grades of high school in a town of 350 people that I came from. But there is only one way they teach math. They taught math the same way in that small school they teach it in the biggest and best school in the United States. That is, 1 and 1 equals 2, not 3.

I studied hard and I learned that. Some in this town with advanced degrees have decided that 1 plus 1 is 3. In fact, you can find it in the budget documents. The fact is, the American people all understand it is a mirage. None of this adds up. This is a tough time and it requires tough choices. I wish it weren't. I wish it was a time when we had unparalleled economic growth, when the economy was rebounding, the stock market was moving up, and everybody was employed. But the fact is that is not the case.

We face serious, abiding economic challenges. This President needs to send a program to this Congress and this Congress has a requirement, it seems to me—if this President won't act, the Congress has a requirement to act to say we need to put this country back on track. The current circumstances simply do not add up.

I used to teach economics in college for a couple years. Everyone talks about the business cycle. We have been hit with things in this economy that are pretty unparalleled. Some of us warned about this 2 years ago when the President proposed a $1.7 trillion tax cut. Some of us said maybe we ought to be a little conservative here. What if the bottom falls out and we run into tough times, or turbulence, or get some bad economic news? They said not to worry. We have blue skies as far as you can see, straight ahead—budget surpluses forever, the President said. We passed that—not with my vote—long-term permanent tax cut, and then immediately we found out we were in a recession. We got hit with the terrorist attack of 9/11, and we were at a war with terrorists; and we now have the largest budget deficits we have seen. We had the largest corporate scandals in history. All of this is coming together at the same time, at the same intersection, and the budget surpluses turned into deficits, and the deficits got bigger and bigger.

The President says the antidote is to give more tax cuts and make them permanent. It seems to me he requires all of us to say we all like tax cuts. It would be nice if nobody had to pay any taxes. Count me in. I expect my constituents would appreciate the fact they would not have to pay taxes. Part of the cost of what we do together as citizens in building roads, schools, and providing for the common defense—part of the cost of that is the taxes we must pay. What the President is proposing in his budget is, by the way, let's be a bit short next year—about $400 billion short—and we will charge it over to the kids. We will let the kids assume that role of paying for it. We will consume more than we are willing to raise, and we will let the kids pay it off some time later. That doesn't add up, either.

By the way, the President also says, well, the economy is fundamentally sound, we don't need to do much right now in terms of stimulus. The fact is, when we teach about the contraction and expansion side of the economy in the business cycle, you teach about confidence. The expansion and contraction side of the business cycle is all about confidence. If people are confident in the future, they do the following: Buy a house, buy a car, take a trip. They do the things that manifest their confidence in the future because they have a job and they feel good about the future. And that confluence of individual acts around the country creates the expansion side of the business cycle. But when they are not confident about the future, they do the opposite. They defer the purchase of that appliance for their home, or that automobile they were looking to purchase, or the home, or the trip. When they defer that purchase, the economy contracts. It is all about the confidence with which the people view the future.

At the moment, the people are not confident about the future. There is not a lot we can do about the mechanics of the economy, because now the lead stories are about war, so there will never be confidence until we get through this period. We cannot ignore what is happening in our country with fiscal policy, trade policy, and a whole series of issues that some apparently feel we should pretend are all right but, in fact, are not all right—are seriously amiss.

That brings me back to the point I started with. The agreement that will be on the floor of the Senate this week dealing with the Moscow Treaty is just another piece of pretend policy. Everybody will vote for it. Why wouldn't you? What is wrong with it? But it does nothing. It says the U.S. and Russia are going to reduce the number of nuclear weapons, not by getting rid of them, but by putting them into storage. So what does that do to make the world safer? The answer is nothing. Most people know it.

