

© 2005 CBS Broadcasting Inc.
All Rights Reserved

**PLEASE CREDIT ANY QUOTES OR EXCERPTS FROM THIS CBS
TELEVISION PROGRAM TO "CBS NEWS' FACE THE NATION. "**

CBS News

FACE THE NATION

Sunday, May 22, 2005

**GUESTS: Senator MITCH McCONNELL, (R-KY)
Majority Whip**

**Senator RICHARD DURBIN, (D-IL)
Minority Whip**

**DAVID BROOKS
The New York Times**

**JAN CRAWFORD GREENBURG
Chicago Tribune**

MODERATOR: BOB SCHIEFFER - CBS News

*This is a rush transcript provided
for the information and convenience of
the press. Accuracy is not guaranteed.
In case of doubt, please check with*

**FACE THE NATION - CBS NEWS
202-457-4481**

BOB SCHIEFFER, host:

Today on FACE THE NATION, it's Senate showdown week. Which party will win the filibuster fight? Senate Majority Leader Bill Frist may invoke the so-called nuclear option to end filibusters on judicial nominations as early as Tuesday. Does he have the votes? Can the Democrats stop him? With Iraq imploding and the deficit soaring, is this what the Congress should be spending its time on? All questions for the two whips of the parties, Republican Mitch McConnell of Kentucky and Democrat Dick Durbin of Illinois.

We'll talk about the rest of the week's news with Jan Crawford Greenburg, who covers the courts for the Chicago Tribune and New York Times columnist David Brooks.

I'll have the final word on learning from Laura Bush.

But first, Senate showdown on FACE THE NATION.

Announcer: FACE THE NATION with CBS News chief Washington correspondent Bob Schieffer. And now from CBS News in Washington, Bob Schieffer.

SCHIEFFER: And good morning again. And joining us from Louisville, Kentucky, this morning, the Senate majority whip, that's the number-two ranking Republican in the Senate, Mitch McConnell. With us from Chicago, his Democratic counterpart, Dick Durbin of Illinois.

Senator McConnell, let me start with you, and let me begin, before we get into this argument over the filibuster, I want to ask you about some legislation that is apparently going to pass the House this week with considerable backing from Republicans, and that is the bill to make it easier to funnel federal money into this research effort on stem cells. Now the president has said he's going to veto the legislation. What is your sense of where the Senate is on this right now? I know it hasn't been scheduled for debate there, but if it does come to the Senate, as it looks like it will, where do you think--will it pass the Senate?

Senator MITCH McCONNELL (Republican, Kentucky; Majority Whip): Well, it raises a lot of very difficult scientific and moral questions, as we all know. I'm not sure what the outcome would be in the Senate, but I'd be surprised if we don't deal with that sometime this Congress.

SCHIEFFER: But do you think right now that senators--what's the feeling amongst Republicans? Would they be with the president now or do you think they would step back from this as some Republicans in the House have done?

Sen. McCONNELL: I would imagine that many Republicans will be with the president. Frankly, we've been doing other issues this year and are just now beginning to think about this and turn to it. I think it's a little unclear what the outcome would be in the Senate at this point.

SCHIEFFER: Senator Durbin, where do you think that this is in the Senate right now?

Senator RICHARD DURBIN (Democrat, Illinois; Minority Whip): I think it's gaining momentum and for good reason. On the Democratic side, we're opposed to human cloning. We want strong ethical guidelines. But it's time for us to start working on this medical research, life-saving research for people who are facing diabetes, who are facing Alzheimer's, serious problems that could be resolved with responsible stem cell research. I'm heartened that

conservative Republicans, like Orrin Hatch, support this effort. And when Nancy Reagan comes out for it, I think it gives a lot of room for even conservative Republicans to join us in a bipartisan effort.

SCHIEFFER: All right. Well, let's shift to the subject of the moment. This is showdown week in the Senate, as we said at the top of the broadcast. Is there a showdown coming, Senator McConnell, over what to do about the Senate filibuster? And let me just explain briefly what this means for those who don't follow it on a day-to-day basis. With the filibuster, it basically requires 60 votes to confirm anyone to the federal bench or even to the Supreme Court. Without a filibuster, it would require only a simple majority. Senator Frist, the Republican leader, says he wants to do away with the filibuster if that becomes necessary in order to get votes on the president's judicial appointments. Does he have the votes to do away with the filibuster at this point, Senator McConnell?

