

with one another and their families through e-mails, newsletters, and reunions. They also, to this day, continue to remember and honor those in their company who never made it home, those who were killed during the fighting, those who will remain as they were at the time frozen in their youth.

I am speaking about the men of Company K, the most decorated company in the 409th Regiment of the 103rd Infantry Division, 6th Corps of the 7th Army. The men of K Company, however, are not unique. The bonds they share and the sacrifices they made are no different than the bonds and the sacrifices of all those who served in World War II together.

Two years ago at this time, I spoke about the 58th anniversary of V-E Day and specifically about K Company. Since that time, my staff and I have heard from many of the surviving members of K Company and their families. We have learned a great deal about what so many men and women went through both during and after the war.

I must say the connection my office and I have established with the members of K Company, soldiers who saw battle in Germany, France, and Austria, has been one of the most rewarding experiences I have had during my entire time in Congress.

One of the members of K Company is my dad, Richard DeWine. In talking to both my mother and my father this past weekend about the end of the fighting in Europe 60 years ago, they remember vividly what happened, where they were 60 years ago yesterday. My mother remembers riding on a firetruck during an impromptu celebration in my parents' hometown of Yellow Springs, OH. She remembers that celebration after the announcement was made of the German surrender.

My dad, half a world away at the time, remembers spending the night before in a foxhole near Innsbruck, Austria, the night before the surrender. And he, like PVT Glenn Waltner who wrote in his letter to his mother, my dad also heard rumors that the war was nearing an end. My dad says the rumors were all over the place. But nevertheless, my dad stayed awake that night in that foxhole fearing that the enemy would attack. He remembers thinking he saw German soldiers coming towards them.

The next morning, and later when he talked to his comrades, his buddies, when he compared notes with them, they thought the same thing, that the Germans were coming after them, coming towards them. Yet they never attacked that night, thank Heavens.

My dad says when the war did end the next day, he can still remember groups of German troops surrendering, and then when he and his K Company buddies went into Innsbruck, quite shortly thereafter he remembers the people of Innsbruck throwing flowers at them as they rode into Innsbruck.

My parents' recollections and the letter I read on the Senate floor from Glenn Waltner are just a couple of examples of the many stories we all have heard about those who fought during World War II. It is through the stories of those who served over half a century ago that we continue to learn about history, about humanity, and about the sacrifices that were made by our parents, grandparents, those who made the sacrifices. Sixty years later, we continue to learn from all those who served in World War II. We continue to learn about honor, respect, loyalty, humility, and sacrifice.

I thank each of them for what they did, what they did for each one of us, and what they did for our country and what they did for the world, what they did over 60 years ago.

They fought so that we could know peace, so that we could remain free. They will never be forgotten.

I thank the Chair, and I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

PROTECTING THE INDEPENDENCE OF THE COURTS

Mr. BAUCUS. Mr. President, inscribed on the Justice Department building are the words: "No free government can survive that is not based on the supremacy of law."

Aristotle said: "Where the laws are not supreme, there demagogues spring up."

And Balzac wrote: "The soul of liberty is love of law."

It is a free and independent judiciary that ensures the supremacy of law. It is a free and independent judiciary that guards against the demagogue. It is a free and independent judiciary that protects the soul of liberty.

As Montesquieu wrote in *The Spirit of the Laws*: "There is no liberty if the judiciary power be not separated from the legislative and the executive."

And as George Washington wrote to John Jay in 1789, when Washington invited Jay to be Chief Justice: "The Supreme Court must be recognized as the keystone of our political fabric."

The effort by some to abridge the Senate's role in the confirmation of judges is nothing less than an effort to diminish the independence of the judiciary. That is the bottom line.

The Senate's rules and its paramount value of unlimited debate are central to preserving that independence of the judiciary. The Senate's involvement in the confirmation of judges helps to ensure that nominees have the support of a broad political consensus. The Senate's involvement helps to ensure that

the President cannot appoint extreme nominees. The Senate's involvement helps to ensure that judges are more independent.