There is the other piece of responsibility that is required—yes, of this President and of this Congress—and that is to provide world leadership and reduce the number of nuclear weapons, reduce the threat of nuclear war; and stop the spread of nuclear weapons around the world. It is the President's and our responsibility here in Congress. We ought not to pretend that we are taking action that really has very little impact with respect to fiscal policy, trade policy, nuclear arms control policy, because that will not ensure the future of this country and will not give our children confidence about the future of this country or this world.

So, Mr. President, my hope and expectation is that we can make tough decisions and come together and decide, yes, if it is heavy lifting, it requires all of us to do it together. I am tired of ''let's pretend.'' That is what is happening all too often both at the White House and also here in the Congress. Let's pretend on nuclear arms policy. Let's pretend on fiscal policy and trade policy. That, in my judgment, is a foolish approach. We need to do better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. It is my understanding that morning business is going to end in a couple minutes; is that right?

The PRESIDING OFFICER. In about 2 minutes.

Mr. REID. Mr. President, I direct a question to my friend from Virginia. The Senator from Virginia is here and wishes to speak; is that right?

Mr. ALLEN. Yes, on the issue of Miguel Estrada.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 21, which the clerk will report.

The legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. REID. Mr. President, before my friend starts, we have other people who wish to speak who can come this afternoon. I am curious as to roughly how long the Senator wishes to speak.

Mr. ALLEN. I suspect 15 to 20 minutes.

Mr. REID. I thank the Senator.

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

Mr. ALLEN. Mr. President, I rise once again to support Miguel Estrada's nomination to serve on the United States Court of Appeals for the District of Columbia. Miguel Estrada is being treated unfairly by Senators on the other side of the aisle who continue to practice such blatant obstructionism in an effort to score petty partisan points. Indeed, the obstructing Senators are shirking, in my view, their duty by avoiding a vote on this gentleman, Miguel Estrada, who was nominated 22 months ago by President Bush.

This is not mere payback; it is an escalation in a bitter battle by the Senate Democrats to keep judges off this court who properly construe the Constitution and respect the laws duly enacted by the elected legislature. That is disappointing, and it is dangerous.

The Senate Democrats' filibuster is a recipe for endless gridlock and a terrible disservice to the American people and the administration of justice.

Our protracted debate on the nomination of Miguel Estrada to the Court of Appeals for the District of Columbia makes clear the importance of sound reasoning judges on our circuit courts. For example, look at the recent denial of a rehearing decision by another circuit court, the Ninth Circuit Court of Appeals. I object to the decision by the Ninth Circuit Court of Appeals which will strip the Pledge of Allegiance from classrooms and over 9,600,000 students in Western United States. This decision is a miscarriage of justice.

The majority opinion lacks a clear reading of the constitutional intent and the legal precedent, and there is clearly a lack of common sense. This decision, frankly, is an abuse of power by the majority of those judges who sit on the Ninth Circuit Court of Appeals.

We all know well the history of our Nation and the fundamental ideas of freedom, particularly those of religious freedom, which in Virginia we call the first freedom. It was because of the desire to worship freely, to escape religious persecution in European countries that many came to settle in the American Colonies, from Pilgrims to French Huguenots. From New England to Virginia to South Carolina, many came to settle in this country to get away from Europe, ruled in large part by monarchs who served not by any talent, quality, or the consent of the people, but, as they called it, divine right. That divine right was generally conferred upon them by the exclusive monopoly of one church. So there was a co-conspiracy of a monarchy and an exclusive religion.

In the Virginia Colony, it was the Anglican Church that was forced upon the people. Baptists, in particular, were forced to pay to that established church. Indeed, when they talk about the Danbury letter to the Baptists, the Baptists were very happy when Thomas Jefferson was elected President. If one looks at what is in the Virginia statute of religious freedom, which was the predecessor of part of the first amendment of the Bill of Rights in the U.S. Constitution, one gets a better sense of what religious freedom and the so-called establishment clause is all about.

I will read from article I, section 16, in the Virginia Constitution that still remains and, of course, is built upon Mr. Jefferson's statute of religious freedom which was also involved in the Virginia Declaration of Rights which became eventually the first amendment to the Constitution.

