I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

TRIBUTE TO TWO GREAT AMERICANS: FRED KOREMATSU AND ERNEST CHILDERS

Mr. DURBIN. Mr. President, It is said that Pope John Paul II was probably the most widely recognized person in the entire world. We have heard many inspiring tributes to this great man, and rightly so.

I would like to take a few minutes to pay tribute to two other great men who died recently. Unlike the Pope, their names and their faces were not instantly recognizable. But they shared some of his finest qualities. They were remarkably brave men who risked much to protect transcendent truths, and who continued to defend those truths even in the twilight of their lives. In their cases, the truths were the principles that are the essence of America.

Both of these men first made their marks on American history during World War II.

Ernest Childers was a Native American, a member of the Creek Nation from Oklahoma, and a recipient of the Medal of Honor.

He was a lieutenant in the Army National Guard when he arrived on the beaches of Salerno, Italy, in September 1943. Hearing that many in his division were pinned down by enemy fire in nearby hills, he organized a group of eight soldiers to help clear a path to rescue the endangered soldiers.

An exploding enemy shell threw Lt. Childers to the ground, breaking his ankle, but he continued to advance. Ordering his soldiers to lay down a base of fire to protect him, he crawled—with his shattered ankle—toward an enemy sniper's nest.

Almost out of ammunition, he reached down and threw a rock at the snipers guessing correctly that they would mistake it for a hand grenade. He was right. When the snipers stood to run, Lt. Childers shot and killed one of them; one of his soldiers killed the other. Later that day, he singlehandedly captured an enemy soldier.

After recovering from his wounds, he was sent back into combat and fought at the Battle of Anzio, where he was wounded again. He was recovering in a military hospital when he learned that he was to receive the Medal of Honor.

He retired from the Army as a lieutenant colonel in 1965, worked briefly in Washington, then returned home to Oklahoma.

After September 11, he wrote a widely circulated column criticizing the attacks on some Arab-Americans. He wrote:

> Even though I have darker skin than some Americans, that doesn't mean I'm any less patriotic than any other American. I am appalled that people who call themselves ''Americans'' are attacking and killing other Americans simply because of their skin color.

Now let me speak of another recently lost. Fred Korematsu also suffered a great injury in World War II. In his case, however, the injury wasn't physical, and it wasn't inflicted by enemy soldiers. It was inflicted by the United States government in one of the most shameful chapters in our Nation's history.

In 1942, Mr. Korematsu was 22 years old, living in California, when the U.S. government declared 120,000 Japanese-American citizens and immigrants ''enemy aliens'' and ordered that they be forced from their homes into internment camps—prison camps.

Mr. Korematsu—who was born in California to immigrant parents—had tried twice to enlist in the military after Pearl Harbor, but was rejected for health reasons. He did everything he could think of to be accepted as American. He changed his name, and even had an operation to try to make his eyes appear rounder. Still, he was still ordered to be imprisoned at Tule Lake, an infamous internment camp in California.

His family and friends complied with the order. But Fred Korematsu resisted because, he said, he was an American, and he believed that the internments were unconstitutional.

He challenged the order all the way to the United States Supreme Court. In a decision that remains one of the most infamous decisions in its history, the Court ruled in 1944 that the internment of American citizens of Japanese descent was justified by the need to combat sabotage and espionage.

It took nearly 40 years for Fred Korematsu's conviction for opposing internment to be overturned by a U.S. District Court.

In 1988, Mr. Korematsu helped win an apology and reparations from the United States Government for internment camp survivors. A decade later, he was awarded the Presidential Medal of Freedom.

In November 2003, Mr. Korematsu did something he never expected he would have to do again in his life. He filed another brief before the Supreme Court protesting what he believed to be unconstitutional internments by our Government only this time, the detainees were being held at Guantanamo Bay, Cuba.

Mr. Korematsu's brief contained a simple plea.

> . . . to avoid repeating the mistakes of the past, this court should make clear that the United States respects constitutional and human rights, even in times of war.

