He, indeed, was a hinge of history, one of the great leaders of the 20th century who helped make our world over on the pillars of faith, freedom, liberty, and human dignity.

As I mentioned, I had the real privilege of leading a delegation of 14 Senators to pay tribute to this great leader. We left last Wednesday. As we soared over the Atlantic, all of us shared our thoughts and stories and reflected upon the Pope's remarkable life. Not only did he live through the great upheavals of the 20th century, but he helped bring about many of its greatest achievements.

As a young man in war-torn Poland, he lived under those heavy boots of fascism and communism, and yet even then he possessed an enduring hope and commitment to man's redemption.

To our great fortune, Karol Woljtyla ascended the world's stage and, as the 264th Pope of the Catholic Church, pressed belief into global action.

In the Catholic Church, he grew its religious following from 757 million faithful when he began his papacy in 1978 to over 1 billion today.

We arrived as a delegation in Rome on Thursday morning. The weather was truly glorious that day; one might even say Heaven-sent weather—clear blue skies, sunshine, a gentle wind.

After a brief moment to organize, we went to Vatican City. As we drove along the roadways, posters lined the city walls with giant pictures of John Paul emblazoned with the words ''grazie'' and ''a dio.'' As we pulled closer to St. Peter's Square, priests, monks, pilgrims, and well-wishers from around the world, many Americans, would come up and say hello to us, all crowding those stone streets around the Basilica.

On that first day, our delegation was escorted into St. Peter's to view the Pope's body. We filed into the crowds as they passed respectfully. Many had waited hours and hours, indeed, well over 24 hours on average. They passed by bowing, saying prayers, crossing themselves, and waving small papal flags. As we came around the corner, we came into view of the Holy Father. It was a powerful moment for our entire delegation—the viewing. It was the first of many powerful moments over the remainder of that day and the next day when the service actually occurred.

As we passed by the body, you could not help but to pause and run through a series of your own prayers of thankfulness, as each and every one of us did.

The next day was the funeral. Again, it was a beautiful day—crisp weather, morning sky glistening overhead. The square was full, silent, solemn, and respectful. We were privileged to enter the Square and find our seats. Our seats were out front, probably 50 or 75 yards, both the Senate and House delegations.

The ceremony was about 2½ hours. Many people have had the opportunity to see it on television, but the presence there, that sense of time and place is difficult to describe. You could feel the powerful strength of the man for whom we all gathered and prayed. It was uplifting, it was serious, and a very dignified celebration in many ways.

As the funeral drew to a close, the adoration for Pope John Paul crescendoed to almost an electric pitch. I heard my colleagues who were with us describe it to our other colleagues over the course of the last 48 hours that way off in the distance we began to hear clapping and the roar of the crowd as it came forward, a huge wave all the way up to St. Peter's and then to the Basilica. It was truly a moving and powerful experience.

The crowd did, at the end, begin to chant and begin to cheer as the Pope was held up one last time in that wooden coffin and dipped down to the people in St. Peter's. He was then lifted aloft and carried solemnly into the Basilica for his final burial.

In closing, I know I speak for all my colleagues when I say it was a tremendous honor for those of us who were able to attend on behalf of our fellow Americans and this institution in paying our respects for a momentous and truly historic world figure.

Pope John Paul will be remembered for many things: his intellect, his charisma, his warmth, his steadfast belief in the culture of life. Above all, he will be remembered for his humble dedication to God and his unwavering love for us all, each and every one a child of God.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that I be allowed to take up to 20 minutes of the majority time, and I respectfully ask the President pro tempore to notify me when I have 2 minutes remaining.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, having heard the words of the majority leader relative to the delegation that was in Rome last week for the burial of Pope John Paul II, I think all Americans, as well as every other individual around the world, were truly moved by the work of this man over the years he served as Pope of the Roman Catholic Church.

Having been to Rome a couple of years ago and been in a service that Pope John Paul II celebrated, I, too, was very moved by the presence of this man. Certainly during his term as Pope he had a tremendous impact on the world, and this man is truly going to be missed as a leader, not just of the religious world but as the world leader that he was.