It reads:

> That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

That, in my view, is the full historical context, from the founding documents since Virginia first passed the Statute of Religious Freedom, of what the first amendment should be.

Obviously, the first amendment of our Constitution is but a few sentences, but this gives the historical and the legal grounding of the Statute of Religious Freedom.

We all know well the words written by Thomas Jefferson proclaiming our independence from the religiously oppressive British monarchy. These words allowed our young Nation to:

> Assume the powers of the Earth, the separate and equal station to which laws of nature and of nature's God.

These are words that tell all of us, as Americans, that all men are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. These words still stir our hearts. They inspire us to continue to build that shining city on a hill, to be that beacon of freedom, religious or otherwise, for people all around the world.

Our Constitution, the hallowed document, can be summed up by one word and one idea: Freedom. The Constitution and the institution and the formation of this Government to protect those God-given rights and those freedoms states that Congress shall make no law respecting the establishment of religion.

While some conveniently use this to perpetrate actions such as those we saw out in San Francisco last week, it is often forgotten that the Constitution just as clearly states that the Congress shall make no law prohibiting the free exercise thereof.

I feel confident that the scholarly Miguel Estrada, who was editor of the Harvard Law Review, would have views similar to the dissent written by Judges O'Scannlain and Ferdinand Fernandez. As Judge O'Scannlain notes in his well-reasoned and thoughtful dissent, this decision of the Ninth Circuit Court is wrong on many levels. It is wrong because reciting of the Pledge of Allegiance is simply not a religious act, as the two-judge majority asserts. The decision is wrong as a matter of Supreme Court precedent as properly understood. The decision is wrong because it denies the will of the people of California as expressed in section 52720 of the California education code, and it is wrong as a matter of common sense.

I trust the Supreme Court of the United States will grant a writ of certiorari and promptly hear and decide this case. I, of course, hope they will reverse it. Parenthetically, I support the resolution of Senator LISA MURKOWSKI of Alaska expressing support for the Pledge of Allegiance, and I ask unanimous consent that I be added as a cosponsor of that measure.

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

Mr. ALLEN. In the realm of public education, the Supreme Court—and the Presiding Officer of the Senate right now is well aware of precedent in the various decisions the Supreme Court has made when dealing in the realm and the issue of public education and prayer, or the religious tests. There are at least three different but interrelated tests used to analyze alleged violations of the establishment clause—in other words, the establishment of a religion. It is a three-pronged test, first articulated in the case of Lemon v. Kurtzman, called the Lemon test, and that is to determine whether that public activity had a primarily secular purpose. Here, the Pledge of Allegiance is primarily a patriotic event and purpose.

The second test is called the endorsement test. Here, there is no endorsement of any denomination of any religion. So that test is passed.

The third test is called the coercion test, and there is no coercion here for students.

The Supreme Court of the United States has commented that the presence of ''one nation under God'' in the Pledge of Allegiance is constitutional. The Supreme Court will have an opportunity to clearly resolve this because sometimes there are judges who have to be reversed on many occasions before they understand the plain intent of the law, of previous opinions and the history of our country.

I will not discuss how the Ninth Circuit erred in the applications of the facts of this case to the establishment clause, but I do commend to my colleagues the dissent of Judge O'Scannlain, which I hope will give guidance to the Justices of the U.S. Supreme Court when they do review this case.

As a resource, I direct the attention of my colleagues to some outstanding historical analysis prepared by a gentleman from Texas, David Barton, and an organization called Wall Builders.

If reciting the pledge is truly a religious act, in violation of the establishment clause, then so the recitation of our Constitution itself would be, which refers to the ''year of our Lord'' and our Declaration of Independence, which

contains multiple references to God. Our Founders claimed the right to dissolve the political bands based on the laws of nature and of nature's God.