Sen. McCONNELL: Well, Bob, I think my good friend Dick Durbin had it right six years ago when he said they're qualified or they're not, vote them up or vote them down. And that's what the Senate did for 214 years until the last Congress. Every single judicial nominee with majority support in the Senate ultimately got an up or down vote prior to the last Congress. Monday, we'll resume the debate of Justice Priscilla Owen, of the Texas Supreme Court. We'll go through the night Monday night to make sure everyone has an opportunity to express themselves. And then Tuesday morning, we'll have that vote you just described to your audience, what we call the cloture vote. And that will be an opportunity for the Senate to use this controversy by hopefully invoking cloture on Justice Owen, and then that guarantees that she would get an up or down vote, as all other judges in similar situations have gotten for over 214 years prior to the last Congress.

SCHIEFFER: OK. But back to my original question. If it comes down to if you can't close the debate, if it--will Senator Frist put it to the Senate, do away with the filibuster or not. Do you think he has the votes to overturn this Senate rule?

Sen. McCONNELL: Yes. It would not do away with the filibuster, it would do away with the filibuster with regard to Supreme Court and Circuit Court appointments. It's the Byrd option. It's something Senator Byrd did on four occasions when he was majority leader. If Senator Frist has to exercise the Byrd option, I believe he will have the votes.

SCHIEFFER: You do think he'll have the votes.

Sen. McCONNELL: I do.

SCHIEFFER: What do you think, Senator Durbin?

Sen. DURBIN: Bob, there's a reason why they're bringing Vice President Cheney in to preside over this. It is an historic moment, and they want to break the Senate rules. If they followed the Senate rules, we wouldn't even have this debate today. But they want to break the rules to change them. And I think, like human nature and political nature, it really isn't until you reach a showdown that some people will make a decision. And there are two or three senators still on the bubble.

But keep in mind there are three important things about to occur if the nuclear option happens: giving the president more power than he's ever had in the history of the United States under the Constitution, taking away a constitutional authority of the Senate never voluntarily given up in our history, and, finally, setting the stage for judges, vacancies, to be approved and men

and women to receive lifetime appointments who are more divisive and more partisan. I don't think that's going to be a good outcome.

SCHIEFFER: Do you think--and you can answer first on this, Senator Durbin--there are moderates on both sides, Republicans and Democrats, who've been working all through last week, trying to find some way to avoid this vote on doing away with the filibuster. Do you think at this point there's any chance of a compromise to avoid this vote, Senator Durbin?

Sen. DURBIN: There's always a chance, and I hope that we can find a good one, but we cannot sacrifice 214 years of Senate tradition. We can't change the rules in the middle of the game. We shouldn't be tinkering with the checks and balances our Founding Fathers put in this Constitution. If we can find a way to resolve this in a good-faith, bipartisan effort--I hope we can. But let's preserve this important constitutional tradition.

SCHIEFFER: Do you think there's any chance of a compromise to avoid this, Senator McConnell?

Sen. McCONNELL: Well, I think any compromise that guarantees these nominees get an up-or-down vote, like similarly situated nominees have for the last 214 years, will certainly be considered. That's what we've been seeking. As Senator Durbin argued back in 1998, give them an up-or-down vote. That's what's always happened for 214 years. You shouldn't be confused by the fact that a filibuster was possible. Sure; there are plenty of things that are possible, but many of them are never done. It was possible to filibuster judges for 214 years that have majority support in the Senate, but it was never done. We restrained ourselves.

And I think this is a good opportunity for the Senate to restrain itself and to get back to the tradition and a pattern and a norm that prevailed in the Senate until the last Congress. There is substantial democratic sentiment for doing just that, for quitting this kind of high-profile, continuous stopping of the president's Circuit Court appointments. You know, the president lost one out of three of his Circuit Court appointments in the last Congress. That's the worst record since World War II. And there are a number of Democrats that are very uncomfortable with that, and hope that we'll get back to the way we used to operate beginning with the cloture vote on Tuesday morning.

SCHIEFFER: Well, let me ask you this, Senator: If it comes to Tuesday and it looks like there might be some way for these moderates to reach some kind of an accommodation and avoid this vote, would Republicans be willing to postpone this vote if it looked like there were truly a chance to get a compromise on this?

Sen. McCONNELL: I don't think postponement is a good idea. I think one thing that both sides have in common: We'd like to get this behind us and get back to the people's business, and we'd like to see the pattern that developed this week in the Senate. Senator Frist just started the regular order, just simply called up Justice Priscilla Owen, and our friends on the other side of the aisle started shutting down various operations in the Senate, keeping committees from meeting, keeping the Energy Committee from meeting while gas prices are at an all-time high, keeping the Intelligence Committee from meeting, keeping the Judiciary Committee meeting--from dealing with asbestos reform, simply because we followed the regular order.