The Framers wanted the courts to be an independent branch of government, helping to exercise the Constitution's intricate system of checks and balances. The Senate's involvement in the confirmation of judges helps to ensure that the judiciary can be that more independent branch. And that independence of the judiciary, in turn, helps to ensure the protection of personal rights and liberties.

Just witness the Bill of Rights and the Constitution and the degree to which the court protects the Bill of Rights against improper encroachment by the legislative branch and in some cases by the executive branch.

The current fight over allowing the President to more easily gain confirmation of Supreme Court Justices and Appellate Court judges recalls another such effort by a President to affect the independence of the judiciary. It was in 1937, when President Franklin Roosevelt tried to pack the Supreme Court.

Roosevelt's effort to pack the Court failed in 1937 because enough Senators from his own party stood up to their President. They stood up for the Constitution that they loved.

One of those Senators was Montana's Burton K. Wheeler.

Until then, Burt Wheeler, a Democrat, had been an ardent champion of New Deal causes. But that changed with Roosevelt's effort to pack the Court.

In his book about Lyndon Johnson, *Master of the Senate*, the historian Robert Caro recounts what happened:

Burton K. Wheeler of Montana, long a leader in Senate fights for liberal causes, was coming to see that the Court plan implied an alteration in the whole balance of governmental power in favor of the White House. What, he wondered, would come next? He refused to fight for this cause. Wheeler was a senator other senators followed. Roosevelt sent his aide Thomas G. Corcoran to him with an offer. Its details would be a matter of dispute; at a very minimum, Wheeler would be allowed to give 'advice' on the nominations of two of the six justices. Wheeler had accepted other offers from Corcoran before, but he refused to do so on the Court-packing plan. 'I'm going to fight it with everything I've got,' he told Corcoran. The President hurriedly invited his old friend Burt to dine at the White House that evening; the Senator replied that the President had better 'save the plate for someone who persuaded more easily'.

And on the Senate floor, Senator Wheeler said:

I am saying to the Senator now that those connected with the administration have said that they wanted six men upon the Supreme Court whom they could trust, that they wanted men on the Court who would decide cases as they wanted them to be decided. That is the issue. It can be camouflaged as much as one wants to attempt to camouflage it, but the truth is that it is impossible to get away from the fact that this is a proposal to make the Supreme Court of the United States subservient to the executive branch of government.

Similar words could be said about the current effort to abridge the Senate's involvement in securing the independence of the Court. There are those connected with the current effort who want people "on the Court who would decide cases as they want them to be decided." And it is impossible to deny that the effect of the current proposal would be "to make the Supreme Court of the United States [more] subservient to the executive branch of government."

There is no doubt about it. That is the intent. That is the result.

On the Senate floor, Senator Wheeler also said:

I say the step proposed is one of the most dangerous ever suggested, and it will set the most dangerous precedent of which I can conceive. You can bring political pressure to bear on me, you can say, 'You you have to go along because of the fact that the administration wants it.' You can say that the privilege of appointing postmasters will not be accorded me; you can say that I will get no more projects for my State, worthy or unworthy; you can say what you please; but I say to Mr. Farley [the Postmaster General and Chairman of the Democratic National Committee] and to everyone else that, so far as I am concerned, I will vote against this proposal because it is morally wrong, morally unsound. It is a dangerous precedent. . . . it gets us nowhere, it is an expedient, it is a stopgap and dictatorial, and so far as I am concerned, if I am the only man in the Senate to do so, I shall vote against it.

Once again, similar words could be said about the current effort to abridge the Senate's involvement in securing the independence of the Court. "[T]he step proposed is one of the most dangerous ever suggested." "[I]t will set the most dangerous precedent" "[I]t is morally wrong, morally unsound." "[I]t gets us nowhere" "[A]nd so far as I am concerned, if I am the only man in the Senate to do so, I shall vote against it."

I only hope that enough Senators from the majority will have the courage that Burt Wheeler had, to stand up to their President, and stop this effort to undermine our Nation's cherished checks and balances.