Fred Korematsu died on March 30 at his home in Larkspur, CA after a long respiratory illness. He leaves his wife, Katherine, and their son and daughter.

Ernest Childers, a courageous warrior to the end, died March 17 at a hospice in Tulsa after suffering a number of strokes. He leaves his wife of 59 years, Yolanda, and their three children.

These men were recipients of the Presidential Medal of Freedom, the highest civilian honor our Nation can bestow on an individual; and the Medal of Honor, the highest military honor our Government grants.

They risked everything as young men to defend the great principles on which our Nation is based, and they continued to speak out for those principles until they died. They were truly American heroes.

Our thoughts and prayers go out to their family and friends.

THE NUCLEAR OPTION

Mr. LEAHY. Mr. President, we heard a distinguished leader of a country pushing into democracy this morning, addressing a joint meeting of the Congress over in the other body. I think every time a country moves into democracy, and its leaders and citizens come to this country, one of the things they are thrilled about is the independence of our Federal judiciary and our judiciary overall. They say in their country, if they ever want to have democracy, they have to have the independence of the judiciary.

I mention this because in recent weeks there seems to have been this escalating verbal attack by political leaders—and I must say, with all due respect, Republican political leaders—against Federal judges, including those who have been appointed by Republican Presidents, and against the Supreme Court, where most of the justices have been appointed by Republican Presidents.

The Republican leader of the House has spoken seeking vengeance against judges involved in the Terri Schiavo matter. A Senate Republican has referenced the brutal murders in the State court in Georgia and of Judge Lefkow's family in Illinois as if they were somehow connected to judicial decisions that some people do not like and which lead to pressures that explode in violence.

Now, I know all Senators, Republicans and Democrats, including the Senator who made those remarks, strongly agree there can be no justification for violence against judges or their families. In Iraq, judges are being attacked by insurgents. In Columbia, honest judges were murdered by drug-dealing thugs. That is not a circumstance we want to see anywhere in the world, especially here. We cannot tolerate or excuse or justify it here in the United States.

When I chaired the Judiciary Committee in 2001, one of the first things I did was push for passage of the Judicial Protection Act, which toughened criminal penalties for assaults against judges and their families. I sponsored it

with Senator GORDON SMITH. We enacted it. We were right to do so. Protecting our judges and Federal law enforcement officers should be a top priority for us. I think sometimes the focus on terrorism distracts us from the day-to-day dangers for judges.

I remember the autumn of 2001, when Senator Daschle and I were each sent anthrax-laced letters in an environment in which high-ranking Republican leaders had criticized us unfairly during the sensitive weeks leading up to that. People who touched the outside of the envelope addressed to me—the envelope I was supposed to open—people who simply touched it, doing their job, died as a result of that. And no perpetrator was ever arrested or convicted for these anthrax attacks by someone who may have thought himself a ''super patriot'' willing to will to make his point.

I do not want to see more attacks on our Federal and State judges. So I urge those members of the other party who are making these attacks to disavow the rhetoric and those attacks. They should not be creating an atmosphere in which anyone will feel encouraged or justified in attacking our judiciary if they do not like a particular decision.

In this regard, I thank the Senator from Texas for the comments he made Tuesday afternoon in which he expressed his regrets with regard to certain remarks he made on Monday that he says were taken out of context and misinterpreted. He has urged that the overheated rhetoric about the judiciary be toned down and acknowledged that ''[o]ur judiciary must not be politicized.''

Mr. President, I became a Member of the Senate more than 30 years ago at a time when the country was recovering from an abuse of power by President Nixon. In the wake of the Watergate scandal, many of us were elected to be a forceful check on executive power. It was a mindfulness of the danger that absolute power corrupts that the Founders designed our Constitution to contain a vital set of checks and balances among the three branches of our Federal Government. Those checks and balances have served to guarantee our freedoms for more than 200 years.