JUDICIAL NOMINEES

Mr. CHAMBLISS. Mr. President, I rise this morning to discuss an issue that is very dear to my heart. I practiced law for 26 years before I came to Congress and I had the pleasure of trying many cases before any number of judges, both at the State and Federal level, and I am very much concerned about what is happening with our judiciary today. For the last 2 years, I served on the Senate Judiciary Committee and have observed what obviously happened during those 2 years, but during the last few months, as we entered into this new session and approached the confirmation of nominees who are being put forward by the President, I remain concerned about some things that are happening.

I will start by noting again that never before in the history of the Senate has a minority of 41 Senators held up confirmation of a judicial nominee where a majority of Senators has expressed their support for that nominee. It is for this reason, if given the opportunity, I will vote in favor of changing our rules to allow confirmation of a judicial nominee by a simple majority because under the Constitution of the United States, the Senate is required to give its advice and consent to the President on his judicial nominees.

The Senate can say no in regard to any particular nominee, but to do so we need an up-or-down vote to decide what advice we give the President. Failing to answer the question is shirking our constitutional role in the separation of powers scheme. The Constitution spells out in certain areas, such as passage of constitutional amendments and ratification of treaties, where more than a simple majority of Senators is required. Confirmation of judges is not one of these areas.

The Senate rules have changed on several occasions over the years as to whether and in what circumstances a filibuster is allowed, but we have, unfortunately, come to a point in time where the filibuster is being abused to hold up judicial nominees on which we are required to act; that is, to say yes or no. I believe it is in violation of the Constitution.

I want to take a point in fact relative to the circuit in which I practiced for a number of years, and that is what is happening today with regard to the judicial nominee to the Eleventh Circuit Court of Appeals. The Democrats have held up confirmation of the only nominee President Bush has made to the Eleventh Circuit Court which handles Federal appeals in my home State of Georgia as well as Alabama and Florida.

As a result, on February 20 of last year, President Bush exercised his constitutional authority to make a recess appointment of Judge Bill Pryor, the former attorney general of the State of Alabama. This recess appointment is temporary in nature, but President Bush has renominated Judge Pryor in the 109th Congress for a permanent position on the Eleventh Circuit Court of Appeals.

As a former member of the Senate Judiciary Committee, I know we need to review with great care the qualifications of judicial nominees to ensure

that they have established a record of professional competence, integrity, and the proper temperament for judicial service. I intend to vote for confirmation of Judge Pryor's nomination to the Eleventh Circuit for the following reasons: Since his recess appointment, Judge Pryor has gained the respect of his colleagues on the Eleventh Circuit without regard to political persuasions. This is no surprise to me because Judge Pryor is a tremendously selfless public servant who has worked very hard to help others both within and outside the scope of his official duties.

In private life, he established a program called Mentor Alabama which provides adult role models for at-risk children, and he has personally acted as such a mentor. In his service as attorney general for the State of Alabama, Bill Pryor established a record of evenhanded enforcement of the law. A noteworthy example of his fair-minded treatment of his public duties is his enforcement of Alabama abortion laws. Bill Pryor is personally opposed to abortion based on his deeply held faith as a Roman Catholic. However, in 1997, the Alabama Legislature enacted a ban on partial birth abortion that did not comport with the Supreme Court's decision in Planned Parenthood v. Casey. The Alabama statute prohibited abortions prior to as well as following viability of the fetus. Attorney General Pryor ordered law enforcement officials to enforce the law only insofar as it was consistent with the Supreme Court's precedents which encompassed only postviability situations. In so doing, he adopted the narrowest possible construction of the Alabama statute.

Moreover, in the wake of September 11, 2001, many abortion clinics were receiving letters with threats of anthrax exposure. In response, Attorney General Pryor held a press conference in which he asserted that the Alabama law ''provides stern felony penalties for those who now prey upon the public anxiety over fears of anthrax and other potential dangers. We warn anyone who is tempted to do so that their deeds are not a joke and will not be treated as mild misbehavior, but as a despicable crime against their fellow citizens that will not be tolerated.'' At this crucial time in history, Bill Pryor's statement sent a clear message that anthrax threats against abortion clinics would be prosecuted vigorously.