The most famous passage, of course, is the ''all men are created equal'' and they are ''endowed by their Creator with certain unalienable rights.'' Subsequently, the signatories ''appeal to the Supreme Judge of the world to rectify their intentions''; our national motto, which is ''in God we trust''; and the singing of the national anthem, a verse which says: ''And this motto: In God we trust.''

Furthermore, the Supreme Court, even the Ninth Circuit Court of Appeals, opens sessions with a call that says, ''God save the United States and this honorable court.''

There is an undeniable and historical relationship between God and our Founders and the Government leaders throughout our history. In fact, it was Congress in 1837, acting on the will of the people, that authorized the motto ''In God We Trust'' to be printed on our currency. We can cite the actions of the entire body of Founding Fathers. For example, in 1800 when Washington, DC, became the Nation's Capital and the President moved to the White House and Congress into the Capitol, Congress approved the use of the Capitol Building as a church building for Christian worship services. In fact, Christian worship services on Sunday were started at the Treasury Building and at the War Office.

A scant review of the legislative history in States and the Federal Government and the intent of our Founders, from George Washington to Thomas Jefferson, lays out the utter absurdity—no; actually, the arrogance—of this Ninth Circuit Court of Appeals and this decision.

Each of us who has the high privilege to sit in this Chamber is very well aware of the circumstances by which the phrase ''one nation under God'' became a part of the pledge in 1954. It was the will of the Congress, the will of the people, that put it there, and today it is a will, unfortunately, of a few unelected judges who seek to remove it.

The State of California is not unique in encouraging students to engage in appropriate patriotic exercise. My Commonwealth of Virginia has a statute requiring the daily recitation of the Pledge of Allegiance in every classroom. It is thoughtfully crafted. The Virginia statute provides that:

> No student shall be compelled to recite the Pledge if he, his parent or legal guardian, objects on religious, philosophical or other grounds to his participating in this exercise. Students who are thus exempt from reciting the Pledge shall remain quietly standing or sitting at their desk while others recite the Pledge. . . .

As Governor of the Commonwealth of Virginia, I was proud to have been able to sign into law a commonsense provision to develop guidelines for reciting the Pledge of Allegiance in public schools in 1996.

While we can go on about this, the point is that the pledge is a patriotic exercise. Thomas Jefferson, who authored the Statute of Religious Freedom, had no intention of allowing the Government to limit, restrict, regulate, or interfere with public religious practices. He believed, along with the other Founders, that the first amendment had been enacted only to prevent the Federal establishment of a national denomination. This patriotic pledge establishes no religious denomination.

These Ninth Circuit Court judges discredit, in my view, the judiciary. This is an example of government overreach in a very different and harmful way. It is judicial activism at its very worst. It is activism by unelected judges who, through this decision, and decisions such as this, usurp the policymaking role given to this body and to the people of the States, the rights that are guaranteed to all of us and the people in the States by the U.S. Constitution.

Let me take a moment to put this decision into context. The Ninth Circuit Court of Appeals has a long recent record of issuing decisions that are clearly out of step with most Americans—I daresay, reality—and out of the bounds of American jurisprudence.

The court has become famous—maybe I should say infamous—for several decisions. The Ninth Circuit Court is the most overturned appeals court in the country. The decisions issued by this court have been reversed by the U.S. Supreme Court more frequently and by a larger margin than any other court of appeals in the Nation. In recent years, the reversal rate has hovered around 80 percent.

In one recent session of the Supreme Court alone, an astonishing 28 out of 29 appeal decisions of the Ninth Circuit Court of Appeals were overturned—97 percent were overturned.

What is the next decision out of this Ninth Circuit Court of Appeals? Will they ban the singing of ''God Bless America'' in our schools? Will they redact our founding documents, some of which are the greatest documents in all the history of mankind and civilization? Will the Congress, the Supreme Court, and State legislatures across the land be prohibited from opening their sessions by saying the pledge because that somehow might offend the sensibilities of someone watching a legislative body open with the Pledge of Allegiance?