Today, Republicans are threatening to take away one of the few remaining checks on the power of the executive branch by their use of what has become known as their ''nuclear option.'' This assault on our tradition of checks and balances and on the protection of minority rights in the Senate and in our democracy should be abandoned.

The American people have begun to see this threatened partisan power grab for what it is and to realize that the threat and the potential harm are aimed at our democracy, at the independent Federal judiciary and, ultimately, at their rights and freedoms. A thoughtful editorial appeared in one of my home State's newspapers today. In that editorial, The Barre-Montpelier Times Argus observed: ''Abolishing the filibuster for judicial nominees is another, more extreme, form of intimidation.'' I ask that a copy of that editorial be included in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. LEAHY. Eliminating the filibuster by the nuclear option would violate and destroy the Constitution's design of the Senate as an effective check on the executive. The elimination of the filibuster would reduce any incentive for a President to consult with home-State Senators or seek the advice of the Senate on lifetime appointments to the Federal judiciary. It is a leap not only toward one-party rule and absolute majoritarianism in the Senate but to an unchecked executive.

Recently Republican partisans have ratcheted up the vitriol even further with their direct threats upon the judiciary. They spare no one, neither State court judges, nor Federal judges, nor Federal judges appointed by Republican Presidents, nor the Supreme Court Justices themselves. Their goal is intimidation and subservience to an ideological agenda, rather than adherence to the rule of law. Worst of all, some Republican leaders have taken their rhetoric to a level that should concern all Americans, at a time when violence against judges, their families and courtroom personnel has shocked the nation. The Republican leader of the House has recently spoken of seeking vengeance against judges involved in the Terri Schiavo matter. I recall a similar call by that House leader in 1997 in which he called for the intimidation of judges. I spoke against it then and do so again today. It is essential that we preserve the independence of our judiciary and protect it from intimidation.

In my time in the Senate we have often faced issues directly relevant to the separation of powers and the role this body plays as a check on executive power. As ranking Democratic member of the Judiciary Committee and as a former chairman of the committee, I have invested significant time and energy on providing resources to our third branch of Government. During the 17 months I chaired the committee, the Senate confirmed 100 of President Bush's judicial nominees. In the other 34 months of the Bush administration, the Senate has confirmed but 104.

The independent, nonpartisan role that judges play in our democracy is vital. I agree with Chief Justice Rehnquist when he called the independent judiciary the ''crown jewel'' of our democracy. It is the envy of and the model for the world. In order to keep this branch of Government independent and above politics, these nominations to lifetime appointments should be of the caliber to garner wide consensus, not political divisiveness. The goal should not consistently to be to see how many controversial nominees can be confirmed by the narrowest of partisan margins. Partisan passions must be kept in check when we are addressing an independent branch of Government, and no President should seek to pack the bench with unalloyed partisans or narrow ideologues.

It is the Federal judiciary that is called upon to rein in the political branches when their actions contravene the Constitution's limits on governmental authority and restrict individual rights. It is the Federal judiciary that has stood up to the overreaching of this administration in the aftermath of the September 11 attacks. It is more and more the Federal judiciary that is being called upon to protect Americans' rights and liberties, our environment and to uphold the rule of law as the political branches under the control of one party have overreached. Federal judges should protect the rights of all Americans, not be selected to advance a partisan or personal agenda. Once the judiciary is filled with partisans beholden to the administration and willing to reinterpret the Constitution in line with the administration's demands, who will be left to protect American values and the rights of the American people? The Constitution establishes the Senate as a check and a balance on the choices of a powerful President who might seek to make the Federal judiciary an extension of his administration or a wholly-owned subsidiary of any political party.

The Senate's role in advising the executive and determining whether to consent to confirmation of particular nominees is a fundamental check and balance on the executive. It is especially important with respect to lifetime appointments to the judiciary. The Senate's rules, already adopted and in place for this Congress, continue to provide for an orderly procedure to end debate on matters before the Senate and an orderly procedure for amending the Senate rules.

