

Mr. President, the Miguel Estrada nomination was submitted by President Bush in May 2001—almost 2 years ago. We know that he has not only the support of the majority party, but he has support from a majority of the Members—more than 51 Senators—in this body. And that was demonstrated in a letter that was sent by Senator MCCONNELL and 51 other colleagues to the President, dated February 25, 2003.

Yet my colleagues on the other side of the aisle continue to practice justice delayed, which, incidentally, is increasingly being called, by the American people, justice denied, because that delay is denying the majority will of this body.

My objective, since February 5—since this nomination came to the floor of the Senate—has been to provide all of our Senators with a forum for informed deliberation, for tempered deliberation, for thorough consideration. I have been very clear from the beginning that my intention was to have a vote—an up-or-down vote—and to move this nomination to the constitutionally mandated question: Will the Senate advise and consent to this nomination—yes or no, yea or nay, up or down? That is all that we ask.

It is the majority leader's job, after consultation with the minority leader, to schedule this yea or nay vote. I have asked, on numerous occasions, for a time certain for this vote. Again and again, each of my requests has been rejected.

The nomination has been pending now for 3 weeks—or more than 3 weeks—and I do believe there has been ample time for Members to deliberate on this nominee. There is no doubt about the outcome if we are allowed to vote on it. The sheer number of signatures on that February 25 letter reflects that the confirmation would occur. Yet Democrats continue to refuse to set a time for this dispositive vote.

So, once again, I say: Let's vote. I hope that Members do come to the floor during today's proceedings to discuss this important nomination.

With respect to rollcall votes—because I know a number of our colleagues are very interested in what the plans will be for both today, tomorrow, and on Monday—I will be discussing the schedule with the Democratic assistant leader or the Democratic leader today in relation to the schedule so that very shortly we can determine when these votes will be scheduled.

The Judiciary Committee is still meeting as we speak. But I hope to have some information here within the next hour or hour and a half so we can set up votes over the next couple days.

The ACTING PRESIDENT pro tempore. The Democratic whip.

Mr. REID. Mr. President, the two leaders have met several times in the last 12 hours. That is fair. And there is progress being made as to what the majority leader is going to do next week. We will be happy to cooperate in any

way we can. We have this little dust-up here. We have to work around that.

As I indicated—the leader was not on the floor at the time yesterday—we know we have a problem with the Estrada nomination.

But we are not trying to delay. We have allowed the committees to go forward. We have tried to cooperate with the majority leader anytime he has had other legislation to bring forward. We will continue to do that. We just need to figure out some way to get through the parliamentary problem we have now with the Estrada nomination. We will continue to be advocates for our position in that regard, but we stand ready, as the majority leader has been told by Senator DASCHLE, to work with him in any way we can to help move legislation.

Mr. FRIST. Mr. President, we will continue to work aggressively. I think everybody in this body understands our goal. I appreciate the good nature. We will continue to push forward for a vote. I did have the opportunity to talk to the leader on the other side of the aisle. The Democratic leader and I discussed plans over the next several weeks. That discussion is very important. I believe we are making progress there. Again, in terms of votes, either later today or tomorrow morning, hopefully within an hour or hour and a half, we can make decisions. In all likelihood, we will be voting Monday afternoon and throughout Tuesday.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

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

The ACTING PRESIDENT pro tempore. 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 assistant legislative clerk read the nomination of Miguel Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey.

Mr. CORZINE. Mr. President, for the past several weeks, as we have heard this morning, this body has done very little beyond the debate on the nomination of Miguel Estrada. Hour upon hour, day upon day, week upon week, the debate has continued. We have heard every argument there is to make on both sides of the issue. We have heard them from just about every Senator, and we have heard them over and over. It has been pretty repetitious.

I don't mean to diminish the importance of this debate about a single, very important job. After all, it goes to the heart of the Senate's role under the constitutional system of government. The question is whether this constitutionally responsible body will be diminished to such an extent that we just become a rubberstamp for White House judicial nominations; that is, whether we will agree to automatically confirm nominees even if they refuse to answer publicly the most basic of our questions on their jurisprudential perspectives. It is hard to understand how we can give a lifetime appointment to a job without having a job interview.

This is an important debate. All of us believe that. That is why we have had 3 weeks of consideration. It is one that reaches well beyond the specifics of the individual candidate. It deserves our careful consideration. The Constitution charges the Senate with the responsibility to provide advice and consent on judicial nominations. Those of us on this side will attend to that responsibility.

Of all the issues facing our Nation at this most challenging time in our history, there are other—certainly in my view and I suspect the view of most of my colleagues—issues that are of a higher priority. It is a profound mistake on the part of the majority to insist on staying on this nomination indefinitely while Mr. Estrada and the administration, with all due respect, continue what some would term “stonewalling” while there are so many vital issues our Congress should be addressing.

THE ECONOMY

Today, I will focus in particular on the problem, along with the drastic, dramatic threat of terrorism we face daily and the prospect of war with Iraq, which we heard the President talked about last evening, that is probably uppermost in the minds of my constituents in New Jersey and, I suspect, across the country, and that is the state of our economy. It is in serious need of attention.

I have been listening to New Jerseyans from around the State, from all walks of life, all ethnic, religious, racial backgrounds, the long-term unemployed, to manual laborers, to mid-level managers, to CEOs, to retirees and soccer moms. For just about all of them, there is a tremendous sense of anxiety with respect to the state of our economy and their families' economic security. People are concerned about whether they will have a job, whether their savings will be there when they retire, whether they will be able to pay for their college educations, whether they will be able to have health care. There are serious concerns, flat-out kitchen table concerns for all Americans. I know that is the case in my home State.

An anecdotal perspective on this country's anxiousness has now been backed up by hard statistics from the conference board released this week.

Sometimes we divorce these statistics from the reality. I certainly see it in people's faces and the words, but we saw it actually monitored in a statistic released by the conference board this week. We saw consumer confidence drop from 78, almost 79 percent, of the population last month to 64 percent. That is the lowest level since October of 1993. That is probably one of the sharpest drops in history; I did not check the actual number, but far greater than post-September 11, and it is reflective of a dramatic undermining of the strength of well-being felt by most Americans.

Americans around the country are deeply concerned about our Nation's economy. They have a good reason to be. After all, since January 2001, the number of unemployed has increased by nearly 40 percent—almost 8.5 million people. About 2.5 million private sector jobs have been lost in that period, and there are now about 2.5 job seekers for every job opening in America. Think about that, 2.5 people applying for every job now available.

Not only have the number of unemployed Americans increased, those out of work are now jobless for longer periods of time. Over the past year, the average number of weeks individuals have spent unsuccessfully seeking work has increased by about a month, and 20 percent of the unemployed have been looking for work more than 6 months. There are 1 million of these long-term unemployed workers in America and almost 100,000 falling off the rolls for unemployment insurance benefits each month. Just slightly fewer than 100,000 each month are dropping off the benefits because they can't find jobs.

While there are no great and solid statistics on it, there are a lot of people dropping out of the job market. The job market is not growing, and it is one of the reasons—the statistics show the unemployment rate certainly up dramatically and skyrocketing—a lot of people have just stopped looking. The lack of jobs has also slowed wage growth. Recently, only those workers with the very highest of incomes have experienced any wage increases in the economy, any wage increases at least that have outpaced inflation. For lower wage earners, that growth has absolutely stalled to zero. That is not, obviously, helping create the demand that will drive our economy and make a real difference in people's lives.

The Bush administration's record on job creation is on track to be the worst in 58 years. In fact, to just equal what transpired during the Eisenhower administration, which currently has the worst record, you would have to create 96,000 new jobs each month starting today and continuing each month for the remainder of this President's term; 96,000 is a lot of jobs to create, particularly when we have been losing jobs at a rate almost that fast each month.

It is extraordinary what we have to do to turn the economy around. With-

out a significant increase in job creation, we will have the worst 4-year record in the history of any President.

Unfortunately, there is little evidence to suggest that it will turn around. For instance, according to the employment outlook survey conducted by Manpower, Inc., which came out this week, which is the private sector's best gauge of what is going on in the employment market, only 22 percent of America's employers are going to increase the number of jobs in the upcoming two quarters. The rest of them are either going to reduce jobs or stay the same.

Mr. President, 22 percent is a very low number by any historical measure. I don't understand why we are debating one job on the floor of the Senate when we are failing to address the fundamental needs and requirements for all American families, their jobs, and their well-being.

Of course, the problems with the economy are much deeper than just reflected in what is probably the most important place—the job market. But there is a lack of confidence in a whole host of sectors in the American economy. Our businesses are now operating at only about 75 percent of capacity. That is well below any of the averages we have had historically, which is about 81 percent. Our States are suffering with some of the most severe fiscal crises they faced in decades, forcing Governors and State legislators to approve steep tax increases. In my State, the average increase in property taxes was 7.1 percent. New York City increased property taxes 18.5 percent, and they are trying to put a commuter tax on so everybody who surrounds the city is helping to bail it out with lots of legitimate needs on homeland defense and first responders. We are putting unbelievable pressure on those individuals who are responsible for State and local governments.

In the upcoming fiscal year, estimates of the total State deficits are roughly \$90 billion cumulatively. And we are talking about a \$36 billion tax cut to be administered this year. That is way overblown by what is happening at our State and local levels.

Briefly, I will mention that investors are in a state of shock. The stock market has declined dramatically in the last 2 years and couple of months, losing almost \$5 trillion in value in that period of time. Those are unbelievable numbers, but when you translate that into 401(k)s and IRAs of individuals—at least in my State—I think that is about a 40 percent decline in value, on average. It is a huge loss of the retirement security that many families have seen happen in their financial well-being. When the President's program was announced in early January, actually the Dow Jones Industrial Average was supposed to be benefited by that program, but it dropped by over 10 percent.

Our Federal budget, which 2 years ago was projected to enjoy a 10-year

surplus at \$5.6 trillion, now looks at record deficits for absolutely years to come—as far as the eye can see, some would say—and will be increasing the public debt over the same horizon as we projected that \$5.6 billion surplus to \$2 trillion worth of public debt. That is a fiscal reversal in this country of \$8 trillion. It is an \$8 trillion negative cash swing in the country's cashflow.

I don't want to tell you what I would do if I were back running a company and we had an \$8 trillion negative cashflow, but it would probably be grounds for change in policies and programs—maybe even a change in CEOs.

When you add all these concerns together, it is clear that the economic record of the Bush administration is bordering on abject failure. Now the administration's response to the problem is, let's do more of the same. Having based its economic policy on large tax breaks for the most fortunate among us, the President's response to that failed policy is let's stay the course, let's have more tax breaks targeted for those with the highest income, and let's run larger budget deficits and increase our national debt even more, and let's reduce national savings—which is the way we create growth in this country—even more.

Whatever happened to the simple view that I think there has been a bipartisan sense of, which is that rising tides lift all boats? Are we not thinking about the economy in its totality? Why don't we have everybody participating? I don't understand why we are sticking with policies that look to be not serving the country well.

As I have suggested, there used to be a business leader who said, "If it's broke, fix it." It is really nothing more than common sense. If things are not working, I think you have to adjust policies; you have to think about doing something differently if you are stuck in a rut. This administration is doing just the reverse. It has dug itself into a hole, and its response is to dig deeper. If we don't challenge these policies, the long-term implications could reduce our Nation's standard of living not just in the near term but for decades to come.

At a time when we are challenged with domestic security and international security, when we are asking for sacrifice from our men and women in uniform, for all of the country to understand we have serious challenges to our national security, why we are not understanding that this is a time for us to pull together and have shared sacrifice is hard for me to understand.

Frankly, if one projects the cost of the President's tax cut package beyond 10 years—if you put that structure in place while the demographic bubble of the baby boomers comes into play, frankly—I don't care about dynamic scoring—we will end up running, by almost all objective analyses, catastrophic deficits, as Chairman Alan Greenspan testified just this morning at a House hearing on aging. It will be

a real challenge to be able to maintain Social Security and Medicare at anything similar to today's programs for the future seniors of America.

We are putting those programs at risk, we are putting our fiscal position at risk, if we stay the course with the policies we have today. Considering all these facts, unfortunately, it is difficult for the administration to provide effective leadership, in my view, on the economy because its credibility has been badly eroded. There is a tremendous credibility gap, and it results from the repeated use of figures and claims that are just badly misleading in many ways. As a matter of fact, starting to come out are regular analyses by economists, people in the press, and I think one needs to honestly look at and challenge what some of these predictions and analyses point to and compare them with the facts.

Let me provide a few examples. The President's rhetoric would lead one to believe that his tax plan will provide a meaningful economic stimulus, get jobs growing, and it is all about jobs. When you dig into the numbers, it turns out that the reality is very different. In fact, only \$36 billion of the President's planned \$675 billion on the table would kick in this year—\$36 billion in a \$10 trillion economy. It is just an absolute drop in the bucket relative to what would be needed to actually drive this economy forward, by anybody's measure, any objective measure of what it takes to get an economy moving.

There is virtually no one in Congress I have been able to find who would argue that this is a program that will stimulate or revitalize this economy, nor does it make sense to argue that the President's dividend exclusion somehow is going to stimulate the economy, when its real effect will be to shift cash off the corporate balance sheet. If corporations are going to invest in jobs and research and development, and if they are going to put money to work in building, plant, and equipment, they need cash. You cannot go to a bank unless you have margin to put down. You need to invest in those things to drive our economy.

By definition, dividend exclusion is going to take money off the balance sheets of companies, and the capacity to invest and retain and create jobs is going to be diminished. That is why there is this argument about whether, if you are going to have a dividend exclusion, you ought to at least do it at the corporate side of the income statement as opposed to through an exclusion.

We have heard that from Chairman Greenspan. We see that from almost any reasonable economic analysis. Cash on the balance sheets is how you get business done, as far as investment and creating jobs. It is almost a truism. Instead of driving economic growth, it is actually antigrowth, and I think we will end up with less economic stimulus by the nature of the

structure, even if we thought it was an appropriate time for that reform on something other than a revenue-neutral basis. In other words, the President's claims about the stimulative impact of his proposal, in my view, and I think a vast majority of independent analysts, is little more than rhetoric. The reality is quite different.

There are other elements with which people can deal with regard to the credibility of the proposals of the administration claiming benefits of this tax cut are going to go—I think this is the quote—'92 million Americans receive an average tax cut of \$1,083.' That is the claim.

As we are hearing over and over, that is pretty misleading because the average tax cut is inflated by the huge breaks going to a very narrow set of folks, while a lot of other people are getting very small tax cuts. In fact, a half of all taxpayers would get a tax cut not of \$1,083, but less than \$100. This is a difference between mean and average, and 78 percent of Americans would get reductions of less than \$1,000.

When I went to business school, our required reading included the book "How to Lie with Statistics." There are some spinmeisters who must have reviewed this work and learned it well, as far as I can tell. I am sure Americans understand how averages are put together, and they can cover great sins.