The fact is, this is not an argument of God or no God. It is not an argument about separation of church and state. It is not an argument of the establishment of a religious denomination. Saying the pledge is no more a religious act than is purchasing a candy bar with a coin that says ''In God We Trust.''

Let us understand the fact is this, and I think most Americans agree: The Pledge of Allegiance should remain in our schools and other public functions. As it is today, it should be a voluntary matter of personal conscience. On this issue and so many others, the Ninth Circuit Court of Appeals is out of touch and flatout wrong. This errant decision clearly points out the need to put commonsense, reasonable, well-grounded judges on the Federal bench, rather than dangerous activists who ignore the will of the people of the States, who ignore common sense, and apparently disagree with or are pitifully ignorant of the foundational principles of these United States.

This is a wake-up call, a wake-up call for those on the other side of the aisle who are holding up the confirmation of people like Miguel Estrada, while at the same time maybe signing on to Senator MURKOWSKI's resolution or maybe at the same time coming down to the floor to rail against activist decisions such as the one that came out of the Ninth Circuit last week.

I have come to this floor many times, as I know the Presiding Officer has, to advocate for Mr. Estrada. The fact is, he is qualified. He has earned the unanimous highest rating from the American Bar Association, the rating that my friends on the other side of the aisle have previously, on other nominees, described as a gold standard for judicial nominees.

Mr. Estrada embodies the modern-day American dream that we so fondly talk about. He, like many others who came to this country in recent decades, came from a Latin American country. He, like those who came to Jamestown, VA, in 1607, or in a later year, Cajuns, Irish, Scottish, German, Scandinavian, Italian, Polish, Korean, Vietnamese, Pakistani, Indian, Lebanese, Persians, or even my own mother, all came to this country to seek out a better life. He has overcome tremendous obstacles. He has worked hard. He has embraced the opportunity that became available to better himself and found a fulfilling life in this land of opportunity.

Now Miguel Estrada stands at the precipice of service on an important DC Court of Appeals. He is ready, qualified, and more than able to take the next step, and for no other reason than scoring political points his nomination is being obstructed, delayed, and denied.

Let me say very clearly, those who deny Mr. Estrada a vote by this body are doing more harm than they realize. For Miguel Estrada and every other person who believes the American dream can happen, that shining city on the hill is dimmed today because of the partisan games taking place in this body. I respectfully encourage those on the other side of the aisle to take a lesson today. Do the right thing. Work your will and constitutional responsibilities. Have the gumption to take a stand and cast your vote.

I have no problem in taking a stand in explaining why I support Miguel Estrada. For those who are opposed, have the gumption to vote no and then explain your vote rather than perpetrating this irresponsible, duplicitous filibuster, which is thwarting the will of the majority of the Senators.

Concerning both the Pledge of Allegiance and the confirmation of Miguel Estrada, the power of the dream and the promise of America is rooted in one idea: that the direction of our Nation is and will always be determined by the consent and will of the people. The consent and will of the people is not being effectuated by the irresponsibility of a few, whether they be judges on the Ninth Circuit Court of Appeals or the Senate. Senators need to exercise their responsibilities to advise and consent on nominees.

I hope and pray the U.S. Supreme Court will reverse this egregious decision to ban the Pledge of Allegiance in the Western States of our country. I also hope and pray that Senators will exercise their duty, take a stand, vote yes or no, explain it to their constituents, and the will and the consent of the majority of the people of this country will be effectuated.

I close by saying, God bless America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the procedure in the Senate, one of long standing, is that we as Senators have the right to keep what we believe is our ability to have our voices heard. In this instance we have said now for some time, if the majority wants to go forward on Miguel Estrada, we should have him come back before the Judiciary Committee, answer questions, and with him bring the memos from the Solicitor's office. They have been supplied on other occasions. It has been mentioned in the RECORD specifically how it was done.