SCHIEFFER: OK. Well, let me...

Sen. McCONNELL: And I think it's time for the Senate to get back to normal. We can do that beginning Tuesday morning by invoking cloture on Justice Owen and getting back to the way that we've always handled judges in this situation.

SCHIEFFER: Are you going to allow this to--is there at this point, Senator Durbin--would you allow this to come to a vote, or will you object and set off this vote to decide whether the filibuster is part of the Senate rules or not?

Sen. DURBIN: I agree with Attorney General Gonzales. Priscilla Owen has shown, unfortunately, that she is an obstructionist and she's--I should say the words that he used, I'm trying to recall--were 'an activist.' He referred to her as a 'judicial activist' on the Texas Supreme Court. That's what her background shows.

But a few points should be clarified. In the year 2000, my friend Senator McConnell decided on a Clinton nominee to stop the debate completely. He voted to stop this nominee, Richard Paez from going forward. So much for an up-or-down vote. And as far as the business of the Senate, let me tell you, I came to the floor this week and said to Senator McConnell, 'If you want four circuit judges at this moment on a bipartisan basis, let's vote on them.' He objected and said, 'No, let's stay in the mode that we're in.'

SCHIEFFER: OK.

Sen. DURBIN: 'We don't want to go beyond it.'

SCHIEFFER: Let me ask you this, Senator Durbin: What will happen if the Republicans do go through with this and they do away with the filibuster? Are Democrats going to shut the Senate down? Are you going to bring it to a crawl? What do you do from here on in? Because a lot of people say that this is going to just bring things to a halt for the rest of the year.

Sen. DURBIN: It won't help, but I can tell you this: The Democrats will not shut the Senate down. We will not shut the government down. Important appropriations bills and bills for our troops, national security and homeland security, will continue. But unfortunately, we will have lost a lot. With this effort by the White House to wrest more power away from the Senate, it's going to change the Senate as an institution. It will diminish us when it comes to our checks and balances. And unfortunately, it means we're going to have to take a different approach.

Our approach is going to be a positive one. We're going to push an agenda the Republicans don't want to talk about. How about pension security in light of what's happened to United Airlines? How about the cost of health care that threatens families and businesses across America? They don't even want to bring these issues up.

SCHIEFFER: OK.

Sen. DURBIN: We're going to push for these issues.

SCHIEFFER: OK. I'll give you the final word, Senator McConnell.

Sen. McCONNELL: Well, the judge that--as Senator Durbin was talking about a while ago, I did vote to invoke cloture on that particular nominee. Those nominees are on the court. We handled them exactly the way they should have been handled. That's the whole issue here. Let's get back to the way the Senate operated for over 200 years, up or down votes on the president's nominee, no matter who the president is, no matter who's in control of the Senate.

That's the way we need to operate. The Senate's got a chance to get back to normal by invoking cloture on Justice Priscilla Owen come Tuesday morning. I'm optimistic that'll happen.

SCHIEFFER: All right. I want to thank both of you. We'll wait and see what happens. Back with our Roundtable discussion in just a minute.

(Announcements)

SCHIEFFER: And we're back now with Jan Crawford Greenburg, the legal correspondent for the Chicago Tribune, and David Brooks, columnist for The New York Times, two people who have been following this very, very closely.

Well, maybe I'll have better luck with you two than I had with the senators. I didn't get any sense of what's going to happen on Tuesday. Do you think this is going to come down to a vote to overturn the filibuster...

Mr. DAVID BROOKS (The New York Times): Yes.

SCHIEFFER: ...David?

Mr. BROOKS: Yes.

SCHIEFFER: You do?

Mr. BROOKS: I've spoken to people in the room, these moderates, these 12 moderates. I'm pessimistic that they're going to get a deal in part because they're moderates. If they were partisans, they'd get in the room, they'd lock themselves in the room, they'd reach the deal, which they--is right within their grasp. And then they'd get out and announce it to the press. It would be over. But they want to shop it around. They don't want to offend anybody. They're trying to be nice. And as a result, they're just scotching their own deal. So...

SCHIEFFER: Well, if it does come to a vote, does Bill Frist have the votes to overturn the filibuster?

Mr. BROOKS: I think he does. I think he has 50, and then with the vice president, he'll have one more. As you've been talking to people, they've--becoming more and more confident on his side, and even some of the opponents, that he has the 50 votes. So they're already planning for what happens Tuesday afterwards. I talked to Harry Reid. They've got plans. He went into a meeting with the Democrats, what do we do after Tuesday? And he said that meeting with the Democrats was, quote, "one of the most pleasant experiences of my life, because they're unified. They're going to war."