Similarly, the White House likes to claim the amount of income tax paid by high-income Americans would actually rise under this proposal. We hear this under the arguments of class warfare. When you consider the real measure of who benefits in terms of increases in something that is simple for people to understand, aftertax take-home pay—the stuff people can actually buy groceries with or pay the bills with—it turns out that—no surprise—it is the most fortunate who do best under the Bush plan.

The tax reduction for those making \$45,000 would amount to less than 1 percent of their aftertax take-home pay. Those making more than \$525,000 would see an increase of more than three times that rate, and in real dollars those are substantial numbers. But with the aftertax, what people can actually use in their everyday lives, the opposite is being promoted from what the reality is. Again, there is a credibility gap.

I also argue the credibility gap applies to the administration's claims that their plan will help seniors. In fact, over half of all dividends paid to the elderly go to seniors with incomes over \$100,000. I think it is great they planned and saved, but the number of seniors out of the roughly 40 million seniors who have incomes over \$100,000 is about 3.5 million. That is where over half of this dividend exclusion benefit would go. By the way, only about a quarter of all seniors would receive any benefit.

To say this is going to somehow vastly improve the position of seniors in

America is just a gross overstatement. I wish to revert back to comments I made earlier. The vast majority of seniors depend on Social Security and Medicare as the basis for protecting their economic security and their well-being over a period of time, and we are doing just the opposite of what is necessary to protect Social Security and Medicare in the future years. It is depressing. That is what Chairman Greenspan talked about an hour ago in a hearing of the House Committee on Aging: the risks to Social Security and Medicare if we do not change our economic policies and do something to straighten out our fiscal policies in this country.

Let's consider the administration's claims about how cutting taxes on dividends will benefit millions of Americans. The truth is, only 22 percent of those with incomes under \$100,000—this is the vast majority of income-tax-paying Americans—reported any dividends in the year 2000, and the average tax cut from the dividend exclusion for those with modest incomes of between \$30,000 and \$40,000—by the way, the average income for individuals in America is something close to \$40,000—those people are going to get a \$29 tax cut associated with this dividend exclusion.

There is a real credibility gap. We are exaggerating and distorting the claims about the power of this tax cut. We are talking in terms that really do not relate to the vast majority of Americans. I think the word is starting to get out. There are serious questions in the minds of Americans that at a time when we have the potential for war offshore, and we certainly have threats of terrorism at home, why are we focusing so much of our benefits of what we are doing with regard to tax proposals on such a narrow segment when the broad economy, that rising tide that would help everyone, is suffering and there is no stimulus going to it?

This is not the only area, by the way, where some of these claims, relative to reality, are setting up a real pattern of a credibility gap for the administration. The Secretary of Defense, on a number of occasions, argued the cost of war in Iraq might be \$50 billion to \$60 billion, something in that neighborhood. But when the President's top economic adviser last December—maybe it was in November—to his credit suggested this figure was far too low and the actual cost could be as high as \$200 billion, what happened? He got fired.

The dissidence between what is talked about in the public relative to what the analysis is by a lot of people who are trying to look at this in a serious-minded way so we understand what our needs are as a nation is troubling to a lot of folks and accentuates this credibility gap.

It is time for the administration to be more forthcoming about the real costs of the impending war. The American people have a right to know. I am glad this week we started to see a little

of that discussion, but even in that context, we need to consider the ongoing costs of rebuilding Iraq in the aftermath of a war, presuming that war goes the way we expect, presuming that it is relatively short in nature.

Even yesterday's estimate of \$60 billion to \$95 billion that we read about in the papers included only 1 year of reconstruction costs—1 year—when almost every expert I have heard come before the Foreign Relations Committee has talked about a decade, maybe a little bit more, but a very long-term program. By the way, all we have to do is think about Korea. We are still in Korea 53 years after a war on that peninsula.

The administration should play it straight with everyone about the costs we are going to face, just as we ought to play it straight with regard to our budget, with regard to tax cuts. In my view, we need to talk straight so we can build up the trust of the American people and those who watch us around the world. Trust does matter. It is important. That is what we are asking corporate America to do, to clean up its act. That is why we want accounting statements that are true. I think people expect to truly understand what the nature of the current situation is as we go forward.

Actually there is a serious credibility problem that is causing us problems abroad as well. I think whether or not we are believed by some of the populations abroad is reflected in how much opposition we have seen from a lot of countries, not just in their political establishment but by literally millions of people who have shown up, probably most clearly in Great Britain, which has been our strongest supporter with regard to the Iraqi situation. The population is someplace else. Why is it we are not able to make our case clear?

I think part of this comes from credibility in how we frame these issues, how the information has been brought forward. All one has to do is look at what is going on in the economy to bring about some credibility questions, when we get on to some of these issues of national security.

In this context, let me return to the issue of the nomination of Miguel Estrada. As with many of the claims about the Bush budget, too many of the claims from the other side on this issue simply lack credibility. One of those—probably the most irritating—is the claim that somehow those who oppose the Estrada nomination, or at least would like to have information to prepare ourselves for a vote, are somehow anti-Hispanic.

Does that suggest that groups such as the Congressional Hispanic Caucus, the National Association of Latino Elected and Appointed Officials, the Mexican American Legal Defense and Education Fund, the National Puerto Rican Coalition are anti-Hispanic? I do not get it.

We are making a judgment about how the constitutional process is sup-

posed to work, not talking about whether or not someone is qualified or disqualified because of ethnic background. As far as I am concerned, these kinds of demagogic attacks on Hispanic groups and those who show common cause with them lack credibility. The facts do not meet the circumstance, and they are part of an attempt to intimidate opponents of Mr. Estrada's nomination to stay silent in fulfilling our rightful and responsible position of advice and consent in selecting judges for lifetime appointments to the courts of our country.

It is not going to work, and one reason it is not going to work is the American people expect us to do our job—it is very simple—just as they expect us to pay attention to the economy and do those things that will get us flat off our back and get the economy moving. These things really are common sense, in my view. We are spending weeks upon weeks debating whether one individual is appropriate for a job because many of us do not understand what his views are, and he is unwilling to answer questions, unwilling to have a job interview, and we are forgetting about the 2½ million private sector jobs that we have lost and the 8 million-plus people who are searching for a job. One job versus 8 million.

I have a very hard time understanding where those priorities come out. What is more important to the American people?

A couple of days ago, I asked the distinguished Democratic leader about some conversations he had with the Governors who have been around town from both sides of the aisle. We have all met with them. We have sympathized with some of their needs. I asked if one single Governor lobbied the leader about the Estrada nomination, either to move it on or take it off, or what is happening. Not a single one spoke to the distinguished leader about that nomination.

It should not surprise anyone that our Nation's Governors are more concerned about the economy and the terrible fiscal crisis they face, and here we are talking about this one individual who has been nominated for this one seat on the Court of Appeals for the District of Columbia.

I know from my conversations with people in New Jersey that they feel the same way, and I am sure Americans across America agree. Why is the Senate spending all this time worrying about this one job—I do not get it—while we ignore the millions of Americans who have lost their jobs? We see the consumer confidence falling off the charts. We see our stock market reeling. We see the dollar declining. We are not paying attention to the real things that people are concerned about that make a difference to their lives, their kids' lives, their families' lives. This Estrada nomination is not the priority of the American people, and I do not think it is the priority of my Democratic colleagues.

In a moment, I am going to make a unanimous consent request that we at long last make the economy our top priority. I am going to ask that at least for now we move off the Estrada nomination, as we have done for other concerns—we have passed the omnibus appropriations bill. We were able to take up the child pornography issue this week. We ought to focus on our economy.

The bill for which I will ask unanimous consent was proposed by the distinguished Democratic leader. It includes, among other things, middle-class tax cuts, aid to the States, an expansion of benefits for unemployed Americans, those 100,000 people a week who are dropping off the unemployment rolls right now, and establish rules to restore long-term fiscal discipline and health in our economy.

I recognize my colleagues on the other side of the aisle are not likely to agree to this proposal, but as Democrats continue to emphasize the importance of dealing with our economy, I hope someone on the other side will begin to question the decision to spend days upon days and weeks upon weeks on the nomination of this one individual. I hope they will come to appreciate that there is little time to waste when it comes to boosting our economy and taking care of America's families and getting on to the priority of creating jobs for Americans. I hope they will adapt their priorities, the priorities of the Senate, to those of the American people, which is jobs and economic security.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the pending nomination be set aside and that the Senate take up and begin debate on Calendar No. 21, S. 414, a bill to provide an immediate stimulus to our Nation's economy.

The ACTING PRESIDENT pro tempore. Is there objection?

The Senator from Nevada.

Mr. ENSIGN. Reserving the right to object, the way to resolve the nomination is to schedule an up-or-down vote.

I object.

The ACTING PRESIDENT pro tempore. The objection is heard.

The Senator from New Jersey has the floor.

Mr. CORZINE. With full expectation and understanding of the position, I am disappointed with the objection that has been raised, but I am not surprised. We have a critical need to get focused on our economy in this country. The needs of the American people are not being addressed. It is not because we are having this debate. We could move off this debate and move to the economy today, then come back to it like we did with regard to the omnibus appropriations.

The American people should know there are proposals on the table that would stimulate this economy and get it moving, instead of seeing unemployment rates skyrocket, instead of seeing deficits as far as the eye can see being

put in place, with no attention being drawn to them, without dealing with the core things that matter in families' lives, in real people's lives. We could do that and still come back to this and have a full constitutional and responsible debate about what is needed to review a candidate and get on with the real needs facing our country.

I find it very difficult to understand where we are with regard to a lot of these priorities at this point in time, and I hope we will see the light before we have to go further with more of these serious problems that our American families face with their economic security.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ENSIGN. Mr. President, it is my pleasure today to come before the Senate to lend my support to a man of tremendous character and extraordinary legal credentials, Mr. Miguel Estrada. We have heard a lot about this nominee. We have heard a lot about why we should be focusing, why we shouldn't. As I discussed before, I would like to see us get on to things like the economy, like the budget. The simplest way to do that is to have an up-or-down vote on Miguel Estrada.

I will share a few facts about Mr. Estrada and the importance of the nomination to our legal system. Mr. Estrada is an American success story. He came to this country at the age of 17 as an immigrant from Honduras, speaking very little English. He overcame amazing obstacles to rise to the top of the legal profession. After graduating magna cum laude from Harvard Law School, Miguel became a law clerk to the Supreme Court Justice Anthony Kennedy. Since that time, he served as a Federal prosecutor in New York and Assistant Solicitor General of the United States for 1 year in the Bush Administration and 4 years in the Clinton administration. He was handed nothing, and his achievements are the product of hard work, perseverance, and a commitment to education. He is actually living the American dream.

Among other accomplishments, Mr. Estrada has argued 15 cases before the Supreme Court of the United States, including one case in which he represented a death row inmate pro bono. The American Bar Association unanimously rated Mr. Estrada as well qualified for the DC Circuit. This is the ABA's highest possible rating, and the rating typically used as the gold standard for judicial nominees in the Senate Judiciary Committee, especially on the Democrat side.

Mr. Estrada served as a member of the Solicitor General's Office in both

the Bush and Clinton administrations. He is enthusiastically supported by both President Bush and President Clinton. The long list of Hispanic groups backing Miguel Estrada's nomination includes the League of United Latin American Citizens, the U.S. Hispanic Chamber of Commerce, the Latino Coalition, the Hispanic Bar Association, and the National Association of Small Disadvantaged Businesses.

Sadly, Mr. Estrada's extraordinary accomplishments and his desire to serve our country have not been enough to protect him from the baseless, vicious, and partisan attacks he has endured through this process. Now is not the time to play partisan games with the United States judicial system. America is facing a judicial vacancy crisis in our Federal courts. The U.S. Courts of Appeals are currently 15 percent vacant, with 25 vacancies out of 167 authorized seats. The DC court, which is the court we are trying to get Miguel Estrada onto, has four vacancies on a 12-judge court.

Adding to this crisis, caseloads in the Federal courts continue to grow dramatically. Filings in the Federal appeals court reached an all-time high last year. The Chief Justice recently warned that the current number of vacancies, combined with the rising caseloads, threatens the proper functioning of the Federal courts. He has asked the Senate to provide every nominee with a prompt up-or-down vote.

Chief Rehnquist is right. Every judicial nominee deserves a prompt hearing and a chance at an up-or-down vote on the Senate floor. This nominee is not being assessed by the traditional standards of quality or by his ability to follow the law as a judge. There is no question that this nomination is being delayed and possibly blocked because of a distorted analysis of his qualifications, policies, and personal views. My colleagues on the other side of the aisle are blocking this nomination simply because he is President Bush's nominee. This is a detriment to the integrity of this body. It is unfair to the nominee. And it is unfair to the American people.

I am asking my colleagues in the Senate today to do what we were elected to do, to allow this body to work its will, and to give Mr. Estrada the up-or-down vote he deserves. I add that the precedent we are setting, this 60-vote threshold for circuit court nominees, is a dangerous precedent. Right now the Republicans are in the majority and we have the Presidency. At some point the Democrats are going to be back in the majority. At some point the Democrats are going to hold the Presidency again. Paybacks are very ugly. But make no mistake about it, with the precedent being set here, unless this can be worked out, those paybacks will come back to haunt the other side of the aisle.

It is vitally important we work this out for the health of the judiciary in this country. It should not become a

political tool to be bandied about just because somebody thinks that somebody may have a particular ideology.

We realize that having a Republican Hispanic on the DC Circuit Court of Appeals is something the other side does not like.

But just because they don't like the politics of that does not mean that they should object to him getting on the court. He deserves this. He is qualified for it. He has the integrity to carry it out. And we, as a body, should give this man an up-or-down vote. If we give him an up-or-down vote he will be confirmed by the Senate.

I believe it is our constitutional duty to give him an up-or-down vote. He has had all the hearings he needs to have. We have been doing this for almost 2 years now. We need to give this well-qualified candidate the vote he deserves.

I want to raise a couple of points. The Senator from New Jersey was talking about the economy. He says we have to get on the economy. I agree, we need to take care of the economy. I have some proposals. The President has some proposals. There are going to be other Senators who will have proposals to try to stimulate the economy. The Senator from New Jersey indicated he doesn't think what the President is doing is going to have enough of an impact. I have a proposal that actually, the first year alone, according to the Joint Tax Committee, will bring \$135 billion worth of investment into this country. I hope the other side of the aisle is going to join us in that. That is significant even in the size economy that we have.

What the President has laid out as part of his plan—I don't agree with all of it, but there are some good things in it. He has laid out a plan, not only for this year but for solid growth and, in future years, to have good, solid, long-term fiscal policy and long-term growth.

I agree with some of the things the other side of the aisle is talking about with respect to budget deficits. We do have a problem in the outyears with budget deficits. But if we do not fix the economy, we know we will never fix the deficits. We will continue to go further and further into debt. That is why it is critical for us to fix the economy, so we produce more tax revenues so we don't have these huge deficits and threats to Medicare and threats to Social Security and threats to our defense spending in the future.