Despite his personal religious convictions, Bill Pryor has a keen knowledge of the Constitution's requirement that the Government make no law respecting the establishment of religion or prohibiting the free exercise thereof.

In Chandler v. Siegleman, as attorney general he persuaded the Eleventh Circuit to vacate a district court injunction that prohibited student-initiated prayers in school. Acknowledging the constitutional distinction between student-led prayers and teacher-led prayers, Bill Pryor refused to argue on appeal in favor of the constitutionality of teacher-led prayers as was the position of then Alabama Governor Fob James. In addition, General Pryor rejected Governor James' suggestion that the State of Alabama argue that the first amendment was never incorporated by the 14th amendment and thus does not apply to the States.

In sum, Bill Pryor has established an impressive record as a fair, diligent, and competent public servant. His nomination to the Eleventh Circuit enjoys strong bipartisan support in his home State of Alabama, and in my home State, our attorney general, the Honorable Thurbert Baker, a Democrat, has written in support of Bill Pryor's nomination.

I urge my Democratic colleagues to stop holding up the confirmation of President Bush's only nominee to the Eleventh Circuit by voting to move forward with Judge Pryor's nomination when it reaches the floor.

Now let us look at another circuit. I just explained what the situation is with the Eleventh Circuit. Opposition to some of President Bush's nominees in other areas of the country such as the Ninth Circuit strikes me as odd because it directly contradicts what some Democrats have said in the past about the concept of balance on the courts.

My friend from the other side of the aisle, the senior Senator from New York, acknowledged a couple of years ago in a speech on the Senate floor that the Ninth Circuit was ''by far the most liberal court in the country.''

To quote from the CONGRESSIONAL RECORD of March 13, 2003, Senator SCHUMER stated:

> I believe there has to be balance, balance on the courts. And I have said this many times, but there is nothing wrong with a Justice Scalia on the court if he is balanced by a Justice Marshall. I wouldn't want five Scalias, but one might make a good and interesting and thoughtful court with one Brennan. A Rehnquist should be balanced by a Marshall.

Four of President Bush's nominees to the Ninth Circuit—Richard Clifton, Jay Bybee, Consuelo Callahan, and Carlos Bea—have been confirmed and are now sitting on the Ninth Circuit. That is the good news. But Democrats refused to give an up-or-down vote to two of President Bush's nominees to the Ninth Circuit, or one-third of the judges he has nominated. When one considers that 14 out of the 26 active sitting judges on the Ninth Circuit Court of Appeals were appointed by President Clinton and 2 of them were confirmed in the last year of his Presidency, the Judiciary Committee and the Senate in general treated President Clinton fairly with respect to the Ninth Circuit. Moreover, of the 28 total seats on the Ninth Circuit, 17 were Democratic nominees, 14 by President Clinton and 3 by President Jimmy Carter.

We now have two remaining seats on the Ninth Circuit to fill, and we have seen two nominees from President Bush to fill these seats. The fairness that the Senate showed President Clinton's nominees has not been applied to all of President Bush's nominees, as the two nominees, Carolyn Kuhl and Bill Myers, have been filibustered despite their tremendous qualifications.

President Clinton had 8 years in office and was able to put in over half the active judges on the Ninth Circuit Court of Appeals. I might add that some of these active judges turned out to be activist judges. But with due respect to my colleagues on the other side, it is time to balance out 17 Clinton and Carter nominees with qualified individuals such as Carolyn Kuhl and Bill Myers. That is the kind of balance we need on the Ninth Circuit.

One of the reasons the Ninth Circuit needs some balance is the outrageous nature of some of the decisions coming from that bench. For example, in the 1996–1997 term, Judge Reinhart, a Carter appointee, was overturned six times in cases where he was the author of the majority opinion.