SCHIEFFER: Huh.

Mr. BROOKS: And I think they're delusional, but that's what they think.

SCHIEFFER: Do you agree?

Ms. JAN CRAWFORD GREENBURG (The Chicago Tribune): I do. And I think Senator Frist has had the votes for some time. I mean, that said, we've always had these moderate

Republicans who have not disclosed how they are going to vote, but he has felt confident that he could get those votes and force this to a vote to change the rules.

SCHIEFFER: Well, what happens to the Senate after that, Jan?

Ms. GREENBURG: Well, I think that, you know, business is going to slow down. And, of course, the timing of this is going to be extraordinarily interesting, because we've got a looming battle for the future of the Supreme Court. Obviously, Chief Justice Rehnquist is ill with thyroid cancer, widely expected to retire at the end of June. So this judges' debate, regardless of what happens Tuesday, is going to play out again with even greater stakes and even more bitterness in the months to come.

SCHIEFFER: Well, do you--let me ask you this, because before we get to the Supreme Court nominations we've got a lot of business that ought to be attended to and pretty much Congress is pretty much come to a halt now. Not very much is getting done, and longer this fight goes on, the lower the approval rating of the Congress gets. Do you think either side thought it would come to this in the beginning?

Ms. GREENBURG: No, and I think people on both sides are saying that this shouldn't have come to this and the Republicans that I've talked to and Republicans who care deeply about this issue, about the judges issue, say in this way this is a problem of Senator Frist's own making, that if he had shown stronger leadership back in 2003 when the Democrats first announced that they were going to filibuster Miguel Estrada to the DC Court of Appeals that this never would have happened. They said that had Senator Lott been in the seat, this would have been averted. He would have held the Democrats' feet to the fire, made them engage in a filibuster that went through the night like they used to do back in the old days, bring pressure to bear on the Democrats. He didn't do that. Democrats at the time were unsure if they could pull this off, hold together. Obviously they've been able to, successfully defeated these nominees for the first time in the history of the United States Senate, so in some ways Senator Frist has backed himself into a corner. He has to act and he has to be able to pull this off..

Mr. BROOKS: Yeah.

Ms. GREENBURG: ...if he wants to have any chance.

SCHIEFFER: Well, we know that he is running for president or wants to seek the Republican nomination. Will this help him or hurt him, David?

Mr. BROOKS: It'll help him in the short term with social conservatives. When you talk to both leaders, both leaderships in both parties think that what they can do after Tuesday will help their party and really hurt the other party. Both of them are going to bring up their most popular pieces of legislation and make the other side say, 'No, we're not going to have a vote on that.' So the Democrats will say the every mom should-- 'Every Child Should Love Her Mom Act of 2005,' the Republicans, 'Every Day Should Be Sunny' and they're going to say the other side is blocking and blocking. And they're all hopeful that this is going to redound to their benefit.

To me they sound like those generals in the beginning of World War I who said, 'We'll have victory before Christmas.' I think it--the people will look at this and just be nauseated, but I don't think that's really sunk in yet.

SCHIEFFER: Well, I mean, I think people are looking at it and are already nauseated if the...

Ms. GREENBURG: Well...

SCHIEFFER: ...if any of the polls you see are to be taken seriously...

Mr. BROOKS: Right.

SCHIEFFER: ...because they all show that people are disgusted with it. Number one, they don't understand it. Number two, they're fed up with both sides and the approval rating of the members of Congress just keeps getting lower and lower and lower.

Ms. GREENBURG: Particularly on issues like this, and this was a political calculation that the Republicans made when to wage this war over judges. Do you try to break the filibuster now or do you wait till a Supreme Court battle? Obviously the Republicans have decided to go for it now, but this is an issue that Americans aren't, by and large, really paying attention to, appellate court nominees. That's never been a big political issue for either party to score a lot of points on beyond the base. So when you've got real problems with the economy, rising gas prices, health care, you know, that's...

SCHIEFFER: But there is a war in Iraq, too.

Ms. GREENBURG: Well...

SCHIEFFER: Yeah. Let me just shift the question here just to talk about this stem cell vote that's coming up. It looks like with the support of a large group of Republicans in the House, they're going to pass this bill that will make it easier to funnel federal money into stem cell research by using these embryos that are discarded at these in vitro clinics. What's your sense of where that is overall, Jan? Do you think this is going to be something that will actually pass the Congress in the end?

Ms. GREENBURG: Yes.

SCHIEFFER: The president's already said he's going to veto it.