We have proven here in Washington, DC, we can't cut spending. We can maybe slow down the rate of growth sometimes, but we can't cut spending. As Ronald Reagan talked about—I don't remember the exact quote, but as he said in the early 1980s: The best way to eternal life is to become a Federal agency or department in Washington. He said that because he realized once a program starts, it develops a constituency and it is impossible to cut it. So I believe if the other side is concerned

about the deficit, they should join some of us on this side of the aisle and start cutting out some of the waste and overspending in certain parts of our Government.

Having said that, let me conclude by saying let's have an up-or-down vote on Miguel Estrada so we can get on to some of the other important issues. Make no mistake about it, though; the judiciary and this part of what we do is a very important part of our role as Senators in fulfilling our obligation, our oath of obligation to defend and support the Constitution. We can get on to other things. The budget was not enacted last year. For the first time since 1974 we did not have a budget. Because of that, we ended up with some serious problems last year. The appropriations bills didn't get finished until just a couple of weeks ago.

We are asking the other side to not continue to obstruct the will and the work of this body, to join us, have an up-or-down vote, let the Senate work its will on this nomination so we can get on to other important business of the country. We have a lot of things to do. Let's join together. Let's work across the aisle. Let's join hands. There are a lot of good things we can do for the American people.

I yield the floor.

THE PRESIDING OFFICER (Mr. BUNNING). The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise to express my great dismay at the policy of the President of the United States that he seems to be attempting to impose on the Senate, which would require each and every one of us in this body to betray the Constitution, to betray our oath of office, and to ignore the constitutional mandate that we give meaningful advice and consent on judicial nominees coming before this body.

I will never betray the Constitution and my oath. I don't care whether we have to be here night after night. I am not going to go down that road. I speak as a Senator who has voted in favor of somewhere in the range of 100 judicial nominees that President Bush has sent to this body, virtually all conservative Republicans. I wish it were different. I wish there were more progressive judges before us. But I understand the President's prerogative, and I respect his right to nominate whomever he may wish.

But this nomination before us is unprecedented. It is not only a matter of Mr. Estrada, it is a matter of the sanctity of our Constitution. It goes to the very oath of office we have taken. It would make a travesty of this body and of the Constitution for us to do otherwise than to object to the manner in which this particular nominee has been presented to the Senate.

The other nominees who have come before this body—for whom I have voted over and over again, somewhere in the range of 100 already—we at least knew what was their legal philosophy. They tended to be conservative Repub-

licans and that is the President's prerogative and I voted for them, but they had either been Federal judges or State judges, allowing us to look at their rulings in the past, or they had been legal scholars with a significant body of work that allowed us to view what the inner workings of their minds were and allowed us to determine whether they were, in fact, within the mainstream of American jurisprudential thought. This nominee stands unique. The precedent would be catastrophic to our Republic if we start, for the first time ever, to approve secret judges, stealth judges, judges who have no record and who will disclose no record to the Senate.

We have no way of knowing what this individual's legal philosophy might be. We have reason to believe he is undoubtedly a capable lawyer, in terms of his technical skills as a Solicitor, but we have no idea where he stands otherwise. The question is not whether we will have Hispanic Republican judges on the District of Columbia Court of Appeals. That is irrelevant. I voted repeatedly, as have my colleagues on my side of the aisle, for Hispanic judges and other high officials in our Government. I am proud to have played a role in supporting our Hispanic colleagues in issue after issue, and position after position. But this, this is a sham. This is a travesty. I believe any Senator who thinks seriously about his oath and reads the Constitution, the obligation—not the right but the obligation of the Senate to provide advice and consent on these offices is a profoundly important role.

It is one thing to approve or not approve Cabinet appointees and other advisers to the President; they come and they go. It is a serious matter, but at least there is not a lifelong appointment involved. In this case, we have a lifetime appointment to the second highest court in the land. What is worse, if we submit to this failure to abide by our constitutional obligations to make a meaningful decision about advice and consent, we will have opened the floodgate because it will become apparent to this President that the strategy to use from here on out is to continue to find individuals who have no track record, who may have a secret ideological agenda, and to send them one after another through the Senate to be rubberstamped by this institution. That is not acceptable. This is a matter of enormous importance.

These individuals, and this particular individual about whom we are debating today, if confirmed, will likely serve on this bench for the rest of our lifetimes, for many of us in this body. President Bush may come and he may go, but these appointments will last a lifetime.

So it is with enormous concern that I rise to express my opposition to this strategy because that is what this is about. It is about a strategy. It is not about whether a Hispanic Republican should be on the bench. It is not about whether a conservative should be on

the bench, so long as they fall within the mainstream of American jurisprudential thought. The question is, Should this Senate be allowed any idea about this individual's ideology, about his legal philosophy? There we know nothing. We would be surrendering our constitutional prerogatives and our constitutional obligations were we to respond any other way than we have attempted to do on this side. Obviously, we can move on to other agenda items, whether it be stimulating the economy, education, health care, or what have you. All that is required is for leadership of our colleagues on the other side of the aisle in support of the President to either withdraw this nominee or to have him respond to reasonable questions about his philosophy. There is no effort here to require this individual to answer questions that have not been put to other judges. The question is not his response to specific items before the Court. It would be inappropriate to ask those kinds of questions. But this is astonishing. This is stonewalling. That is what this is. It is unacceptable.

Again, over 100 judges that President Bush has nominated have been confirmed by this body, and most have gone through with my support. Most of them were conservative Republican judges. That is fine. But this is different. I hope the American public understands the profound consequences that would flow from our surrendering of our constitutional obligation to at least make meaningful decisions about whether to confirm a particular nominee.

THE BUDGET

Mr. President, I also want to express my great frustration and my great sadness in many ways over priorities that President Bush has recently exhibited relative to our young men and women in uniform and the likely war we are about to embark upon.

Americans all across this country, including my wife and myself, are about to send our finest young men and young women into harm's way in the Iraq region. We can debate the wisdom of that. But that is the reality. I think we all see this coming. We can take great pride in these men and women in uniform, the courage they show, and their commitment to America. They are asking for so little and, yet, they are willing to do whatever is required of our American military. They are the greatest military ever fielded in terms of the sophistication of technology they deal with and the requirements they meet.

But while we put this military together and send them on their way with flags flying and salutes and the prayers of all of us, the President simultaneously has recommended now in his 2004 budget recommendation that we cut impact aid education funding for the children of these very troops who we are sending into war. Is it because we can't afford to finance quality

education of the children of our military? No. President Bush also, as we recall, has called for over \$100 billion of tax cuts for primarily the very wealthiest of Americans—primarily on Wall Street. So rather than asking America's wealthiest families to sacrifice at a time of war, the request seems to be of the middle class and the working family, send your sons and daughters into combat, and we will ask America's wealthiest no sacrifice whatever. In fact, we will cut their taxes and we will come back to these families who are sending their sons and daughters into combat and tell them we can't afford to educate your kids while you are gone. And these spouses remain. The Guard and Reserve and active-duty spouses in South Dakota and across every State in our land are worried to death about the prospects of their loved ones, but proud, and upholding America's ideals as they go into heaven knows what kind of combat circumstance they will face with weapons of mass destruction arrayed against them. We hope whatever combat occurs will be swift and decisive and conclude positively for us. But obviously we all know there is great risk for everyone's sons and daughters who go into circumstances such as this.

Is asking too much of President Bush to at least not cut the education funding for the children who are left behind? Is that asking too much? It says a lot about the priorities of this administration, that we would array the world's finest military on the one hand, provide tax relief for the world's wealthiest people on the other hand, and simultaneously beg poverty when it comes to the schools for the children of our military personnel. Shame on the President. Shame on the President for these kinds of priorities. America deserves better. Our fighting men and women deserve better than this. Fiscal responsibility is not the issue. Priority is the issue.

Then when our military personnel come home again, what do they find but the Veterans Administration underfunded yet again. The administration is asking for higher copayments, higher deductibles, and denies hundreds of thousands of our veterans access to VA health care they were promised. What kind of signal does that send? How are you going to continue to attract the very best of America's young men and women to wear our Nation's uniform when they find that while we do that and pat them on their back and salute them and send them onto combat—4 years, 5 years—at the same time we are not going to take care of their kids. When they come home, we are not going to take care of their health care obligations as we promised we would.

It is long overdue that some of these priorities be met off the top of the barrel, rather than the bottom of the barrel and the crumbs that are left over half doing other things.

I don't know how we can expect in the day and age of a voluntary military

to continue to attract the best and the brightest of our young people who deal with the sophisticated kinds of technology they are requested to do now, if they know simultaneously—and they increasingly do—that once they leave home and once they come back, they will in too many cases be treated shabbily by our government, which is too busy stuffing its pockets with cash rather than meeting its obligations to those who are laying their lives literally on the line for America's freedom and American values.

As a member of the Senate Budget Committee, today I also expressed alarm at recent news reports of still larger than expected Federal budget deficits, after an unprecedented 4 years in a row of budget surpluses during the final 4 years of the past Clinton administration—the years in which we were in the black. We were paying down on the accumulated national debt. We were not borrowing from the Social Security trust fund. We now find the bipartisan Congressional Budget Office telling us this red ink will be an astonishing \$199 billion. As recently as 2001, we had a surplus of \$127 billion.

Mr. President, in 2001—2 years ago—we had a surplus of \$127 billion, which followed 3 preceding surplus years in the black. That was responsible budgeting. Some experts now are saying that the 2004 deficit is going to break all records, at over \$350 billion, if war expenses and the cost of the Bush tax policies are assumed.

The budget surplus, the paying down of the national debt, and the preservation of the Social Security trust funds—which was what we all had when this administration commenced—have all gone away. The days of not borrowing from the Social Security trust fund are over. We are back. And we are told by the White House budget people at OMB that we will continue to borrow under the President's budget and tax plans out of the Social Security trust fund for the remainder of the decade.

The paying down of the national debt has gone away. The ability to avoid continued high debt service so we can redirect those dollars, instead, to education, to health care, to our veterans, to our military, whatever it might be, has all gone away, because we are going to increasingly pay debt service under the President's budget plan.

The CBO indicates that our Nation will not see a budget surplus again until 2007, and then only if there are no war expenses, no additional tax cuts, and no Medicare prescription drug legislation. We all know that is not going to happen. We are going to have war expenses. We do not know what they will be. We will pay whatever it takes to make sure our men and women in uniform are supported. Whatever the cost is, we will pay it. But the war and the follow-on occupation is likely to cost at least \$100 billion.

We know the President has tax cut after tax cut lined up primarily for his

wealthiest contributors. And then we know, as well, that we need to move on to prescription drug legislation that is long overdue. We are the only major democratic society in the world that does not have some kind of prescription drug or national health care strategy.

So what we find here is President Bush's proposal to borrow yet another \$1 trillion. Now we are not even talking "B," we are talking the "T" word. Mr. President, \$1 trillion over the coming decade in order to finance Wall Street tax breaks has to be approached with great caution. This seems, to me, to be part of an agenda designed to make it impossible to have strong Federal funding for education, veterans, agriculture, and seniors for generations to come.

This overall strategy strikes me as one that we saw a glimmer of in the 1980s; and that is, a strategy designed to primarily break the Federal Government, to deny all resources. Because when our friends in the far political right try to advance the cause of eliminating Medicare, downsizing Social Security, downsizing or eliminating veterans health care, withdrawing from supporting our schools, getting out of the afterschool and daycare programs, getting away from rural electricity and rural development programs—when they try to do that, they are always met with resistance from the American people, Democrats and Republicans alike.

They have never been able to win that war because Americans want that kind of partnership—that constructive partnership—between Washington and our communities and our States. So in a very cynical tactic, what has been discovered here is that while they cannot win the war on the merits of eliminating that partnership, they can try to break the Government, to deny it the revenue it needs, so that they can come to the American public and say: Well, we would love to support those afterschool programs, we would love to have more police on the beat, we would love to help our fire departments, and we would love to make sure all our young people could afford to go to college or technical programs, but, oh, we are broke; we don't have the money.

That is apparently how some people hope this debate will conclude. They cannot win on the merits of the policy, but what they can try to do is come up with a tax policy that enriches the wealthiest contributors while simultaneously making it increasingly impossible for this Federal Government to live up to its obligations to its people and to build a stronger society, offering more opportunity for every young American—Black, Hispanic, Native American, Caucasian, whoever they might be.

I feel great frustration. I hope the American public understands what really is going on here relative to the President's budget-and-tax agenda. It is a radical agenda. If you don't believe

it is a radical agenda, look at what this President is willing to do, even to the children of our men and women in uniform. It is appalling.

Look at what the President is willing to do to try to stack the court, possibly with ideologues, far outside the mainstream of American jurisprudential thought, to bend the Constitution, to break the Constitution, by bringing nominees to this body who will not share with us their judicial thoughts, who have no scholarly writings, who have no past judicial decisions to look to. They are stealth judges, secret judges.

We cannot allow that to stand. We cannot allow that to happen in our Nation. Our country has been a beacon of democracy, a beacon of openness, a beacon of opportunity. We cannot walk away from that. The Constitution has been the bulwark of making sure that those remain our ideals. For this body to walk away, and to allow for a rubberstamp process to go on, that any individual can come before the Senate Judiciary Committee and the full Senate without the Senate or the committee having any idea who he is or what his agenda really is would be a travesty. It is completely unacceptable.

So, again, I have been proud to work in a bipartisan manner on the confirmation of roughly 100 judges—virtually all conservative Republican judges. But I draw the line here. This is unprecedented, and the constitutional ramifications of what would occur and what precedent would be set would be devastating to this Nation. It would make a mockery of our oath, a mockery of the Constitution, for this body to do anything other than to insist that this nominee share with the body his philosophy relative to legal issues, his jurisprudence.

So I hope we can soon either get to the bottom of who this individual is or move on to other issues that are pressing before our Republic—ranging from health care, education, support of our men and women in uniform. There is much we need to be doing.

Frankly, there is very little pending on the floor at this time, but there is much that ultimately we need to be doing. I hope, in the context of taking on these additional issues, we will do it with fiscal responsibility, which not only involves not succumbing to the temptation to sink our country deeper and deeper into red ink as far as the eye can see, but also involves correcting President Bush's budget priorities to the degree that we take care of these kids of our military men and women, that we resist the President's temptation to take money away from these schoolhouses in order to give it to Wall Street and to wealthy contributors for political campaigns.

That isn't what we are here for. Those aren't the people we represent. Those aren't the ideals we represent. And this Nation deserves better.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

MEDICAID

Mr. BINGAMAN. Mr. President, I rise to address two or three issues this afternoon. I very much appreciate the chance to do so. First, let me begin with a subject that is extremely important to my State and to many of our States. That is Medicaid. I want to address two different proposals there. First, there is a proposal the administration has made related to Medicaid.