Just as amending our fundamental charter, the Constitution, requires supermajorities, so amending our Senate rules does, as well. When the Senate rule for ending debate in the Senate has been amended in the past, the rules for amending those rules have been followed. Previous Senate majorities have followed the rule of law by amending rule XXII only after a supermajority has agreed to end debate on amending the rule. The nuclear option would circumvent rule XXII and would destroy the equivalent of the rule of law in the Senate.

Even the Senate's Republican majority should not be above the law. The Senate has always protected minority rights. The nuclear option would bring an end to that tradition and to the comity and cooperation on which the Senate depends. The Senate and the House were designed by the Founders to serve different functions in our Government. The nuclear option destroys the fundamental character of the Senate. Breaking so fundamental a Senate rule by brute force is lawlessness. Over

the past 2 years, the Republican majority has already bent, broken or ignored the rules governing committee consideration of judicial nominees. This year they are moving to destroy the one Senate rule left that allows the minority any protection and any ability to protect the rights of the American people.

In political speeches we all talk about the importance of the rule of law. In Iraq over the last 2 years, young Americans have given the ultimate sacrifice seeking to help establish a democracy that upholds the rule of law. The governing transitional law that the Bush administration helped design for Iraq calls for a two-thirds vote of the Iraqi legislature to select the president and vice presidents. This was created to protect the minority and encourage consensus. Just today we hear that the long period of negotiations following the Iraqi elections has yielded an agreement on the presidency council, which is the next step in forming an Iraqi government, and that the Iraqi national assembly expects to have the two-thirds vote required to proceed to name a Kurdish leader, a prominent Shiite Arab politician and a Sunni Arab leader as the president and the two vice presidents of Iraq. While we recognize and fight for consensus-building and minority protection in Iraq, Republican partisans here at home are threatening the nuclear option to remove protection for the minority in the U.S. Senate. That is wrong.

When President Bush last met earlier this year with President Putin of Russia, he spoke eloquently about the fundamental requirements of a democratic society. President Bush acknowledged that democracy relies on the sharing of power, on checks and balances, on an independent court system, on the protection of minority rights and on safeguarding human rights and human dignity. What we preach to others we should practice. Destroying the protection of minority rights, removing the Senate as a check on the President's power to appoint lifetime judges and undermining our independent Federal judiciary are inconsistent with our democratic principles and values but that is precisely what the nuclear option would do.

Breaching the Senate rules to eliminate filibusters of nominations will only produce more division, bitterness and controversy. To date the Senate has proceeded to confirm 204 lifetime appointments to the Federal judiciary by President Bush. The Senate has refused to grant its consent to only a handful of his most controversial and divisive nominees and only after public debate and the votes of a substantial number of Senators. Those who now threaten the nuclear option were willing to forestall votes on more than 60 of President Clinton's moderate and qualified judicial nominees if only one anonymous Republican Senator had a secret objection.

The way to resolve this conflict is for the President and Senate Republicans to work with all Senators and engage in genuine, bipartisan consultation aimed at the appointment of consensus nominees with reputations for fairness who can gain wide support and join the more than 200 judges confirmed during President Bush's first term. By last December, we had reduced judicial vacancies to the lowest level, lowest rate and lowest number in decades, since President Ronald Reagan was in office.

There are currently 28 judicial vacancies for which the President has delayed sending a nominee. In fact, he has sent the Senate only one new judicial nominee all year. I wish he would work with all Senators to fill those remaining vacancies rather than through his inaction and unnecessarily confrontational approach manufacture longstanding vacancies.

There are currently two of his nominees, Michael Seabright of Hawaii and Paul Crotty of New York, who the Republican leadership refuses to schedule for consideration. I believe that those nominees can be debated and will be confirmed by overwhelming bipartisan votes, if the Republican leadership of the Senate would focus on making progress instead of seeking to manufacture a crisis. They can become the first judges confirmed this year. Let us join together to debate and confirm these consensus nominees.

Rather than blowing up the Senate, let us honor the constitutional design of our system of checks and balances and fill judicial vacancies with consensus nominees without unnecessary delay.