Ms. GREENBURG: Yes, and it looks like there's support in both houses for this legislation and the president has announced he's going the veto it which makes, I think, a--makes it a very tricky political issue for him, because again, polls on this issue show that most Americans widely support the use of these embryos in a limited way with restrictions for these types of research to cure these--research into curing these diseases.

SCHIEFFER: David?

Mr. BROOKS: I agree. I think it's a matter of conscience for the president. You don't create life to destroy life is what he would say, but the political structure is that the Democrats are unified, the Republicans are divided. I was out with a bunch of businessmen and women in California, and they were so pro-stem cell research and they were all Republicans, you just could not believe it because, you know, they didn't worry about abortion because they're not going to have abortions but they may have Alzheimer's, and they really want stem cell research and they think that'll lead to some sort of cure for Alzheimer's. So the Republicans are deeply divided, and so there's just a majority for some sort of stem cell research.

Ms. GREENBURG: But the--but, you know, when you've got Senators Hatch, Specter, Nancy Reagan, you know, the key elements of the Republican Party in the House and Senate and outside saying that this kind of research should be funded by taxpayer money it's a tough issue for the president.

SCHIEFFER: Let me ask you about something right, wrong or indifferent. This was certainly the picture of the week, the pictures that Rupert Murdoch's Sun newspaper in London came up with, also printed on the front of the New York Post, his newspaper in this country, the pictures of Saddam Hussein in captivity. I want to ask you, Jan, because you are a lawyer, number one, in addition to being a reporter who covers the courts. Saddam's lawyers said immediately they're going to sue. What does Saddam Hussein...

Ms. GREENBURG: Now that I...

SCHIEFFER: ...sue for?

Ms. GREENBURG: I think that's a--you talk about lawsuit abuse, you know, I can't see a way you're going to get any traction with that. But, you know, I mean, those pictures, what's the news value there? I think that's the big question. I don't have a lot of sympathy for Saddam Hussein here, of course.

SCHIEFFER: I have none.

Ms. GREENBURG: And I don't think anybody would. But, you know, the news value of these photographs, there's none. It's not like we're showing Saddam Hussein torturing people or other acts in his murderous regime. And that makes this story different than some of the other scandals that have rocked our business in recent months.

SCHIEFFER: What about you, David?

Mr. BROOKS: Well, you know, I agree. The guy killed a million-and-a-half people. I don't feel too sorry for the guy. But listen, one of the things we have to understand is we're going to fight a war and we're going to commit atrocities or even, like, this is a stupid atrocity. We still have to fight the war. I'm afraid we're getting to the point where we don't even--we're sort of paralyzed in the war because we're afraid we're going to do something wrong. World War II was a noble cause, we did some terrible things then. Every war you do some terrible things. We have to try to minimize it. We just can't allow ourselves to get paralyzed by the stupid things people on our own side do.

SCHIEFFER: I have about 20 seconds left. Do you think the president's personal savings accounts is dead?

Mr. BROOKS: Oh, absolutely. Yes.

SCHIEFFER: What about you?

Ms. GREENBURG: At this point, yes.

SCHIEFFER: Will there be any kind of reform of Social Security this year?

Mr. BROOKS: The debate right now is to whether to split it into the solvency issue, the personal accounts issue. The House Republicans do not want to vote just on solvency because that's the pain, that's not the gain. They don't want to be in that position.

SCHIEFFER: All right. Thank you, both. Thank you both. Back with the final word in just a second.

(Announcements)

SCHIEFFER: Finally today, remember when President Bush was blowing off steam one day about something that had been in the news, and he said he never even read the papers anymore? That became the official White House line until his wife told a reporter that, of course, the president read the newspaper, and he watched television, too.

Then last week, after the White House Press Office refused to admit there had been a foul-up when the Secret Service failed to notify the president that the Capitol and White House were being evacuated because of a security scare, it was again the first lady who set the record straight. The president's staff still won't concede a mistake was made, but Mrs. Bush told reporters, 'Yes, the president should have been notified.'

And after the White House spinners unloaded on Newsweek for publishing what proved to be a false report about desecrating the Koran, it was Mrs. Bush again who said the report was irresponsible, but Newsweek alone shouldn't be blamed for the riots that followed.

The president has surrounded himself with a lot of smart public-relations advisers who give him all kinds of advice about dealing with the press. But Mrs. Bush has developed a strategy of her own: When reporters ask her questions, she just answers them, truthfully, as far as I can tell.

Memo to the White House staff: This is a different approach, to be sure. But you may want to check it out. It sure seems to work for her.

That's it for us. We'll see you next week, right here on FACE THE NATION.