We don't have a written proposal as yet, but we do have various statements from Secretary Thompson. We had a hearing this morning in the Finance Committee that the Presiding Officer attended, as did I. We have had testimony and oral statements and very brief descriptions, but we do not have a written proposal or even a detailed outline of what might be proposed by the administration. But in what they are proposing, I find some real serious concerns.

The other proposal I want to discuss is one I am working on with Congressman DINGELL—we hope to introduce it probably early next week—entitled "Saving Our States." I will try to describe a little bit each of these.

The Nation's Governors have been here this week. I had the good fortune to speak to them last Sunday at one of their subcommittee meetings on human resources about Medicaid. It is clear that they are under severe stress at this point fiscally. It is estimated the States are facing nearly a \$30 billion shortfall this year and an \$80 billion shortfall in fiscal year 2004. In my view, it is important that the Federal Government respond to that. We cannot just ignore the fact that a growing number of our citizens are uninsured and that more and more people are being dropped from the Medicaid Program and the SCHIP program.

The Federal Government needs to fundamentally reassess its own role in providing health care and reassess its relationship to the States in this regard. As I indicated, I am working with Congressman DINGELL to prepare legislation to do just that.

Let me talk first about the administration's proposal in very broad terms, as I understand it. It contains two parts. One is a set of reforms where, as the Secretary very eloquently described, it would allow States to adopt the best practices. It would allow States to put more emphasis on preventive care for seniors. It would allow States to have the flexibility they need to meet their particular needs. All of that is, of course, very good public policy, at least as stated in its most general form.

As a general matter, I certainly believe the President and the Secretary will find strong support in Congress for that effort. But the second part of their proposal is the one that gives me concern. That is the restructuring of the financing. This part is much more difficult. What this does is basically say

that for optional groups and for optional services—and that is an interesting definition as to what is optional; you will find that most of the services and groups currently covered by Medicaid turn out to be optional, and most of the funding that is currently spent on Medicaid turns out to be funding for optional groups and optional services—States would have the ability to get extra money for the first 7 years if they agreed that they would essentially live by a capped amount of Federal funding from now on. It would be about what they were getting in the year 2000 plus a 9-percent increase per year. That is the basic proposal.

In addition to that, they are saying not only are we going to give the States a little extra money, we will reduce the amount of growth in that portion that the State in fact provides. So this is going to save money for the Federal Government. It will save money for the States.

The one thing that is not discussed and that I have great concern about is the effect on the people who are supposed to be getting the health care services under this program; that is, the low-income children and the seniors.

When you look at these definitions, optional groups, which seniors would you think might be in an optional group? Well, under the definition I have been given, if your income is over 74 percent of the Federal poverty rate, you are in an optional group. That means if your income gets anywhere up over about \$7,500 or \$8,000 per year, somewhere in that range—and I can get the exact figure—you are in an optional group. That means the total resources going to assist in your health care are being capped and are not going to grow as the population needing those services grows, are not going to grow as the usage of those services grows, are not going to grow as the health care cost of those services grows. We all know that there is growth in all three of those areas. That concerns me greatly.

The other part of this which I can understand and makes it somewhat attractive to Governors, some of the Governors who were here this week, is that the Federal proposal says, if you agree to this, not only do you get a little extra Federal money but the amount of State money that you are going to have to put in is also going to be capped. The growth in that is also going to be capped. In other words, we will be able to save you money in your State budget.

This is great for the States; it is great for the Federal Government. The problem is that the health care services available to low-income children and to seniors in our society are going to be reduced and reduced very substantially over the next 10 years under this proposal. So that has been my concern.

Allow me to cite a couple of quotations from people who have spent

a lot of time studying this. The AARP executive director and CEO, Bill Novelli, has said, in relation to the administration's proposal:

This proposal handcuffs states because it leaves people more vulnerable in future years as states struggle to meet increased needs with decreased dollars.

Another quote, from the Consortium for Citizens with Disabilities:

The Bush Administration proposal fails people with disabilities and dishonors the nation's commitment to its residents—it is not in the national interest. . . . What the Medicaid program calls "optional" services are, in reality, mandatory disability services for the children and adults who need them. These services often are not only life-saving, but also the key to a positive quality of life—something everyone in our nation deserves.

I believe strongly that the Federal Government at this particular time in our Nation's history should not be stepping away from its commitment to seniors, to people with disabilities, and to low-income children. It should not be leaving the States with the primary responsibility for dealing with growth in the cost of the services to these groups in the future.

The administration will point out that the proposal does provide more funding up front to the States. The proposal is to give \$12.7 billion more over the first 7 years to help the States. But there is something of an element of bait and switch in that after the first 7 years, that additional funding goes away.

Secretary Thompson noted in his press conference that is after he has left his position, and I am sure it is after most of the Governors will have left their positions and probably after many of us will have left the Senate. That does not give us an adequate justification for putting in place a system that cuts funding for these vitally needed services in future years.

The administration points out that they are promising the block grant for optional populations in a way that will increase at the same percentages that are projected in its budget. This is difficult to respond to, frankly, until we see a written proposal. We need a written proposal from the administration. We do not have that as yet. We do not have that on the Medicaid subject. We do not have that on Medicare either. And I hope those will be forthcoming soon because they are extremely vital programs for all of our States.

Let me also talk a little about the proposal that I have, along with Congressman DINGELL, that we are going to introduce next week. And I will go into more detail about it next week.

Our idea is that there are certain groups that receive health care services under Medicaid, where the Federal Government needs to step up and pay the full cost of those services—or something very close to the full cost. One such group is so-called dual eligibles. These are people who are eligible for Medicare benefits, but are also low income enough that they are eligible for Medicaid at the same time.

Current law says for those who are covered under the Medicaid law the States pay the lion's share of that cost. We are saying the States should not have to pay the lion's share of that cost. This is something where these folks have become eligible for Medicare. We should be paying 100 percent of that cost at the Federal level.

Another group the Federal Government should be underwriting the cost of providing services for are illegal immigrants who come to our health care providers needing emergency attention. Here you can get into quite a philosophical argument as to whether or not these services should be provided. The reality is, if you are a doctor, if you are working in an emergency room and someone shows up who needs emergency care, you are obligated under your Hippocratic oath and the laws of decency, basically, to provide that care, if you are able to do so. To turn a person away because they do not have the right health insurance coverage, or they cannot demonstrate to you their financial solvency, when their circumstance is critical, is just not the way we should do business.

The question is, Once that person has come into that emergency room and asked for that emergency care, who should reimburse the hospital for it? Who should pay the cost of that physician? At the current time, the States are picking that up, or the counties are picking that up, or the health care providers themselves are doing this on a pro bono basis. The reality is the Federal Government should be responsible for that, and we are proposing that in our legislation.

Another group, of course, is Native American citizens. We have a great many Native Americans in my home State. The Federal Government should be stepping up to its responsibility to ensure that health care for these individuals is provided. We propose that as part of our proposal for saving our States as well.

I will have another chance to talk this "saving our States" proposal when we introduce it early next week. I very much wanted to make reference to it today and indicate my great concern about the proposal I understand the administration is about to present to us. The truth is, the cost of providing health care is very high, and it is not getting any cheaper. We need to budget that in and we need to acknowledge that and we need to recognize that as a matter of public policy in this country, we should provide that basic care to seniors, to low-income children, to those who are disabled. The Medicaid Program does that. We need to keep the Medicaid Program sound and not undermine it by rationing back on the dollars we are willing to spend on those basic services.

SOUTHWEST REGIONAL BORDER AUTHORITY ACT

Mr. President, let me also talk about a bill I introduced yesterday. This is a bill entitled Southwest Regional Border Authority Act. We offered this

same bill last May. I am very pleased this year I am joined by Senator KAY BAILEY HUTCHISON, and also Senator BARBARA BOXER. This legislation would create an economic development authority for the Southwest border region that would be charged with awarding grants to border communities in support of local economic development projects. The need for a regional border authority is acute. The poverty rate in the Southwest border region is over 20 percent, nearly double the national average of 11.7 percent. The unemployment rate in Southwest border counties can reach as high as six times the national unemployment rate. The per capita personal income in the region is greatly below the national average. In many border counties, the per capita personal income is less than 50 percent of the national average. There is a lack of adequate access to capital that has made it difficult for businesses to get started in this region.

In addition, the development of key infrastructures, such as water, waste water, transportation, public health, and telecommunications—all of these areas of infrastructure need have failed to keep pace with the population explosion and the increase in commerce across our border with Mexico.

Mr. President, the counties in the Southwest border region are among the most economically distressed in the Nation. It should be noted that there are only a few such regions of economic distress throughout the country. Virtually all of the other regions that face this same economic distress are, in fact, served by regional economic development commissions today. These commissions include the Appalachian Regional Commission, the Delta Regional Authority, the Denali Commission in Alaska, and the Northern Great Plains Regional Authority.

In order to address the needs of the border region in a similar fashion, we are proposing this Regional Economic Commission for the Southwest border. The bill is based on four guiding principles.

First, it starts from the premise that people who live on the Southwest border know best when it comes to making decisions as to how to improve their own communities.

Second, it employs a regional approach to economic development and encourages communities to work across county and State lines where appropriate. All too often in the past, the efforts to improve our region have hit roadblocks as a result of poor coordination and communication between communities.

Third, it creates an independent agency, meaning it will be able to make decisions that are in the best interest of the border communities, without being subject to the politics of Federal agencies.

Finally, it brings together representatives of the four Southwest border States and the Federal Government as partners to work on improving the

standard of living for people living on the border.

This is not just another commission, and it is certainly not just another grant program. I believe this Southwest regional border authority not only will help leverage new private sector funding, it will also help to better target the Federal funds that are available to those projects that are most likely to produce results.

The legislation accomplishes this through a sensible mechanism of development planning. The purpose of the planning process is to ensure that priorities are reflected in the projects funded by the authority. It also is to provide flexibility to the authority to fund projects that are regional in nature.

I think the process has various advantages, and there are great benefits that can be derived from setting up this border authority. I believe very strongly this legislation is overdue. It is something that should have happened several years ago. For too long, the needs of the Southwest border have been ignored, overlooked, and underfunded.

I am confident the creation of a Southwest regional border authority not only will call attention to the great needs that exist on the border, but will help us to meet those needs. I urge my colleagues to give attention to this legislation that we have introduced. I hope other colleagues will choose to support it. I hope we can have a hearing on it in the near future and move the legislation through the Senate and through the House to the President for signature.

Mr. President, let me say a few words about the Estrada nomination as well. I know that is a subject of great concern to many on both sides of the aisle. I have taken some time in the last couple of days to review the transcript of the testimony that Mr. Estrada gave in the Judiciary Committee.

I have been struck by his position, as stated numerous times in that testimony, that he was not willing to share his views on any issue related to judicial philosophy or court decisions with the committee.

I was particularly struck by the discussion he had with our colleague, Senator SCHUMER. Senator SCHUMER was asking about Mr. Estrada's earlier statement that he saw as part of his job working for Justice Kennedy recommending law clerks and asking them questions, of course, interviewing them before he made the recommendation.

Senator SCHUMER said:

Isn't it appropriate that you would ask those questions? Isn't it also appropriate that we would be asking you some questions to try to determine your views?

Mr. Estrada said in response to that question:

Questions that I asked in doing my job for Justice Kennedy were intended to ascertain whether there were any strongly felt views that would keep that person from being a good law clerk to the Justice.

That is entirely appropriate, in my view, and a very well-stated position. That, in my view, is the exact job we have to perform as we screen and consider the various nominees for Federal court positions that the President sends us. We need to determine whether they have any strongly felt views that would keep them from being good members of the Court of Appeals for the District of Columbia, good members of the district court, or good members of the Supreme Court.

My own position is that I am willing, and have demonstrated many times on the Senate floor my willingness, to support conservative nominees to the court. I believe many of those people are making excellent judges in our Federal court system. But I also want to be sure their views on issues that relate to their duties are mainstream, that they are not extreme. The only way I know to carry out that responsibility is to ask some questions to determine whether they have strongly felt views, as Mr. Estrada said, that would keep them from being, as he said in the case he was referring to, a good law clerk to the Justice.

In the Senate, when we are considering people for lifetime appointments to the Federal judiciary, we have a heavier responsibility to be sure there are no strongly held views that would keep these individuals from being good judges in our Federal court system for the remainder of their lives. That is what I believe we should be trying to do. I think that is what many members of the Judiciary Committee were trying to do in the hearing that took place on Mr. Estrada.

His view was that he would not respond to questions that were put to him about any such views, and he repeatedly said he did not think it was appropriate for him to comment on any personal views he might have. Since, of course, he would not comment on his personal views, there is no way to determine whether any of them are extreme.

I do not think that is an adequate carrying out of responsibilities by the Judiciary Committee. I do not think it is an adequate carrying out of responsibilities by the Senate. And I think we do need more information. That has been my position. Before we move ahead with this nomination, we should get more information.

I hope the Judiciary Committee will consider reconvening a hearing, once again providing the nominee with an opportunity to respond, as other nominees have traditionally responded. That is all we are asking, not that he give us information others were not asked to give or others did not give, but that he essentially provide basic information.

He may express some views with which I do not agree. That is fine. Many judges for whom I have voted also, I believe, expressed views with which I did not agree. At least I was confident their views were not ex-

treme. At least I was confident their views were mainstream and that they were within the mainstream as far as their conception of where the law is and where the law ought to go.

I hope very much we can get the additional information we have been asking for and can proceed to dispose of this nomination. That would be my great hope. I do not know what the intent of the majority leader is at this point or the intent of the Judiciary Committee. I hope we can proceed in that manner.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ALLARD). Without objection, it is so ordered.

Mr. REID. Mr. President, last evening, there was a lot of talk about whether memos at the Solicitor General's Office had ever been made public. I am going to talk about that, but I think we should put this whole debate involving Miguel Estrada in a framework that people who are watching the debate who are not familiar with Senate procedure can better understand what is going on.

In effect, Miguel Estrada has asked his employer, the Federal Government, to give him a job to last for life. As with any job, one usually has to have an interview. In this instance, in addition to an interview, you bring whatever papers you have, whether it is a resume or other documents that your employer may want to find out if you should be hired. In the instance of Miguel Estrada, he simply has not filled out the requisite papers, he has not answered the questions or supplied the necessary information.

An employer in Nevada, whether a company that sold tires or a company that sold food—it would not matter what it is—if somebody applied for a job, they would have to answer the questions that employer asked and give the requisite papers. In this instance, Democratic members of the Judiciary Committee believe he has not answered the questions. By reading the transcript, it is quite clear that is true.

But yesterday, the distinguished Senator from Utah, Mr. HATCH, engaged in extensive discussion regarding the release of Solicitor General memoranda. As everyone by this time knows, we have asked that Miguel Estrada release memos he wrote while he was an attorney in the Solicitor General's Office. The administration has refused to provide these documents.

