the issues of the American people.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business until the hour of 2 o'clock, with the Senator from Ohio, Senator DEWINE, permitted to speak for up to 2 hours.