I am not here, though, to debate the qualifications of Miguel Estrada. I am here to talk about my becoming a vocal critic of the American Bar Association rating process for judicial nominees. I have to say, frankly, I have never been a big fan of the American Bar Association. I know they do some good things. I have lost significant respect for the operation of rating judges. I do this not in any way to denigrate Miguel Estrada. My statement I make today is in no way to denigrate Miguel Estrada.

I have said before, Miguel Estrada graduated from Harvard. He could have graduated at the bottom of his class at Harvard and he still would be one of the more credible, more qualified people to go to law school. It is hard to get into Harvard. But he did not graduate at the bottom. He was one of 71 editors they had at the Law Review, and he was one of their better students. This is in no way to denigrate the academic qualifications of Miguel Estrada. It is to talk about and to criticize the American Bar Association.

What the Estrada case has done is lifted the veil on how the ratings of the American Bar Association are made, revealing partisanship that has no place in a process that should be as impartial as the judges it helps to select. My criticism goes beyond the specific Estrada case. It demonstrates that we cannot rely on the American Bar Association to give us impartial ratings.

This may surprise some, but I will say I support the Republicans' stand on what should be done with the American Bar Association as it relates to judges. I think we can and should take them out of the process. I don't think we need them. I am a convert to that.

Some asked why didn't I say I felt that way when Republicans did it initially. I didn't have enough knowledge to do that. I recognize I was wrong.

So we have this funnel for all Presidential nominees, and when we were a country of a few million people, that funnel was able to put everybody through very quickly. But the bigger the country becomes and the more judges we authorize, the more Cabinet officers, the more subcabinet people we authorize, this funnel becomes clogged.

The ABA is only one additional way of clogging that as it relates to judges. I feel we should get rid of them.

The Estrada case most starkly reveals that the ABA process is fatally flawed, that its gold seal is, indeed, tarnished. The gold seal of impartiality has been replaced by a stealth seal of partiality. In my view, the ABA rating should not be relied on until the process is fixed.

Unfortunately, as I will discuss in a moment, the ABA is defending this flawed process and its inherently flawed recommendation for Mr. Estrada. It defends both in the face of a case that very clearly violates its own conflict of interest rules.

As many of my colleagues know, the ABA delegates that review of potential nominees to one individual ABA member of the ABA committee for each circuit. In effect, one person is given responsibility to recommend to the committee this person's qualifications. That individual interviews colleagues who know the nominee, evaluates each nominee, and reports to the ABA with a recommended rating for the nominee.

The ABA has three ratings: Not qualified, qualified, and well qualified. Mr. Estrada received a well-qualified rating. The ABA Committee member who recommended Mr. Estrada for that rating was Mr. Fred Fielding. Given the sensitive nature of these recommendations, ABA rules specifically prohibit ABA committee members like Mr. Fielding from engaging in partisan activities while working for the ABA. The rules note that:

> [T]he integrity and credibility of its process and the perception of these processes are of vital importance.

The ABA rules go on to implement this important principle by providing:

> No member of the Committee shall participate in the work of the Committee if such participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee.

The rules then get even more specific:

> As a condition of appointment, each member agrees while on the Committee and for at least one year thereafter not to seek or accept [a] federal judicial appointment and agrees while on the Committee not to participate in or contribute to any federal election campaign or engage in partisan political activity. Partisan political activity means that a member, while on the Committee, agrees not to host any fund-raiser or publicly endorse a candidate for federal office. . . .

The rule concludes:

> In view of the confidence reposed in the Committee and the vital importance of the integrity and credibility of its processes, these constraints are strictly enforced.

These rules were not enforced in the case of Mr. Estrada. Mr. Fielding violated them. While on the ABA Committee, Mr. Fielding played a high-level role in President Bush's transition team. He helped the President and the White House counsel clear the President's highest level executive branch appointments in 2000 and 2001. Certainly these are far more partisan roles than hosting a fund-raiser or endorsing candidates for Federal office.