In the latter half of the 19th Century, James Bryce was the Ambassador of the United Kingdom to the United States. In 1888, he wrote of America's independent judiciary:

The Supreme Court is the living voice of the Constitution It is the guarantee of the minority who, when threatened by the impatient vehemence of the majority, can appeal to this permanent law, finding the interpreter and enforcer thereof in a Court set high above the assaults of faction.

For two centuries, the Senate's rules have protected the rights of the minority party, Democrats and Republicans alike, and thereby protected the independence of the judiciary. After two centuries, it would be a mistake to change those rules.

As the Senior Senator from Tennessee, the Majority Leader, wrote in a forward to a book published last year entitled *Senate Procedure and Practice*, and I quote:

[A]bove all, together the Senate's rules and practices form a whole. It is a whole that faithfully reflects the Framers' design and ambition for the body. It is a whole that remains true to the Senate's two paramount values: unlimited debate and minority rights.

[U]nlimited debate and minority rights.

That is what the leader wrote just a year ago: unlimited debate is one of the paramount values in the Senate's rules. Minority rights is the other one.

"[U]nlimited debate" allows Senators to protect "minority rights." The Senate's rules help to protect the independent judiciary. The Senate's rules help to ensure that no one party has absolute power. The Senate's rules help to give effect to the Framers' conception of checks and balances to protect the rule of law.

John Locke wrote in *The Second Treatise on Government*:

Wherever law ends, tyranny begins.

John F. Kennedy said:

Law is the strongest link between man and freedom.

And the Greek philosopher Heraclitus of Ephesus wrote:

The people should fight for their law as for their city wall.

I urge my Colleagues on the other side of the aisle to fight for this city wall. I urge them to defend the independence of the judiciary. One hallmark that sets the United States apart from most countries in the world is a strong, independent judiciary: not bullied by the legislative branch, not bullied by the executive branch; an independent judiciary.

I urge my colleagues to defend that independence and I urge them to reject this effort to overturn the Senate's rules.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS—Continued

Mr. INHOFE. Mr. President, I ask unanimous consent that we resume the highway bill.

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

AMENDMENT NO. 567 WITHDRAWN

Mr. INHOFE. Mr. President, I ask unanimous consent that the pending substitute amendment be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment is withdrawn.

AMENDMENT NO. 605

(Purpose: To provide a complete substitute)

Mr. INHOFE. Mr. President, I now send a substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE] proposes an amendment numbered 605.

Mr. INHOFE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, finally, after much laboring, this massive new substitute, or managers' amendment, is before us.

This reflects the tremendous amount of work our staffs have done over the recess as well as the many long weeks and months our committees worked on it. It is not what anybody would say is a perfect bill. Everybody would like more money, and many would like more money in different places. But given the constraints under which we operated, this is the best we have been able to produce. Obviously, we hope that after the Senate may complete action on the supplemental, which I understand may be coming up, we would like to move as quickly as we can on this bill.

The leadership on both sides has told us they want to finish the bill by this week. That is an ambitious schedule but, frankly, the current extension of the highway transportation bill runs out at the end of this month. The only hope we have of meeting that deadline and getting a bill to the President is to get it to conference this week. The conference is going to be difficult because of the different approach taken by the House than the approach we have taken.

The approach we have taken, and the EPW Committee, on highway funds is one of bipartisan cooperation, to use formulas to assure that the highway money goes to States on the various indicators of need built into the formulas. I happen to think the formulas undercut the crossroads of the United States. I will be showing, when people talk about needs in other areas, a map by the U.S. Department of Transportation showing the level of heavy traffic on the roads in America. It is no surprise that that heavy traffic goes right through the middle of America, through Oklahoma, Missouri, Illinois, Indiana. We are the crossroads States. We are not doing as well in our States as many of the other States that are asking for more money.

When people say they want more money, my response is: I do, too. But we have attempted to follow the pattern established in previous formulas. And if people want to change it, I have some changes I would like to make as well and include the crossroads where the traffic is the heaviest and where, in my State and in Oklahoma, we now recognize the fact that deaths caused by inadequate highways is a legitimate concern for a bill called SAFETEA.