There are two basic charges raised by my distinguished colleagues on the other side of the aisle about these memoranda: First, the distinguished chairman of the committee, Senator HATCH, has argued that when such

memos were provided in the past, they were leaked.

My colleague argued that they have never, ever been given to anyone on Capitol Hill.

Second, he qualified his remarks by saying to the extent memos had been provided, they were provided because there was some allegation of improper behavior by the nominee in connection with the memo.

I will place in the RECORD a series of correspondence between the Judiciary Committee and the Justice Department from 1987 that demonstrates in fact such documents were provided. This is only one instance. These letters show that these memoranda were not leaked. They show that they were in fact provided freely by the Justice Department.

In a letter dated August 10, 1987, then Judiciary Committee Chairman BIDEN set forth a request for several types of documents relating to the nomination of Judge Bork to the Supreme Court. In the letter, Senator BIDEN requested four classes of Bork-related memos: He requested those that related to the Watergate controversy; second, all documents generated or involving Solicitor General Bork relating to the constitutionality, appropriateness, or use of the pocket veto; third, all documents generated to or involving then Solicitor General Bork regarding school desegregation; fourth, all documents generated to or involving then Solicitor General Bork in forming the U.S. position in a series of specific cases.

These requests involved memoranda provided by attorneys in the Solicitor General's Office to the Solicitor General recommending such things as whether to file amicus briefs in particular cases.

In this instance, what happened to Senator BIDEN's request? Well, in fact a letter came to him dated August 24 from then Republican Assistant Attorney General Bolton to Democratic Senator JOE BIDEN. In that letter, the Justice Department declined to provide documents relating to the Watergate controversy. This denial of documents was based on executive privilege. The documents involved did not include Bork but, rather, related to communications between and among close advisers to the President and the President.

Yesterday, Senator CRAPO made reference to the fact that some documents were not turned over to the committee during this time. While it is true that the Watergate documents were not turned over, and this is based on executive privilege, that does not affect our debate. Solicitor General memoranda from Estrada to his supervisors are not covered by executive privilege. No one has ever claimed they are.

In 1987, however, the Justice Department did provide the other documents I described above which were requested in the Biden letter. In these materials, the Justice Department noted in the letter: The vast majority of the docu-

ments that have been requested reflect or disclose internal deliberations within the executive branch. We wish to cooperate to the fullest extent with the committee and to expedite Judge Bork's confirmation process. The letter concludes that the documents referred to above would be provided. The letter confirms the nature and circumstances under which the Solicitor General memoranda were provided to the Judiciary Committee during Bork's hearings.

So what about the argument that to the extent memoranda have been provided, they were only provided when the request alleged misconduct or malfeasance on the part of the nominee or other attorneys involved in the matter? This simply is not true.

I have a list of internal attorney memoranda provided during the Bork, Reynolds, and Rehnquist nominations. These documents, some of which are from the Solicitor's Office, others from other parts of the Justice Department, were made public and given to Senator BIDEN, and in other instances given to others. For example, all documents related to school desegregation between 1969 and 1977 relating to Bork in any way, there was no allegation of misconduct; documents related to Halpern v. Kissinger, no allegation of misconduct.

I have about 14 of these that were made a part of proceedings before the Senate.

I ask unanimous consent that this list be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

All documents related to school desegregation between 1969 and 1977 relating to Bork in any way (disclosure included, among others, the SG Office memos about *Vorcheimer v. Philadelphia*, known as "the Easterbrook memo"; *United States v. Omaha*; *United States v. Demopolis City* (school desegregation in Alabama)); No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Documents related to *Halperin v. Kissinger* (civil suit for 4th Amendment violations for wiretapping); No allegation of misconduct or malfeasance by the nominee.

Memos about whether to file an amicus brief in *Hishon v. King & Spaulding* (gender discrimination at a law firm); No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos regarding *Wallace v. Jaffree* (school prayer in Alabama); No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about Congressional reapportionment in Louisiana and one-person, one-vote standard: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos regarding possible constitutional amendment in 1970 to overturn *Green v. New Kent County*, and preserve racial discrimination in Southern schools: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memo of November 16, 1970 from John Dean: No allegation of misconduct or malfeasance by the nominee.

Memos of William Ruckelshaus of December 19, 1969 and February 6, 1970: No allega-

tion of misconduct or malfeasance by the nominee.

Memos of Robert Mardian of January 18 1971: No allegation of misconduct or malfeasance by the nominee.

Memos of law clerk to Justice Jackson: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about whether or not to seek Supreme Court review in *Kennedy v. Sampson* (pocket veto): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Hills v. Gautreaux* (racial discrimination in housing in Chicago): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *DeFunis v. Odegaard* (affirmative action program at the University of Washington law school): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Morgan v. McDonough* (public school desegregation in Boston): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Pasadena v. Spengler* (public school desegregation): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Barnes v. Kline* (military assistance in El Salvador): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Kennedy v. Jones* (pocket veto and the mass transit bill and bill to assist the disabled): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Documents related to Supreme Court selection process of Nixon and Reagan: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Mr. REID. I say respectfully that the statements made by the distinguished Senator from Utah were without basis of fact. Here we have records that were not leaked, they are directly as we said they were last night. We were unable to get the floor, but in fact that is what the story was.

So now that we do have the floor, I ask unanimous consent that the letter dated August 10, 1987, to Attorney General Ed Meese from JOSEPH BIDEN be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, August 10, 1987.

Hon. EDWIN MEESE III,
Attorney General, Department of Justice,
Washington, DC.

DEAR GENERAL MEESE: As part of its preparation for the hearings on the nomination of Judge Robert Bork to the Supreme Court, the Judiciary Committee needs to review certain material in the possession of the Justice Department and the Executive Office of the President.

Attached you will find a list of the documents that the Committee is requesting. Please provide the requested documents by August 24, 1987. If you have any questions about this request, please contact the Committee staff director, Diana Huffman, at 224-0747.

Thank you for your cooperation.

Sincerely,

JOSEPH R. BIDEN, Jr.,
Chairman.

REQUEST FOR DOCUMENTS REGARDING THE NOMINATION OF ROBERT H. BORK TO BE ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT

Please provide to the Committee in accordance with the attached guidelines the following documents in the possession, custody or control of the United States Department of Justice, the Executive Office of the President, or any agency, component or document depository of either (including but not limited to the Federal Bureau of Investigation):

1. All documents generated during the period from 1972 through 1974 and constituting, describing, referring or relating in whole or in part to Robert H. Bork and the so-called Watergate affair.

2. Without limiting the foregoing, all documents generated during the period from 1972 through 1974 and constituting, describing, referring or relating in whole or in part to any of the following:

a. any communications between Robert H. Bork and any person or entity relating in whole or in part to the Office of Watergate Special Prosecution Force or its predecessors- or successors-in-interest;

b. the dismissal of Archibald Cox as Special Prosecutor;

c. the abolition of the Office of Watergate Special Prosecution Force on or about October 23, 1973;

d. any efforts to define, narrow, limit or otherwise curtail the jurisdiction of the Office of Watergate Special Prosecution Force, or the investigative or prosecutorial activities thereof;

e. the decision to reestablish the Office of Watergate Special Prosecution Force in November 1973;

f. the designation of Mr. Leon Jaworski as Watergate Special Prosecutor;

g. the enforcement of the subpoena at issue in *Nixon v. Sirica*;

h. any communications on October 20, 1973 between Robert H. Bork and then-President Nixon, Alexander Haig, Leonard Garment, Fred Buzhardt, Elliot Richardson, or William Ruckelshaus;

i. any communications between Robert H. Bork and then-President Nixon, Alexander Haig and/or any other federal official or employee on the subject of Mr. Bork and a position or potential position as counsel to President Nixon with respect to the so-called Watergate matter;

m. any action, involvement or participation by Robert H. Bork with respect to any issue in the case of *Nader v. Bork*, 366 F. Supp. 104 (D.D.C. 1975), or the appeal thereof;

n. any communication between Robert H. Bork and then-President Nixon or any other federal official or employee, or between Mr. Bork and Professor Charles Black, concerning Executive Privilege, including but not limited to Professor Black's views on the President's "right" to confidentiality as expressed by Professor Black in a letter or article which appeared in the *New York Times* in 1973 (see Mr. Bork's testimony in the 1973 Senate Judiciary Committee hearings on the Special Prosecutor);

o. the stationing of FBI agents at the Office of Watergate, Special Prosecution Force on or about October 20, 1973, including but not limited to documents constituting, describing, referring or relating to any communication between Robert H. Bork, Alexander Haig, or any official or employee of the Office of the President or the Office of the Attorney General, on the one hand, and any official or employee of the FBI, on the other; and

p. the establishment of the Office of Watergate Special Prosecution Force, including but not limited to all documents constituting, describing, referring or relating in

whole or in part to any assurances, representations, commitments or communications by any member of the Executive Branch or any agency thereof to any member of Congress regarding the independence or operation of the Office of Watergate Special Prosecution Force, or the circumstances under which the Special Prosecutor could be discharged.

3. The following documents together with any other documents referring or relating to them:

a. the memorandum to the Attorney General from then-Solicitor General Boark, dated August 21, 1973, and its attached "redraft of the memorandum intended as a basis for discussion with Archie Cox" concerning "The Special Prosecutor's authority" (typeset copies of which are printed at pages 287-288 of the Senate Judiciary Committee's 1973 "Special Prosecutor" hearings);

b. the letter addressed to Acting Attorney General Bork from then-President Nixon, dated October 20, 1973., directing him to discharge Archibald Cox;

c. the letter addressed to Archibald Cox from then-Acting Attorney General Bork, dated October 20, 1973, discharging Mr. Cox from his position as Special Prosecutor;

d. Order No. 546-73, dated October 23, 1973, signed by then-Acting Attorney General Bork, entitled "Abolishment of Office of Watergate Special Prosecutor Force";

e. Order No. 547-73, dated October 23, 1973, signed by then-Acting Attorney General Bork, entitled "Additional Assignments of Functions and Designation of Officials to Perform the Duties of Certain Offices in Case of Vacancy, or Absence therein or in Case of Inability or Disqualification to Act";

f. Order No. 551-73, dated November 2, 1973, signed by then-Acting Attorney General Bork, entitled "Establishing the Office of Watergate Special Prosecution Force";

g. the Appendix to Item 2.f., entitled "Duties and Responsibilities of Special Prosecutor";

h. Order No. 552-73, dated November 5, 1973, signed by then-Acting Attorney General Bork, designating "Special Prosecutor Leon Jaworski the Director of the Office of Watergate Special Prosecution Force";

i. Order No. 554-73, dated November 19, 1973, signed by then-Acting Attorney General Bork, entitled "Amending the Regulations Establishing the Office of Watergate Special Prosecution Force"; and

j. the letter to Leon Jaworski, Special Prosecutor, from then-Acting Attorney General Bork, dated November 21, 1973, concerning Item 2.i.

4. All documents constituting, describing, referring or relating in whole or in part to any meetings, discussions and telephone conversations between Robert H. Bork and then-President Nixon, Alexander Haig or any other federal official or employee on the subject of Mr. Bork's being considered or nominated for appointment to the Supreme Court.

5. All documents generated from 1973 through 1977 and constituting, describing, referring or relating in whole or in part to Robert H. Bork and the constitutionality, appropriateness or use by the President of the United States of the "Pocket Veto" power set forth in Art. I, section 7, paragraph 2 of the United States Constitution, including but not limited to all documents constituting, describing, referring or relating in whole or in part to any of the following:

a. The decision not to petition for certiorari from the decision of the United States Court of Appeals for the District of Columbia Circuit in *Kennedy v. Sampson*, 511 F.2d 430 (1947);

b. the entry of the judgment in *Kennedy v. Jones*, 412 F. Supp. 353 (D.D.C. 1976); and

c. the policy regarding pocket vetoes publicly adopted by President Gerald R. Ford in April 1976.

6. All documents constituting, describing, referring or relating in whole or in part to Robert H. Bork and the incidents at issue in *United States v. Gray, Felt & Miller*, No. Cr. 78-00179 (D.D.C. 1978), including but not limited to all documents constituting, describing, referring or relating in whole or in part to any of the exhibits filed by counsel for Edward S. Miller in support of his contention that Mr. Bork was aware in 1973 of the incidents at issue.

7. All documents constituting, describing or referring to any speeches, talks, or informal or impromptu remarks given by Robert H. Bork on matters relating to constitutional law or public policy.

8. All documents constituting, describing, referring or relating in whole or in part either (i) to all criteria or standards used by President Reagan in selecting nominees to the Supreme Court, or (ii) to the application of those criteria to the nomination of Robert H. Bork to be Associate Justice of the Supreme Court.

9. All documents constituting, describing, referring or relating in whole or in part to Robert H. Bork and any study or consideration during the period 1969-1977 by the Executive Branch of the United States Government or any agency or component thereof of school desegregation remedies. (In addition to responsive documents from the entities identified in the beginning of this request, please provide any responsive documents in the possession, custody or control of the U.S. Department of Education or its predecessor agency, or any agency, component or document depository thereof.)

10. All documents constituting, describing, referring or relating in whole or in part to the participation of Solicitor General Robert H. Bork in the formulation of the position of the United States with respect to the following cases:

a. *Evans v. Wilmington School Board*, 423 U.S. 963 (1975), and 429 U.S. 973 (1976);

b. *McDonough v. Morgan*, 426 U.S. 935 (1976);

c. *Hills v. Gautreaux*, 425 U.S. 284 (1976);

d. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976);

e. *Roemer v. Maryland Board of Public Education*, 426 U.S. 736 (1976);

f. *Hill v. Stone*, 421 U.S. 289 (1975); and

g. *DeFunis v. Odegaard*, 416 U.S. 312 (1975).

GUIDELINES

1. This request is continuing in character and if additional responsive documents come to your attention following the date of production, please provide such documents to the Committee promptly.

2. As used herein, "document" means the original (or an additional copy when an original is not available) and each distribution copy of writings or other graphic material, whether inscribed by hand or by mechanical, electronic, photographic or other means, including without limitation correspondence, memoranda, publications, articles, transcripts, diaries, telephone logs, message sheets, records, voice recordings, tapes, film, dictabelts and other data compilations from which information can be obtained. This request seeks production of all documents described, including all drafts and distribution copies, and contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

3. In the event that any requested document has been destroyed or discarded or otherwise disposed of, please identify the document as completely as possible, including without limitation the date, author(s), addressee(s), recipient(s), title, and subject matter, and the reason for disposal of the document and the identity of all persons who authorized disposal of the document.

4. If a claim is made that any requested document will not be produced by reason of a privilege of any kind, describe each such document by date, author(s), addressee(s), recipient(s), title, and subject matter, and set forth the nature of the claimed privilege with respect to each document.

Mr. REID. Mr. President, this outlines seven pages of documents he wants and certain guidelines that would be followed so that the Attorney General's Office would be protected.

