

That is not silly. People may disagree with our position, but it is not a silly position. The Constitution's consent requirement is not just a rubberstamp requirement, as my colleague himself once observed. When a Democratic President sat in the White House, my Republican colleagues called for voluminous document presentations from his judicial nominees, and they got them.

Judge Paez, I talked to his mother, trying to get him confirmed, and we finally did. Senator HATCH knows this. I had his mother talk to Senator HATCH. He was held up for 4 years. He was asked to provide documentation of every instance during his tenure as a lower court judge where he reduced a sentence downward from Federal sentencing guidelines. I had no problem with their asking for them. Why did he do it? Was his judicial temperament, his activism, as it is called by my friend from Utah, so much that he couldn't vote to confirm? That is a right that he has.

Judge Marcia Berzon was required to provide the minutes from every single California ACLU meeting that occurred while she was a member, regardless of whether she had even attended the meeting.

At that time, Chairman HATCH stated:

[T]he Senate can and should do what it can to ascertain the jurisprudential views a nominee will bring to the bench in order to prevent the confirmation of those who are likely to be judicial activists.

That is not a "silly" thing he is doing. He has a right to do that. Senator HATCH continued:

Determining which of President Clinton's nominees will become activists is complicated and it will require the Senate to be more diligent and extensive in its questioning of nominees' jurisprudential views.

He had a right to do that. I think the Senate should be similarly diligent and probing in its review of Mr. Estrada's record. Basically, the Judiciary Committee asked him roughly 80 questions and he didn't give any answers. He gave answers such as "I have not read the briefs;" "I wasn't present during arguments;" "I have to independently research the issue." He was asked to name three cases from the last 40 years—Supreme Court cases—of which he was critical. He didn't have any.

Even Chief Justice Rehnquist, who presided in the Senate during the impeachment trial—and the Presiding Officer was one of the prosecutors—and, I thought, handled that impeachment proceeding with great solemnity—he was diligent and fair. I may not agree with all of his legal opinions, but what a nice man. I was chairman of the Democratic Policy Committee, and I called the Chief Justice and said: Come visit with us at election time; would you do that? He did that. He answered questions, was real funny, and he had a great sense of humor. So Chief Justice Rehnquist, a person I have great respect for, said:

Since most justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formu-

lated at least some tentative notions that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another.

This nominee doesn't fall under that. He also commented:

It would not merely be unusual, but extraordinary if they had not at least given opinions as to Constitutional issues in their previous legal careers.

They are asking that the man be on the second highest court in this land and he doesn't have any opinion about other opinions written by judges. I think that really says it all—why there are questions being raised.

I am going to bring in here—I was hoping to do it today. Everybody brings in visual aids to the Senate, and there have been efforts to cut the size of them, or to cut them out. Anyway, that has not been done. Let's assume we had a chart back here, a big white piece of cardboard, or posterboard, and we had here the judicial experience of Mr. Estrada. It would be blank. There would not be anything on it. We would bring out another chart and on that it would have Miguel Estrada and it would have there the questions he answered for the Judiciary Committee. It would be blank. There would be nothing on it.

Does it seem "silly" that we are asking questions about this man? I don't think so. So I would say that we have a right and an obligation to move forward the way we are.

The administration's secrecy is deeply disturbing in all these areas. It is more so in the case of Miguel Estrada. I have talked about Vice President CHENEY not giving us information about the oil companies, and this nomination is also very troubling to me. If I could file another court brief in this instance, I would. It is not available. This is a different type of proceeding.

Senators have a constitutional duty to evaluate this nominee. This nominee has stayed silent, refusing the American people a window into his views, judicial philosophy, and his manner of thinking. The administration has similarly refused to turn over documents that would illustrate those things to the Senate.

Should we approve this nomination, the Senate would be setting a dangerous precedent that would greatly narrow the scope of the important power vested in us by our Founding Fathers.

It would serve neither the Senate, the people of Nevada, nor the rest of the American people to confer such a rubber stamp on this or any administration, Republican or Democrat.

The Founders carefully balanced the powers of each branch of government, and the Senate's role in approving a President's nominee is a critical part of that balance, this separation of powers.

I submit that the examples I have provided show that this administration has forgotten, or ignored, the importance of that balance.

There is no more important a time to remind this administration of the importance of that balance than in the

case of a person who is nominated for a lifetime judicial appointment to the second highest court in our land.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

#### LEGISLATIVE SESSION

Mr. BIDEN. I ask unanimous consent that the Senate now return to legislative session.

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

#### CRISIS IN NORTH KOREA

Mr. BIDEN. Mr. President, I thank the majority leader, Senator FRIST, for accommodating my being able to speak at this moment.

I rise today, after coming from a hearing of my Foreign Relations Committee, where Secretary Powell has just testified. I note at the outset that I, for one—and I think my view is shared by many—think Secretary Powell made a compelling and irrefutable case yesterday about Saddam Hussein's possession of and continued effort to hide his weapons of mass destruction and his desire to gain more. But I am fearful—that is the wrong word—I am concerned that our understandable focus on Iraq at this moment is taking focus off of what I believe to be an equal, if not more immediate, threat to U.S. interests and those of our allies. I speak of Korea.

Last week we learned that North Korea has moved plutonium fuel rods out of storage and possibly towards a production—for everybody listening, this is complicated stuff and I will explain what I mean. They announced today they are beginning their 5 megawatt nuclear powerplant. What happens with that type of nuclear powerplant—which we, until now, had them shut down with the IAEA, when there were cameras and inspectors making sure it was shut down. What happens is they have fuel rods—as my friend knows well, fuel is a nuclear power, produces nuclear power. That spent rod—in other words, the byproduct of that process of generating electricity through nuclear power—that so-called spent rod is then taken out of that reactor and, because of the type of reactor this is, it is the byproduct of that reactor. It is a spent rod that has plutonium in it. Plutonium—and I am giving an unscientific analysis. Not that the American public could not understand it, but this is an unscientific analysis of how it works.

That spent rod is then stored somewhere because it has a radioactive half life that is longer than any of us, or our grandchildren, or great-grandchildren are going to have. What we have always worried about is they would take that spent rod and move it to a plant not far from the reactor that generates electricity, such as the lights that are on in this Chamber, and they are put in a reprocessing plant.

The reprocessing plant is another process by which that spent rod that no longer generates electricity, that has the fissile material in it, essentially