While on the ABA Committee, Mr. Fielding accepted an appointment from President Bush to an international center that settles trade dispute, a job that pays $2,000 a day plus expenses; $2,000 a day, $14,000 a week, that's a lot of money.

While on the ABA Committee, Mr. Fielding helped co-found the partisan Committee for Justice to run ads against Senators who oppose Mr. Estrada. Mr. Fielding's partisan activities, in fact, span back decades. He served as deputy counsel to President Nixon. He served on the Reagan-Bush campaign in 1980, the Thursday night group. He served on the Lawyers for Reagan advisory group, the Bush-Reagan transition in 1980–1981. He served as the conflict of interest counsel, ironically enough.

He served in the Office of Counsel to the President, as deputy counsel to President Reagan. He served on the Bush-Quayle campaign in 1988; as campaign counsel to Senator Quayle; as Republican National Conventional legal advisor; as campaign counsel to Senator Quayle; and as deputy director of the Bush-Quayle transition team. He served on the Bush-Quayle campaign in 1992; as senior legal advisor and conflict of interest counsel to the Republican National Committee. He served as the legal advisor to the Dole-Kemp campaign in 1996. Just from these statements it would appear he should understand something about conflict of interest.

The ABA couldn't have picked a Republican with better partisan credentials than Mr. Fielding. And Mr. Fielding didn't just give Mr. Estrada a well-qualified rating, every rating Mr. Fielding has handled for President Bush to the D.C. Circuit has resulted in a ''well-qualified.'' All of those ratings, in my view, should be held suspect.

By contrast, Mr. Fielding did not give any of President Clinton's nominees to the D.C. Circuit—nominees who had similar qualifications as Mr. Estrada—a well-qualified rating.

What has the ABA had to say about all of this? On Thursday, February 26, 2003, the head of the ABA, Alfred P. Carlton, Jr. sent a letter to Senators FRIST and DASCHLE. I was deeply disappointed by its content.

In that letter, the ABA declares that our criticism of Mr. Estrada's case is ''unfair'' The ABA goes on to say that we seek to:

Impugn the integrity of members of the Committee and of its process during the current Senate debate. . . .

I was also a little disappointed that Mr. Carlton failed to tell me about this letter when he met privately with me a day after the letter had been sent. I didn't ask for that meeting. He asked for it.

In that meeting, I strongly encouraged the ABA to strengthen its rules and disavow the process that led to Mr. Estrada's recommendation and possibly scores more of tainted recommendations. Mr. Carlton told me he would consider such a step.

I also encouraged Mr. Carlton to write to Senators FRIST and DASCHLE and tell them that the ABA would clean up its act. Mr. Carlton also told me he would consider sending such a letter.

He not only failed to mention that just the day before he had sent the leaders a letter, but also that the letter was a strongly worded defense of an indefensible process.

If the head of the ABA cannot be straight with me, what hope do we have for this process? The letter he sent the leaders reveals that we shouldn't have much hope.

The ABA says in the letter that we have been critical of Mr. Fielding's role based solely on the fact that he cofounded the Committee for Justice. The ABA letter implies that this fact is not problematic because the Committee for Justice was formed after Mr. Fielding made his glowing recommendation of Mr. Estrada. The letter fails to mention several things: First, that even this post-Estrada activity violates ABA's clear rules. Second, that Mr. Fielding was engaged in the Bush transition partisan activities at the time he was making his Estrada recommendation. The letter concludes that our attacks on this process are ''baseless'' . . .

If this is so, then the ABA's own rules are baseless. The ABA cannot claim that our criticism of the way Mr. Estrada's recommendations was handled is baseless when that recommendation violates the ABA's own rules. Is the ABA disavowing its own rules? Does it find them baseless?