In addition, I ask unanimous consent that a letter dated August 24 of that same year to JOSEPH R. BIDEN from Mr. Bolton, the Assistant Attorney General, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE, OFFICE OF LEGISLATIVE AND INTER-GOVERNMENTAL AFFAIRS,

Washington, DC.

Hon. JOSEPH R. BIDEN, JR.
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR CHAIRMAN BIDEN: This responds further to your August 10th letter requesting certain documents relating to the nomination of Judge Robert Bork to the Supreme Court. Specifically, this sets forth the status of our search for responsive documents and the methods and scope of review by the Committee.

As we have previously informed you in our letter of August 18, the search for requested documents has required massive expenditures of resources and time by the Executive Branch. We have nonetheless, with a few exceptions discussed below, completed a thorough review of all sources referenced in your request that were in any way reasonably likely to produce potentially responsive documents. The results of this effort are as follows:

In response to your requests numbered 1-3, we have conducted an extensive search for documents generated during the period 1972-1974 and relating to the so-called Watergate affair. We have followed the same procedure, in response to request number 4, for all documents relating to consideration of Robert Bork for the Supreme Court by President Nixon or his subordinates. We have completed our search of relevant Department of Justice and White House files for documents responsive to these requests. The Federal Bureau of Investigation also has completed its search for responsive documents, focusing on the period October-December 1973 and on references to Robert Bork generally.

Most of the documents responsive to requests numbered 1-4 are in the possession of the National Archives and Records Administration, which has custody of the Nixon Presidential materials and the files of the Watergate Special Prosecution Force. The Archives staff supervised and participated in the search of the opened files of the Nixon Presidential materials and the files of the Watergate Special Prosecution Force, which was directed to those files which the Archives staff deemed reasonably likely to contain potentially responsive documents.

Pursuant to a request by this Department under 36 C.F.R. 1275, the Archives staff also examined relevant unopened files of the Nixon Presidential materials, and, as required under the pertinent regulations, submitted the responsive documents thus located for review by counsel for former President Nixon. Mr. Nixon's counsel, R. Stan Mortenson, interposed no objection to release of those submitted documents that (a) reference, directly or indirectly, Robert

Bork, or (b) were received by or disseminated to persons outside the Nixon White House. Mr. Mortenson on behalf of Mr. Nixon objected to production of the documents which are described in the attached appendix. Mr. Mortenson represents that these documents constitute purely internal communications within the White House and contain no direct or indirect reference to Robert Bork.

Mr. Mortenson also objected on the same grounds to production of unopened portions of two documents produced in incomplete form from the opened files of the Nixon Presidential materials:

1. First page and redacted portion of fifth page of handwritten note of John D. Ehrlichman dated December 11, 1972.

2. All pages other than the first page of memorandum from Geoff Shepard to Ken Cole dated June 19, 1973.

Mr. James J. Hastings, Acting Director of the Nixon Presidential Materials Project, has reviewed these two documents and has advised us that the unopened portions of neither document contain any direct or indirect reference to Judge Bork.

Our search has not yielded a copy of the document referenced in paragraph "a" of your request numbered 3, which, as you correctly note, is printed at pages 287-288 of the Judiciary Committee's 1973 "Special Prosecutor" hearings.

Among the documents collected by the Department are certain documents generated in the defense of *Halperin v. Kissinger*, Civil Action No. 73-1187 (D. D.C.), a suit filed against several federal officials in their individual capacity, which remains pending. The Department has an ongoing attorney-client relationship with the defendants in *Halperin*, which precludes us from releasing certain documents containing client confidences and litigation strategy, without their consent. 28 C.F.R. 50.156(a)(3).

All documents responsive to request number 5, concerning the pocket veto, have been assembled.

All documents responsive to request number 6 have been assembled. The exhibits filed by counsel for Edward S. Miller on July 12, 1978 and referred to in your August 10 letter, remain under seal by order of the United States District Court for the District of Columbia. However, a list of the thirteen documents has been unsealed. We have supplied copies of eleven of these documents, including redacted versions of two of the documents (a few sentences of classified material have been deleted). We have supplied unclassified versions of two of these eleven documents, as small portions of them remain classified. We are precluded by Rule 6(e) of the Rules of Criminal Procedure from giving you access to two other exhibits—classified excerpts of grand jury transcripts—filed on July 12, 1978. We also searched the files of several civil cases related to the Felt and Miller criminal prosecution, as well as the documents generated during the consideration of the pardon for Felt and Miller.

With respect to request number seven, Judge Bork has previously provided to the Committee a number of his speeches, which we have not sought to duplicate. We have sought and supplied any additional speeches, press conferences or interviews by Mr. Bork, as well as any contemporaneous documents which tend to identify a date or event where he gave a speech or press interview during his tenure at the Department.

On request number eight, there are no documents in which President Reagan has set forth the criteria he used to select Supreme Court nominees, or their application to Judge Bork, other than the public pronouncements and speeches we have assembled.

Our search for documents responsive to request number nine has been time-consuming

and very difficult, and is not at this time entirely complete. In order to conduct as broad a search as possible, we requested the files in every case handled by the Civil Rights Division or Civil Division, between 1969-77, which concerned desegregation of public education. Although most of these case files have been retrieved, several remain unaccounted for and perhaps have been lost. We expect to have accounted for the remaining files (which may or may not contain responsive documents) in the next few days. We have also assembled some responsive documents obtained from other Department files. The Department of Education is nearing completion of its search of its files, and those of its predecessor agency, HEW.

We have assembled case files for the cases referred to in question ten, with the exception of *Hill v. Stone*, for which there is no file. We have no record of the participation of the United States in *Hill v. Stone*, or consideration by the Solicitor General's office of whether to participate in that case.

A few general searches of certain front office files are still underway, and we expect those searches to be concluded in the next few days. We will promptly notify you should any further responsive documents come into our possession.

As you know, the vast majority of the documents you have requested reflect or disclose purely internal deliberations within the Executive Branch, the work product of attorneys in connection with government litigation or confidential legal advice received from or provided to client agencies within the Executive Branch. The disclosure of such sensitive and confidential documents seriously impairs the deliberative process within the Executive Branch, our ability to represent the government in litigation and our relationship with other entities. For these reasons, the Justice Department and other executive agencies have consistently taken the position, in response to the Freedom of Information Act and other requests, that it is not at liberty to disclose materials that would compromise the confidentiality of any such deliberative or otherwise privileged communications.

On the other hand, we also wish to cooperate to the fullest extent possible with the Committee and to expedite Judge Bork's confirmation process. Accordingly, we have decided to take the exceptional step of providing the Committee with access to responsive materials we currently possess, except those privileged documents specifically described above and in the attached appendix. Of course, our decision to produce these documents does not constitute a waiver of any future claims of privilege concerning other documents that the Committee request or a waiver of any claim over these documents with respect to entities or persons other than the Judiciary Committee.

As I have previously discussed with Diana Huffman, the other documents will be made available in a room at the Justice Department. Particularly in light of the voluminous and privileged nature of these documents, copies of identified documents will be produced, upon request, only to members of the Judiciary Committee and their staff and only on the understanding that they will not be shown or disclosed to any other persons. Please have your staff contact me to arrange a mutually convenient time for inspection of the documents.

As I stressed in my previous letter, if the Committee is or becomes aware of any documents it believes are potentially responsive but have not been produced, please alert us as soon as possible and we will attempt to locate them.

Should you have any questions or comments, please contact me as soon possible. Thank you for your cooperation.

Sincerely,

LAURA WILSON
(for John R. Bolton, Assistant
Attorney General)

APPENDIX

DOCUMENTS SUBJECT TO OBJECTION BY MR.
NIXON'S COUNSEL

1. Memorandum to Buzhardt and Garment, from Charles Alan Wright, January 7, 1973. Subject: June 6th meeting with the Special Prosecutor. (Document No. 8)
2. Memorandum to Buzhardt and Garment, from Charles Alan Wright, January 7, 1973. Subject: June 6th meeting with the Special Prosecutor. (Document No. 9)
3. Memorandum to Garment, from Ray Price, July 25, 1973. Subject: Procedures re: Subpoena. (Document No. 13)
4. Memorandum to General Haig, from Charles A. Wright, July 25, 1973. Subject: Proposed redrafts of letters. (Document No. 14)
5. Draft letter to Senator Ervin, dated July 26, 1973. Subject: two subpoenas from Senator Ervin. (Document No. 15)
6. Draft letter to Judge Sirica, dated July 26, 1973. Subject: subpoena duces tecum. (Document No. 16)
7. Memorandum to The Lawyers, from Charlie Wright, dated July 25, 1973. Subject: Thoughts while shaving. (Document No. 17)
8. Memorandum to The President, from J. Fred Buzhardt, Leonard Garment, Charles A. Wright, dated July 24, 1973. Subject: Response to Subpoenas. (Document No. 18)
9. Memorandum to Ray Price, from Tex Lezar, dated October 17, 1973. Subject: WG Tapes. (Document No. 20)
10. Memorandum to Leonard Garment and J. Fred Buzhardt, from Charles A. Wright, dated August 3, 1973. Subject: Discussions with Philip Lacovara. (Document No. 25)
11. Memorandum to the President, from Leonard Garment, J. Fred Buzhardt, Charles A. Wright, dated August 2, 1973. Subject: Brief for Judge Sirica. (Document No. 26)
12. Memorandum to Len Garment, Fred Buzhardt, Doug Parker and Tom Marinis, from Charlie Wright, dated August 1, 1973. Subject: note regarding brief. (Document No. 27)
13. Memorandum to The President, from J. Fred Buzhardt, Leonard Garment and Charles A. Wright, dated July 24, 1973. Subject: Response to Subpoenas. (Document No. 28)
14. Draft letter to Senator Ervin, dated July 26, 1973. Subject: two subpoenas issued July 23rd. (Document No. 29)
15. Draft letter to Judge Sirica, dated July 26, 1973. Subject: subpoena duces tecum. (Document No. 30)
16. Memorandum to J. Fred Buzhardt, Leonard Garment and Charles Alan Wright, from Thomas P. Marinis, Jr. (undated). Subject: Appealability of Cox Suit. (Document No. 31)
17. Notes (handwritten) (undated). Subject: [appears to be notes of oral argument]. (Document No. 32)
18. Memorandum to The President, from Charles Alan Wright, dated September 14, 1973. Subject: Response to Court's memorandum. (Document No. 34)
19. Handwritten notes. (Document No. 36)
20. Memorandum to J. Frederick Buzhardt, from Charles Alan Wright, dated June 2, 1973. Subject: Executive privilege. (Document No. 41)
21. Memorandum to J. Frederick Buzhardt and Leonard Garment, from Charles Alan Wright, dated June 7, 1973. Subject: June 6th meeting with Special Prosecutor. (Document No. 42)
22. Memorandum to J. Fred Buzhardt from Robert R. Andrews, dated June 21, 1973. Subject: Executive Privilege. (Document No. 43)
23. Memorandum to J. Fred Buzhardt and Leonard Garment, from Thomas P. Marinis, Jr., dated June 20, 1973. Subject: Professor Wright's attempt to obtain document. (Document No. 44)
24. Memorandum to J. Fred Buzhardt and Leonard Garment, from Charles Alan Garment (sic), dated June 7, 1973. Subject: June 6th meeting with the Special Prosecutor. (Document No. 46)
25. Draft letter to Senator, from Alexander Haig, dated December 12, 1973. Subject: Response to letter of the 5th. (Document No. 60)
26. Draft Letter to Senator, from Alexander Haig, dated December 12, 1973. Subject: Response to letter of the 5th. (Document No. 61)
27. Proposal re: transcription of tapes, dated October 17, 1973. (Document No. 63)
28. Typed note with handwritten notation: Sent to Buzhardt 12/11/73, undated. Subject: papers Buzhardt sent to Jaworski. (Document No. 66)
29. Chronology—Presidential Statements, Letters, Subpoenas, dated March 12, 1973. Subject: chronology of same. (Document No. 71)
30. Handwritten note, dated 1/31/74 (January 31, 1974). Subject: Duties and responsibilities of Special Prosecutor. (Document No. 82)
31. Memorandum to Fred Buzhardt, from William Timmons, dated 7/30/73 (July 30, 1973). Subject: refusal to release taped conversations. (Document No. 91)
32. Memorandum to Fred Buzhardt, from Paul Tribble, dated October 30, 1973. Subject: Cox's disclosure of Kleindienst's confidential communication. (Document No. 92)
33. Proposal regarding transcription of tape conversations, dated 10/17/73 (October 17, 1973). (Document No. 94)

Mr. REID. These clearly indicate that Bolton acknowledged materials would be forthcoming.

The reason these are important is that we have said this man who has no judicial record whatsoever—and I heard the distinguished Presiding Officer give a statement yesterday about the many judges who have been distinguished who have not had judicial experience. We have never debated that. We agree, one does not have to have judicial experience to be a good judge. If that were the case, there would never be any good judges, quite frankly. Somebody has to start someplace. In fact, we would never have judges. That is what is referred to as a red herring.

We have never alleged that Miguel Estrada is disqualified from being a judge because he has not been a judge. That is something that the majority has talked about a lot, but we have never raised that as an issue.

What we have said is that those instances where we can learn something about his political philosophy and his philosophy as it relates to jurisprudence, we need to know something about that. The only place we can go to look is in relation to when he worked at the Solicitor's Office because he has not answered the questions we have asked him about the cases he prepared and took to trial when he was an Assistant Attorney General or when he argued cases before appellate courts.

As I have said on a number of different occasions, I have been to court

lots of times. I have represented all kinds of different people. In all the cases I took, when I argued a case before a jury and before a court, one could not find out what my political or judicial philosophy was. The reason was I was being paid to represent somebody and carrying out my responsibilities as a lawyer.

So the fact that he has been before the Supreme Court and other appellate courts and has tried cases adds to someone's capabilities, but it does not allow us to find out about a person who is going to the second highest court in the land, if he passes this test. That is not enough. We need to know something about him. That is the reason we have raised these issues.

One thing my friend from Vermont raised, and I thought it was so good last evening: One does not have to graduate first in their class at Harvard to be a judge, but we heard assertions that Miguel Estrada has graduated first in his class. He has not. But he could graduate last in his class. He went to Harvard, which is one of the top two or three law schools in the entire country. The mere fact he went to Harvard means he is really smart.

He did not graduate first in his class. He was not editor of the Law Review. He was, with 71 other men and women at Harvard, part of the Law Review. He was 1 of 71. That is a pretty large group. As I have indicated, they are all smart.

The fact that he was an editor adds to his qualifications, but do not try to puff him up to make him something that he is not. He was not editor of the Law Review.

I think we are off on a lot of tangents. As Senator HATCH laid out so clearly last night, I think it is tremendous that a man came from Central America when he was 17 years old, went to Columbia University, also a school that is hard to get in, so he must have done well on his tests. I think it is tremendous that he was able then to go to Harvard. But let's not try to make this a rags-to-riches story because it was not. He did well, and that is tremendous. He is an immigrant to this country who has done well academically, but let's not build this up to some kind of a Horatio Alger story as some have said. I think the guy has done very well, and that is commendable. But we have heard all of these assertions that he graduated first in his class and he was editor of the Law Review, which is not true. It does not take away from what a smart man he must be.