EXHIBIT 1

[From the Times Argus, Apr. 6, 2005]

TIME TO STAND UP

Republicans and Democrats are headed for a showdown in the Senate over the Democrats' insistence that, for a handful of extreme and ill-suited judicial nominees, it will use the filibuster to block action. Sen. Patrick Leahy, ranking Democrat on the Senate Judiciary Committee, will be in the center of the fight.

Republicans have responded to the prospect of Democratic filibusters by threatening to throw out the rule allowing filibusters for judicial nominees. Democrats say that if that happens they will halt all but the most essential Senate action.

The battle over the judiciary is a central political struggle of our time. The congressional effort to meddle in the Terri Shiavo case was a prelude to the battle over the courts, and it revealed the dangerous degree to which the nation's Republican leaders intend to twist the judiciary to their will.

The party line among Republicans is that they favor judges who interpret the law rather than making it. They don't want judges imposing outcomes or crafting decisions to carry out a personal agenda.

Yet the astonishing comments by Rep. Tom DeLay, House Republican leader, show the Republicans' true aim. DeLay revealed that, above all, he wants to impose outcomes. The outcome in the Schiavo case didn't go his way so he began talking of impeaching the judges involved. Judges whose independence is curbed by that kind of intimidation will be forced into outcomes demanded by politics, not by the law.

The Schiavo case passed before judges in state and federal courts, the federal appeals court, even the U.S. Supreme Court, and all those judges, liberal and conservative, ruled that Terri Schiavo's expressed wishes, as conveyed by her husband, should prevail. There has been much debate about whether the husband was reliable and whether the medical diagnosis was correct. But those questions went to judgment in the courts. That is what courts are for. The judiciary is independent so that courts can weigh facts in a calm and reasoned fashion, free of political pressures or the enthusiasms of enflamed groups. Sometimes we don't agree with the outcome, but citizens, like judges, are not supposed to impose outcomes.

Intimidation of the judiciary was also the approach of former Attorney General John Ashcroft, who sought to discipline judges who acted counter to his wishes. Abolishing the filibuster for judicial nominees is another, more extreme, form of intimidation.

The Republican critique of the judiciary suggests they believe judges are somehow outside the democratic system, that they have no business thwarting the workings of the legislative branch. But judges are an essential part of the democratic system. For one, they are appointed by the elected executive and confirmed by elected senators. And they exist to safeguard our democratic system when the legislative or executive branches try to ride roughshod over the law.

In the Schiavo case, the executive and legislative branches sought to abolish the constitutional role of the judiciary as an independent branch. In those cases where President Bush's judicial nominees exhibit similar lack of respect for the law, senators have the duty to oppose them and to stand up against the intimidating tactics of the Republican leadership.

HONORING POPE JOHN PAUL II

Mr. MCCONNELL. Mr. President, I rise today with a heavy heart to express my sorrow on the passing of his Holiness, Pope John Paul II.

Karol Jozef Wojtyla, born in the village of Wadowice, Poland, grew up in a poor family, and was an orphan by the age of 21. But by the end of his long, energetic life, he had overseen a new outpouring of faith in the Catholic Church and a renewal of freedom around the world.

With his election in 1978, John Paul became the first non-Italian pope in over 450 years. How fitting that of all the countries to produce the next pope, he came from Poland. In 1978, Poland, like most of Eastern Europe, was straining under the yoke of Soviet domination. The Soviet Communists had dubbed religion ''the opiate of the masses,'' and purposefully destroyed churches, detained or murdered priests, and terrorized worshippers.

The last thing they wanted was a native son of Poland returning there to remind his people of the power of faith.

Despite the Polish Communist government's attempts to prevent his visit, John Paul journeyed to Poland in June 1979. When he arrived he knelt down and kissed the Earth. He made over three dozen public appearances, in Warsaw, in Krakow, even in Auschwitz, and millions of Polish Catholics defined their government to see him. John Paul reminded the world that the