Conflict of interest rules such as the ones that ABA has adopted are not just designed to prevent the actual exercise of a bias in a way that influences an outcome. These rules are also adopted to prevent the appearance of a conflict. Preventing the appearance of impropriety is important to assure the Senate and the American people that the process of evaluating our judges is as impartial as people expect judges to be.

Before we rely upon the judgment of the ABA in evaluating nominees for lifetime judicial appointments, the ABA should not just pledge to enforce existing rules but should strengthen those rules. They should revise them to provide that individuals so heavily steeped in partisan activities not be permitted to serve in these crucial roles at all. That is, the rules should be expanded to prevent partisans from passing judgment on judicial nominees. This shouldn't be limited merely to the time period during which the individual is serving on the ABA Committee.

It strains credulity to believe that someone who occupied partisan roles in the last several Republican administrations could be viewed as impartial in this case. If Mr. Fielding had started the committee for Justice after he left the committee would the specter of bias really be any less? Mr. Fielding moved seamlessly from passing judgment on Mr. Estrada to becoming a leading advocate for his nomination.

The fact that the advocacy followed the judgment doesn't render the judgment any less suspect. Much has also been made of the fact that the full ABA Committee endorsed Mr. Fielding's view of Mr. Estrada's qualifications. This doesn't cleanse the Fielding recommendation of its taint. Mr. Fielding is an important person, a powerful man.

Mr. President, the hour of 12:30 is nearly here. I guess he left—I saw my friend from Kansas here. I just have a couple of more minutes and it will run past 12:30. I ask unanimous consent I be allowed to finish my statement.

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

Mr. REID. It is impossible for us to know one way or another whether members of the committee felt pressure to endorse Mr. Fielding's view. It is certainly possible. And that possiblity—like Mr. Fielding's clear conflict of interest—is the problem in this case.

There are thousands of lawyers in the United States, thousands who are not steeped in partisan politics—Democrat of Republican. That is every obvious because the poorest contributors to campaigns of any group in America are lawyers. So most of them are not involved at all in politics.

We rightly cast a skeptical eye on judicial nominees who are heavily involved in partisan activities. We do that because we want those who would define the breadth and depth of our constitutional protections to be impartial and without bias.

Regardless of what side of the aisle you are on—Democrats or Republican—we should be able to agree that those who occupy the most partisan roles of either party should not be part of the ABA process.

This does not, in the words of the ABA, impugn those partisans. It is to say that the fact of those partisan activities creates a clear appearance of improperity. It is that appearance that is impossible to avoid. It is that appearance—and the doubt that it creates in the underlying process—that is the heart of all conflict of interest rules.

This issue goes well beyond the nomination of Miguel Estrada. His nomination has simply brought to light a fatally flawed process that should not be relied upon in the case of any of our nominees.

As I have said before, I now agree with the majority that the ABA should be out of the process. I hope that the ABA will rethink the staunch defense it made of its flawed process and flawed recommendations. I hope that the head of the ABA will not continue to be disingenuous when he meets with Members privately. Perhaps then the ABA would merit the trusted role that it has long held by that, in my view, it no longer deserves.

RECESS

The PRESIDING OFFICER. The hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA—Continued

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I rise to speak on a few matters of importance to us related to the nomination of Miguel Estrada, which is what we are now focused on, as well as some of the issues we should be focused on which we are not doing because the majority leader has determined we will continue to debate Estrada.

Last week, something happened in the Judiciary Committee that more of our colleagues should know about because a lot of us find this very confounding.

First, I have tremendous respect for and, indeed, consider the senior Senator from Utah my friend. I know he cares deeply about the issues and about the Senate. What we are seeing in the Judiciary Committee is going to do some significant harm—I hope not irreparable harm—not only to the Judiciary Committee but to the whole body. Up until last week, when we were moving closer and closer and closer to the edge of violating the rules the Judiciary Committee has worked upon, there were a lot of traditions on our committee. It is an important committee, a committee steeped in great legal tradition. If you look at the pictures on the wall of the various chairs of the committee, it goes long and deep.