We heard a lot last night, with Senators asking questions of Senator HATCH about all the editorials from around the country. Of course, there are lots of editorials that oppose Miguel Estrada. There is no need to read all of them, but I would like to read one from the New York Times. It may only be one newspaper, but the circulation makes up for a lot of smaller newspapers.

This editorial is 411 words long and is entitled "Full Disclosure for Judicial Candidates."

The Constitution requires the Senate to give its advise and consent on nominees for federal judgeships. But in the case of Miguel Estrada, the Bush administration's choice for a vacancy on the powerful United States Court of Appeals for the District of Columbia Circuit, the Senate is not being given the records it needs to perform its constitutional role. The Senate should not be bullied into making this important decision in the dark.

Mr. Estrada, who has a hearing before the Senate Judiciary Committee tomorrow, has made few public statements about controversial legal issues. But some former colleagues report that his views are far outside the legal mainstream.

The best evidence of Mr. Estrada's views is almost certainly the memorandums he wrote while working for the solicitor general's office, where he argued 15 cases before the Supreme Court on behalf of the federal government. In these documents, he no doubt gave his views on what position the government should take on cases before the Supreme Court and lower federal courts. Reading them would give the Senate insight into how Mr. Estrada interprets the Constitution, and in what direction he believes the law should head.

There are precedents for this. When Robert Bork was nominated to the Supreme Court in 1987, the Senate was given access to memos prepared while he was solicitor general. The administration has no legal basis for its refusal to supply these documents. Congress has oversight authority over the solicitor general's office, which is part of the Justice Department, and therefore has a right to review its records. Attorney-client privilege and executive privilege are inapplicable for many reasons, including their inability to override the Senate's constitutional duty to investigate fully this judicial nomination.

This is an administration that loves secrecy, on issues ranging from the war in Iraq to Vice President Dick Cheney's energy task force. And it seems to think that if Congress is ignored, it will simply go away. Congress must insist on getting the documents it needs to evaluate Mr. Estrada, and it should not confirm him until it does.

There are three things that can be done and we have been saying this for the 3 weeks we have been on this matter. No. 1, pull the nomination. What does that mean? That means go to something else. No. 2, try to invoke cloture. File a motion to invoke cloture and to do that you need 60 votes. That certainly is within the framework of the Senate for these many years. I also recognize the other way to do this is for Mr. Estrada to come before the Senate and answer the questions that we ask and also supply the memoranda that the New York Times says he should supply. That would be the way to get over this.

We have had now for several days statements made that we should not be on this, that Miguel Estrada is making hundreds of thousands of dollars a year as a lawyer, fully employed at a large law firm here in Washington, DC. We believe that for the many people who are unemployed, the many people who have lost their jobs, 2.8 million during the 2 years of this administration, we should be dealing with those people who are not employed and under-

employed people with no health insurance or who are underinsured, people who are trying to make it educationally and otherwise in this society. That is what we should be dealing with. Rather than spending 3 weeks on a man who is fully employed, making hundreds of thousands of dollars a year, we think we should get off this and go to something else.

We are, as has been indicated, here for the duration. If the majority decides they would rather spend the Senate's valuable time on Miguel Estrada, they can do that. But I say that idle time is time we cannot make up later. There is a limited amount of time and a limited amount of legislative days that we have. We could be going to something else.

These filibusters occur very infrequently. I have been here more than two decades now and filibusters are very rare. Once in a while you have to stand for what you believe is right. As the New York Times indicated, we believe we are right.

Now, there was a lot of name calling last night. Both my friend from Colorado and my friend from Tennessee have the absolute right to voice their opinion. I don't think any less of Members for voicing opinions because they disagree with me. I don't think this is the time to name call. We have an actual factual dispute in the Senate. It is now in a procedural bog. We have to figure a way out of this. It should be a debate that is worthy of the traditions of the Senate. That is what this is all about. The Senate traditionally has had debate we read about in our history books. That is what I want the people who read about this debate to see in years to come—not calling each other names, negative in nature but, rather, referring to a person's position as one of conviction.

I listened to the speech of the Presiding Officer who indicated he would wait until next Tuesday to give his maiden speech, but he felt so passionate—that is my word, not his—about this issue that he wanted to give it a few days early. More power to the Senator from Tennessee. That is certainly fine. That is tremendous that the Senator from Tennessee made his speech and he feels strongly about the issue. It does not mean I have to agree with him. But I admire and respect his position.

Everyone on the other side should understand we also have conviction and feel passionately about this issue, and sometimes there are stalemates. This may be one of those. There may be a very tough decision that the majority leader has to make to pull this nomination. If he wants to go through a cloture vote, second cloture vote, a third cloture vote, eat up more time of the Senate, we are here. We are here for the duration. I don't think because we are involved in this debate that people suddenly need to say the Senate will never be the same. Of course it will be the same. We survived the filibuster

with the Abe Fortas nomination. We survived that. It was very tough at the time. I watched that from the sidelines. We survived the filibusters conducted against President Clinton's nominees. The problem the Republicans had at that time, they did not have enough votes to stop cloture from being invoked because there were Republicans of good will who decided it was the wrong thing to do. That is good.

The fact there were filibusters and some people felt so strongly is hard to comprehend, but even after the filibuster was ended with the cloture vote then people still moved to postpone that nomination. It went that far.

The Senate survived that. And the Senate will survive this little dustup that is going on here.

The point I am trying to make, let's feel good about other people's positions. You do not have to be mean spirited about someone disagreeing with you. I hope, however long this debate takes, whether it is ended today, Friday, next week, or a month from now, that people will speak well about each other in the Senate and not resort to name calling. That is not good at all.

I hope we can move on to some of the other important issues now facing this country.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Colorado.

Mr. ALLARD. Mr. President, I stand in support of Miguel Estrada, and the need for a vote on his nomination. I listened to the comments of my colleague from Nevada, and I ask myself, what is this debate really about? The debate is about whether a majority of Senators should have the opportunity to voice their opinion through a vote on Miguel Estrada. I, for one, feel like I have adequate information. There is more than a majority of Senators in this body who obviously feel they have adequate information to take a vote on Miguel Estrada.

This filibuster is unprecedented. We have never had a filibuster of this nature before on a circuit court judge up for consideration before this body. I think it is time we recognize that in the Constitution there is an advise and consent provision. Many of us feel the debate has reached the point where enough questions have been asked and now the full body of the Senate is ready to proceed to a vote.

When a judge starts through the nomination process, he is introduced to the Senate through resolution. The nomination goes to the committee. There is also a process where individual Senators can express their concerns through a blue slip process. Then there are hearings and votes in committee, and then the nomination comes to the floor for a vote.

Miguel Estrada has gone through this process. He has even received the highest recommendation from the American Bar Association. That is a body of peers, peers he has done business with on a regular basis, who understand his

record, who know him personally, and who appreciate and respect his professional competence to the point they are willing to give him the highest rating the American Bar Association will give to any nominee.

I think he has a great story. He came to this country with a limited English language ability at the age of 17. He could speak Spanish hardly any English at all. If you come here at 17 and don't know the language and you graduate from a university magna cum laude and then go and serve on the Harvard Law Review—it is simply an outstanding academic accomplishment.

This individual's accomplishments did not stop with graduation; they continued through his professional life. Not just anybody gets to argue before the Supreme Court of the United States. That is a select group of people. So as far as I am concerned, let's simplify this debate, as my colleague suggested. Let's have a vote. That is what we are talking about. Let's just bring up Miguel Estrada for a vote in the Senate. I think it is time. I think a lot of debate has been going on. There are some differences of opinion about things that can be argued about. But if we have a vote, each individual Senator has an opportunity to make up his or her mind as to how they feel, as to whether or not there is enough information, to make up their minds as to whether they think this is the quality of person they would like to have on the DC Court of Appeals.

The assistant Democratic leader suggested there are three ways to resolve this problem. He said we can pull the nomination, file cloture, or submit the nominee to additional questioning. I suggest another: To do what we do for most nominees; that is, have the debate, which we are having and have done, set a time certain for a vote, which the other side simply has refused to do, and then vote up or down. Unfortunately, they are not going to permit that to happen.

Last night I joined a majority of my colleagues to display our unity in support for Miguel Estrada, a display of support that is particularly important in the midst of this Democrat-led filibuster. But last night was more than just a display. It was an attempt to break the logjam, a good will invitation to carry out the Senate's duties as commanded by the advice and consent clause of the Constitution. My colleagues and I gathered here on the floor last night, ready to act. A majority of this body is willing to move forward on the nomination of Miguel Estrada by taking a simple up-or-down vote. That is all we are asking for, a simple up-or-down vote on a nominee who is more than qualified to assume the judgeship of the DC Circuit Court, the second most important court in the United States.

Hoping to proceed, my colleagues and I participated in a dialog with Chairman HATCH, a back-and-forth exchange of questions and answers. I admire, I

have to say, the ability and knowledge of Chairman HATCH and his dedication to this cause, especially as it became apparent that we, once again, would be denied the opportunity to vote, held hostage by a game of entrenchment politics.

Every time I hear one of my colleagues address the nomination of Mr. Estrada, I cannot help but to be both impressed and shocked, impressed with the character and integrity, the intellect and principles of Mr. Estrada; and shocked that such a capable man, who has the opportunity to become the first Hispanic judge on the DC Circuit Court, cannot even receive a vote, a simple up-or-down vote.

The majority of my colleagues are ready to move forward on the nomination. We are ready to vote. I cannot cast judgment on those who oppose Mr. Estrada. If they want to vote no, that is their choice. I respect that. It is their right. I understand that. I voted against judges whom I believed were not fit to serve. But it is implausible to think he should be denied a vote entirely.

Newspapers, radio stations, television programs across the country are demanding that the stalemate end, and that the minority party allow the Senate to proceed and to break off a filibuster that could amount to a major shift in constitutional authority.

Last week I spent the Presidents Day recess traveling across the State of Colorado. In every community, big or small, concerned citizens shared their beliefs on the importance of this nomination and the need to provide a vote for Miguel Estrada. They were appalled that we were not moving forward, that their representative in the Senate would not have an opportunity to vote on a very important consideration for the judiciary. Perhaps some disagree on whether he should be confirmed, but they all agree there should be at least a vote, and they agree it should be done without shifting constitutional authority in a manner that imposes a supermajority requirement on all judicial nominations. I am afraid that is where we are headed.

Let me share with you a couple of editorials that ran in Colorado's two major newspapers, one published in the Denver Post, the other appearing in the Rocky Mountain News.

The Denver Post, a paper that endorsed Al Gore in 2000, and by no means an arm of the Republican party, demands that Estrada be given his day in court, that the Senate be provided a vote. The paper confirms the outstanding quality of the nominee, noting that he is a picture book example of an immigrant pursuing the American dream.

The Denver Post also recognizes his outstanding credentials, stating that while he may lack judicial experience, so, too, do a majority of those now sitting on the DC Circuit Court, some of whom were nominated by Presidents Carter and Clinton.

I have a statement here from the editorial in the Denver Post on the posterboard beside me.

The key point is that there should be a vote . . . a filibuster should play no part in the process.

The Rocky Mountain News simply described the Democrats tactics as "ugly," commenting on their attempt to thwart the Senate's majoritarian decisionmaking.

The editorial calls the filibuster:

. . . irresponsible, a hysteria being acted out to keep Estrada from serving on the US Court of Appeals for the District of Columbia.

On the chart I have a quote from both papers highlighting the need to end the filibuster and to proceed to a vote.

The Denver Post:

The key point is that there should be a vote . . . a filibuster should play no part in the process.

The Rocky Mountain News concludes that:

The Democrats have no excuse. Keeping others from voting their consciences on this particular matter is simply out of line.

Editorial boards across the country echo this very same sentiment. More than 60 major newspapers are calling for an end to the filibuster.

I would like to share with my colleagues here this afternoon a few of those. Let me name a few:

The Arkansas Democrat-Gazette; in California, Redding, and The Press Enterprise; The Hartford Courant; The Washington Post; in Florida, The Tampa Tribune and The Florida Times-Union; The Atlanta Journal Constitution and the Augusta Chronicle; the Chicago Tribune in Illinois, along with the Chicago Sun-Times, and Freeport Journal Standard; The Advocate in Baton Rouge, Louisiana; The Boston Herald; The Detroit News and Grand Rapids Press; in New Mexico the Albuquerque Journal; in Nevada, the Las Vegas Review Journal; the Winston-Salem Journal in North Carolina; in North Dakota, the Grand Forks Herald; the Providence Journal in Rhode Island; in West Virginia, the Wheeling News Register/Intelligencer; and nationally, the Investor's Business Daily and the Wall Street Journal.

I would also like to refute one of the arguments being put forward by the Democrats against Mr. Estrada.

For 11 days we have heard statements that the nominee is not qualified to serve because he lacks judicial experience. This standard is simply ridiculous.

Had it applied to their own Democratic nominees, it would have prevented some of the most capable attorney's from being seated on the federal bench.

Under the experience litmus test, the late Justice Byron "Whizzer" White, a great Coloradan, who was nominated to the Supreme Court by President John F. Kennedy, would never have been confirmed.

Nor would another great Coloradan, Judge Carlos Lucero, who was nominated by President Bill Clinton to the

Tenth Circuit Court of Appeals, have been confirmed.

To consider a lack of judicial experience as the poison pill of the Estrada nomination while ignoring the confirmation of Democratic nominees Justice White and Judge Lucero, is a double standard of the highest order.

The majority of this body, a majority elected by the American people, is ready to proceed with the nomination of Miguel Estrada.

I have no doubt that the obstructionists have their own reason to vote against the nominee. But they have no reason to prevent a vote entirely.

I hope that my colleagues will realize the danger of the path they have chosen, and will end this course of obstruction.

While I believe a full and fair debate of Presidential nominees is of paramount importance, obstructing an up-or-down vote fails the public trust and is a disservice to our system of justice.

I know how I am going to vote. I am voting for a highly qualified individual. A nominee who the American Bar Association has stated is "highly-qualified." That individual is Miguel Estrada, and he deserves a vote by the United States Senate.

I yield the floor.

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.

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

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

TITLE IX

Mrs. CLINTON. Mr. President, yesterday, the President's Commission on Opportunity in Athletics released its recommendations for Title IX and some of the findings are a haunting reminder of the way things used to be.

It seems that many of the Commissioners believe that men's sports have suffered because of women's programs. They believe that it is okay to count "slots" instead of actual women players. And some believe that since men are better "naturally" at sports compared to women—that is their word and not mine. That is a true statement if it comes from me, but it is not a true statement when it comes from other women who are more athletically different—and, therefore, men deserve more funding and support. I don't think we should forget that was the excuse used for decades and for generations to keep women out of college, out of math and science classes, and out of the workplace.