To cite specific examples of outrageous cases of judicial activism, the Ninth Circuit Court of Appeals has, first, barred children in public schools from voluntarily reciting the Pledge of Allegiance—that was in Newdow v. U.S. Congress, a 2002 case; second, initially barred California from holding a gubernatorial recall election notwithstanding a clear State statutory scheme and widespread popular support, which was a 2003 decision in the case of Southwest Voter Registration Education Project v. Shelley; third, invented a constitutional right to commit suicide, a 1996 decision, Compassion in Dying v. Glucksberg; and fourth, made it far more difficult to prosecute those who give material support to foreign terrorist organizations, the case of Humanitarian Law Project v. U.S. Department of Justice, a 2003 case.

Also, this court struck down California's three strikes criminal sentencing law in the case of Andrade v. California in 2001 and only implemented the Supreme Court's reversal of that decision by a divided panel with Judge Reinhardt upholding the defendant's sentence only under the Supreme Court's ''compulsion'' and Judge Pregerson stating that ''in good conscience'' he could not follow the Supreme Court's decision.

Lastly, that court held that a foreign national criminal apprehended abroad pursuant to a legally valid indictment was entitled to sue the U.S. Government for money damages, a 2003 case, Alvarez-Machain v. United States.

I could go on, but there is no small wonder, then, that even Senator SCHUMER has stated:

> The Ninth Circuit is by far the most liberal court in the country. Unless this is the kind of activist court that Democrats want to preserve, it's time to at least allow an up-or-down vote on nominees like Carolyn Kuhl and Bill Myers to restore some balance.

There have been two issues that have been raised by the other side during the debate and the filibuster by the

other side of the aisle relative to the judicial nominees sent up by the President. One of those is the fact that filibustering Federal judges is not something that is new, and it is a contention of the other side of the aisle that Republicans initiated a filibuster on the nomination of Judge Abe Fortas back in the Johnson administration. I will once again set the record straight relative to exactly what happened, and I will quote because I want to make sure that we get this exactly right. This is from a statement made by the former chairman of the Judiciary Committee, Senator ORRIN HATCH, in some remarks that were made on the Senate floor on March 1, 2005. Senator HATCH stated as follows:

> Some have said that the Abe Fortas nomination for Chief Justice was filibustered. Hardly. I thought it was, too, until I was corrected by the man who led the fight against Abe Fortas, Senator Robert Griffin of Michigan, who then was the floor leader for the Republican side and, frankly, the Democratic side because the vote against Justice Fortas, preventing him from being Chief Justice, was a bipartisan vote, a vote with a hefty number of Democrats voting against him as well. Former Senator Griffin told me and our whole caucus there never was a real filibuster because a majority would have beaten Justice Fortas outright. Lyndon Johnson, knowing that Justice Fortas was going to be beaten, withdrew the nomination. So that was not a filibuster. There had never been a tradition of filibustering majority-supported judicial nominees on the floor of the Senate until President Bush became President.

I think that factual statement by Senator HATCH says it all relative to any issue concerning the contention that this is not the first time we have seen filibusters on the floor of the Senate. As we move into the consideration of these judges for confirmation, I am not sure what is going to come out from the other side.

I have great respect, first of all, for this institution in which we serve. I am very humbled by the fact, as is every one of the 100 Senators here, that our respective States have seen fit to send us here to represent them. But as I traveled around the country last year, campaigning for President Bush, as well as for Senate nominees, I continuously heard from individuals—whether it was in a formal gathering or whether it was in an informal gathering such as, on a lot of occasions, being in airports, or sometimes even walking down the street—it was unbelievable the number of Americans, and I emphasize that these were not Republicans or Democrats in every instance, they were just Americans who were very much concerned about what is happening with respect to the judicial nominees on the floor of the Senate.

The PRESIDENT pro tempore. The Senator now has 2 minutes left, at which time there will be 10 minutes left for the majority.

Mr. CHAMBLISS. I thank the Chair.

This body has a number of rules which have been in place for decades. Those are good and valid rules and need to be followed in most instances. But there comes a time when you have to look the American people in the eye and say: I know Americans sent a majority party to the Senate, and I know you want us to carry out the will of the American people but, unfortunately, even though it only takes 51 votes to confirm one of President Bush's judicial nominees, we have a Senate rule that says you have to have 60 votes before you get to the point where you only have to have 51 votes. It doesn't take a Philadelphia lawyer to figure out something is wrong with that rule, and it needs to be corrected.

As we move into the consideration of these judges, I hope we will reach an accord so the integrity of this institution will be maintained. Hopefully, our rules can be maintained intact. But it is imperative we do the will of the American people, which is move toward the confirmation of the President's judicial nominees as required by the Constitution of the United States.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Virginia.

ISSUES CONFRONTING THE SENATE

Mr. ALLEN. Mr. President, I rise to share with my colleagues my observations and urgings on two issues: One, following on the eloquent remarks of the Senator from Georgia, SAXBY CHAMBLISS, on the importance of judges and actions in the Senate; and the second has to do with our National Guard and Reserves who are being called up for duty and what the Federal Government can do to be helpful to them.

JUDGES

First, on judges, I look at four pillars as being essential for a free and just society: freedom of religion, freedom of expression, private ownership of property, and fourth, the rule of law. The rule of law is where judges come in, where you have fair adjudication of disputes, as well as the protection of our God-given rights.

It is absolutely essential we have judges on the bench at the Federal level, and at all levels, who understand their role is to adjudicate disputes, to apply the facts and evidence of the case to the laws, laws made by elected Representatives. We are a representative democracy. That means the judges ought to apply the law, not invent the law, not serve as a superlegislature, not to use their own opinions as to what the law should be but rather apply it. That is absolutely essential for the rule of law, for the credibility and stability one would want to be able to rely on in our representative democracy for investments and, as we advance freedom, to try to have the people of other countries around the world put into place these four pillars of a free and just society.

What we have seen is a break of precedent in the Senate. For 200 years judicial nominees from the President, when they were put forward, were examined by the Judiciary Committee very closely, as they should be, as to their temperament, philosophy, and scholarship. If they received a favorable recommendation from the committee, they would come to the floor and Senators would vote for them or against them. In the last 2 or 3 years, what we have seen is unprecedented obstruction, a requirement, in effect, of a 60-vote margin for judges, particularly at the appellate level. The most egregious in recent years, in my view, was Miguel Estrada. He is an outstanding individual, completely qualified—great scholarship, great experience—a modern-day Horatio Alger story, having come to this country from Central America, applying himself, doing well. Indeed, the American Bar Association unanimously gave him their highest recommendation and endorsement.

That went on for a year. Then it went on for another year. It went on for over 2 years, and he finally had to withdraw, notwithstanding the fact that a vast majority of Senators were actually for Miguel Estrada.

It is not unique to him. It has happened to roughly 10 or so appellate judges, including those nominated for the Ninth Circuit, which is the circuit where you have adventurous, activist judges who ignore the will of the people. For example, the recitation of the Pledge of Allegiance in schools, which they struck down because they are concerned about the words ''under God.'' That is the sort of activist judiciary that is ignoring the will of the people, who are the owners of this Government.

People say: What do we need to do, and they up come with this term, ''nuclear option.'' It is a constitutional option. It shows how out of touch people are in calling this a nuclear option, when all it is is the question of whether it is a majority vote to give advice and consent or to dissent on a particular judicial nomination. It is my view, in the event the minority party continues with the approach of obstructing the opportunity of a nominee to have fair consideration, then this constitutional option must be utilized. We should not be timid. We should not cower. I believe the obstructionist approaches are preventing me from exercising my duty and responsibility to the people of the Commonwealth of Virginia to advise and consent on these judicial nominations. I hope my colleagues will not continue this obstructionist approach. In the event they do, then we have to use the constitutional option. I do not think it is too much to ask Senators to get off their haunches and show the backbone or spine to vote yes or no, but vote, and then explain to their constituents why they voted the way they did on any particular man or woman who has been nominated to a particular judicial position.

I am hopeful we do not have to use it, but if we do, go for it. Do not cower. Do