I remember as a young girl reading stories of the first women back in the 19th century who wanted to go to medical school to become a doctor or to a law school to become lawyers and who wanted to go to college to further their education. There were court decisions which said women naturally were not suited for higher education. It will

wear out their brain. It will undermine their health, and they certainly are not fit to go into the courtroom or into the operating room. Thank goodness we have come a long way from those days.

But I think about it frequently because my mother was born before women could vote. Lest we forget that many of the changes which we now take for granted did not come about just because somebody changed their mind. It is because we had to fight for work and for the kind of progress which we can see all around us.

For 30 years, title IX has encouraged millions of girls and women to participate in sports. In 1972, only 1 out of every 27 women participated in sports. Today, that number is 1 in 2. The program works. I think we should recognize the extraordinary progress we have made.

I remember very well that although I loved playing sports and athletics as a young girl, I was never very good at it. But I played hard, and it was a major influence on my understanding of my abilities, my limits, teamwork, and sportsmanship. It was hard for me to accept the fact that many of my friends and colleagues who were more talented really hit a wall. There were not the kind of interscholastic teams available at the high school level which we now take for granted. There were not scholarships available in most sports for most girls who had the capacity to compete and be good. The colleges were in no way fulfilling the need and desire that young women had to further their athletic pursuits. There really wasn't anything that you could point to as being professional athletic options for extremely well-qualified and motivated women.

I believe passionately that title IX changed the rules on the playing field and opened up the opportunities so more girls and women could see themselves on that field—and create conditions that would encourage our institutions actually to respond to those needs and desires.

I was very pleased to hear last night that Secretary Paige announced he would only consider the recommendations of the Commission that the Commission unanimously agreed upon. And I applaud that announcement.

But I believe that the minority report, which was written by Julie Foudy, the captain and 9-year veteran of the U.S. Women's National Soccer Team, and Donna de Varona, an Olympic swimmer with two gold metals, raises questions about whether any of these recommendations can actually be described as unanimous.

The introduction of the report reads as follows:

After . . . unsuccessful efforts to include . . . our minority views within the majority report, we have reached the conclusion that we cannot join the report of the Commission.

And Julie Foudy and Donna de Varona go on to say:

Our decision is based on our fundamental disagreement with the tenor, structure and

significant portions of the content of the Commission's report, which fails to present a full and fair consideration of the issues or a clear statement of the discrimination women and girls still face in obtaining equal opportunity in athletics—

They go on to say:

[secondly,] our belief that many of the recommendations made by the majority would seriously weaken Title IX's protections and substantially reduce the opportunities to which women and girls are entitled under current law; and, [third,] our belief that only one of the proposals would address the budgetary causes underlying the discontinuation of some men's teams, and that others would not restore opportunities that have been lost.

Their goal in issuing this minority report was to make sure it was included in the official record of the Commission. Unfortunately, it is my understanding that the Secretary of Education today has refused to include the minority report. I think that is fundamentally unfair. To me, that report should belong with the majority report, especially since those two women, probably between them, have more direct personal experience in what athletics can mean to a woman's life and what it was like before IX, when Donna was competing, and what it was like after IX was enacted, when Julie helped to lead our women's soccer team to the World Cup Championship.

Therefore, Mr. President, I am going to ask unanimous consent to have printed in the RECORD this minority report. I am doing so because I believe it is important that on this issue we hear from the people who have the most to lose: women athletes, women students. Julie and Donna were invited to join the Commission to represent that point of view, and their voices should be heard. For the information of my colleagues, the minority report can be found at <http://www.womensportsfoundation.org/binary-data/WSF—Article/pdf—file/944.pdf>.

Now, along with my colleagues, Senator DASCHLE, Senator KENNEDY, Senator MURRAY, Senator SNOWE, and Senator STEVENS, who care so deeply about this issue, we will continue to keep a watchful eye on the Department of Education because the truth is, they do not need permission from the Commission or anyone else to adopt the changes the Commission has proposed; they can propose to change the regulations or offer guidance at any time.

So I am here today in the Chamber to say that I, and many of my colleagues on both sides of the aisle—men and women alike; athletes and nonathletes alike—will fight to protect title IX for our daughters and our granddaughters and generations of girls and women to come.

But let me also add, my support of title IX and my support of the right of the minority to be heard with respect to the Commission's recommendations does not, in any way, suggest that I do not believe in the importance of sports for young men, because I do. I strongly support sports for all young people.

In fact, I think it is very unfortunate that physical education has been dropped from so many of our schools, that so many of our youngsters not only do not have the opportunity to discharge energy and engage in physical activities, but to learn about sports, to find out that maybe something would inspire their passion and their commitment.

There are other ways to ensure that all boys and girls, all men and women have the opportunity for athletic experiences, to participate on teams.

I was somewhat distressed, when the Commission was appointed, with the number of Commissioners who represented an experience that is not the common experience; namely, the experience of very high stakes, big college and university football, which of course is important; I very much believe that. But that is only one sport, and it is a very expensive sport.

I think there are ways, without taking anything away from anyone—boys, girls, men, women—that we can listen to the voices of experience, such as Julie's and Donna's, and come to recognize that there may be other reasons, besides the law, that some men's teams have been discontinued, which I am very sorry about and wish did not have to happen and believe should not have happened if there had been a fairer allocation of athletic resources across all sports.

So I think we can come to some agreements that would serve perhaps to create additional opportunities, but we should not do it to the detriment of girls and women.

I appreciate the opportunity to come to the floor to recognize this very important piece of legislation which has literally changed the lives of girls and women and should continue to do so. What we ought to be doing is looking for ways we can enhance the physical activity, the athletic, competitive opportunities of boys and girls.

One of the biggest problems we have confronting us now is obesity among young people. We need to get kids moving again. We need to get them in organized physical education classes, intramural sports, interscholastic sports, afterschool sports, and summer sports, so they can have an opportunity to develop their bodies and their athletic interests, as well as their minds and their academic pursuits.

Mr. KYL. Mr. President, also, for the information of my colleagues, "Open to All," the report of the Secretary of Education's Commission on Opportunity in Athletics can be found at <http://ed.gov/pubs/titleixat30/index.html>.

HOMELAND SECURITY

Mrs. CLINTON. Now, Mr. President, on another issue that is of deep concern to me, I come also to raise questions about our commitment to homeland security. This is something I have come to this Chamber to address on numerous occasions, starting in those terrible days after September 11, 2001.

And it is an issue I will continue to address in every forum and venue that I possibly can find because, unfortunately, I do not believe we have done enough to protect ourselves here at home.

On February 3, Mitch Daniels, the Director of the Office of Management and Budget, said:

There is not enough money in the galaxy to protect every square inch of America and every American against every conceived threat.

This statement bothered me at the time. It has continued to bother me. I suppose, on the face of it, it is an accurate statement. Not only isn't there enough money in the United States, the world, or the galaxy to protect every square inch, but what kind of country would we have if we were trying to protect every square inch? That would raise all sorts of issues that might possibly change the character and quality of life here in America.

But I do not think that is what really motivated the statement. The statement was a kind of excuse, if you will, as to why this administration has consistently failed to provide even the rudimentary funding that we have needed for our first responders and to deal with national security vulnerabilities.

We have learned, in the last few months, that threats do exist all over our country. It is not just New York City or Washington, DC, that suffered on September 11. We know that in the months since then, we have seen many other parts of our country respond to alerts—our latest orange alert—which have required huge expenditures of resources in order to protect local water supplies, bridges, chemical plants, nuclear powerplants, to do all that is necessary to know that we have done the best we can.

Life is not certain. There is no way any of us knows where we will be in an hour or in a day or in a year. But what we try to do is to plan for the worst, against contingencies that might undermine our safety. And then we have to just hope and trust and have faith that we have done enough. But if we do not try, if we do not make the commitment, if we do not provide the resources, then we have essentially just put up our hands and surrendered to what did not have to be the inevitable.

When I heard Mr. Daniels make that comment, I thought to myself, if you had made a list of every community in America that might possibly be a site for an al-Qaida terrorist cell, I am not sure that Lackawanna, NY, would have made that list. It is a small community outside of Buffalo where the FBI, in cooperation with local law enforcement, uncovered such a cell of people who had gone to Bin Laden's training camps in Afghanistan and then come back home, most likely what is called a sleeper cell. Their leader was in Yemen where one of our predator aircraft found him and took action against him and his compatriots who are part of the al-Qaida terrorist campaign against us. If

we were just thinking, where should we put money to protect ourselves, I am not sure Lackawanna, NY, would have been on that list. Yet we have reason to believe it should be on any list anywhere. Just yesterday four men in Syracuse, NY, were accused of sending millions of dollars to Saddam Hussein.

I don't know that we can sit here in Washington and say: Well, we can't possibly protect everybody so we shouldn't protect anybody. But that seems to be the attitude of this administration. That is what concerns me most. We should be doing everything we possibly can to make our country safer. We should be thinking 24 hours a day, 7 days a week about new steps, smart steps that we should be taking. Why? Because that is what our enemies do when they think about how to attack us. If somebody is on CNN or the Internet, it doesn't stop at our borders. That is viewed and analyzed in places all over the world. We know that they are working as hard as they possibly can to do as much harm to us and our way of life as they possibly can.

Since September 11, our first responders, our mayors, police and fire chiefs have said over and over again they need Federal support so they can do their jobs to protect the American people. During this recent code orange alert, they have done a remarkable job. They have responded to their new responsibility as this country's frontline soldiers in the war against terrorism with grace, honor, and a dedication that Washington should emulate.

We have had the opportunity to do so. We could have already had in the pipeline and delivered more dollars to pay for needed training, personnel, overtime costs, equipment, whatever it took as determined by local communities that they require to do the job we expect them to do. But every time the Senate has tried to do more for our first responders, the administration and some in Congress have said we should do less.

Senator BYRD stood right over there last summer and offered an amendment, which the Senate supported, that would have provided more than \$5.1 billion in homeland security funding. It included \$585 million for port security; \$150 million to purchase interoperable radio so that police, firefighters and emergency service workers can communicate effectively, a problem we found out tragically interfered with communication on September 11 in New York City; another \$83 million to protect our borders. But in each case, despite having passed it in the Senate, the administration and Republican leaders settled for far less. They called such spending "unnecessary." In some cases, such as the funding for interoperable radios, not only did we not get the increase to buy this critical equipment, the funding was cut by \$66 million.

It was during that debate that we needed the administration's support. But instead, they opposed such efforts,

and the President himself refused to designate \$5.1 billion last August as an emergency to do the kinds of things that mayors and police chiefs and fire chiefs and others have been telling me and my colleagues they desperately need help doing.

The paper today says the President acknowledges we need to do more. I welcome that acknowledgment. But I have learned that we have to wait to see whether the actions match the words. We have to make sure this new awareness about having shortchanged homeland security doesn't translate into taking money away from the functions that firefighters and police officers are called upon to do every day, transferring it across the government ledger, relabeling it counterterrorism, and wiping our hands of it and saying: We did it.

That just doesn't add up. That is what they tried to do for the last year, take money away from the so-called COPS program, which put police on the beat onto our streets, which helped to lower the crime rate during the 1990s, taking money away from the grants that go to fire departments to be well prepared to get those hazardous materials, equipment, and suits that will protect them and claiming that we take that money away, we put it over here, and we say we have done our job. That is just not an appropriate, fair-minded response.

We cannot undo the past, but every day we don't plan for the future is a lost day. I don't ever want to have a debate in the Senate about what we should have done or we could have done or we would have done to protect ourselves, if only we had taken as seriously our commitment to homeland security as the administration takes our commitment to national security.

Last month I issued a report about how 70 percent of the cities and counties in New York are not receiving any Federal homeland security funding. I commissioned this study because I wanted to know for myself whether maybe some money had trickled down into their coffers that I was not aware of. Well, 70 percent say they had gotten nothing; 30 percent say they had gotten a little bit of the bioterrorism money that we had appropriated. But then I also asked them, how much did they need and what did they need it for and how did they justify their needs. And I must say, most of the requests were very well thought out, prudent requests for help that in this time of falling revenues and budget crunches, city and county governments just cannot do themselves.

When that orange alert went out a week or so ago, what happened? I know in New York City, if you were there, you would have seen an intense police presence because our commissioner of police, our mayor, knew they had to respond. They had to get out there and keep a watchful eye. But there was no help coming from Washington for them to do that. It may be a national alert,

but it is a local response. And we are not taking care of the people we expect to make that response for us.

Then I was concerned to see that in so many of the discussions of potential weapons of mass destruction, doctors and nurses and hospital administrators are saying: We are not ready. We do not have the funding. We don't even have the funding to do the preventive work, the smallpox vaccination. We don't have the means to be ready for some kind of chemical or biological or radiological attack.

When we had the incident a few months ago of the shoulder-fired missile that was aimed at the Israeli airline in Kenya—thankfully it missed—I called the people in the new Department of Homeland Security. I said: What are our plans? How do we respond to the threat posed by shoulder-fired missiles?

The response I got back was: Well, that is a local law enforcement responsibility.

Are we going to provide more funding so we can have more police patrols on the outskirts of large airports similar to the ones we have in New York and other States have?

Well, no, that is not in the cards. You just go out there and keep an eye out for those shoulder-fired missiles.

Time and time again we hear about a threat. We hear the conversations from our government officials. We listen to the experts tell us what we have to be afraid of. And if you are a police chief or a fire chief sitting in any city in our country, you are sitting there in front of the television set saying to yourself: My goodness, how am I going to protect my people? How am I possibly going to do the work I need to do when my State budget is being cut, when my local budget is being cut, when the Federal budget is not providing me any resources? How am I going to do that?

It is a fair question. Yet when we dial 911, we expect that phone to be answered, not in this Chamber, not down at the other end of Pennsylvania Avenue in the White House, but right in our local precinct and our local firehouse. Yet in place after place around America, we read stories about police being laid off or being enticed into early retirement to save money, firehouses being closed or firefighters being encouraged to take early retirement, not filling classes in the police and fire academy.

There is something wrong with this picture. Now, we have done all we know to do to give our men and women who wear military uniforms every bit of support we believe they need. If we are going to put them in harm's way, then we owe it to them, to their families, to equip them and train them, and give them the best possible protection so they can fulfill their mission without harm to themselves.

But this is a two-front war. We hear that all the time. My gosh, there is nothing else coming across the airwaves except about what is happening

in the Persian Gulf and on the Korean peninsula and what is happening with al-Qaida. We know we are in a global war against terror and against weapons of mass destruction. That is good offense. We need to be out there trying to rid the world of weapons of mass destruction, rid the world of tyrants and dictators who would use such weapons.

But what about defense? What about what happens here at home? We have not done what we need to do to protect our homeland or our hometowns. That is absolutely unacceptable. The one thing we have learned from the horrors of September 11 is that in this new globalization of transportation and information we now live in, boundaries mean very little. Part of the reason we were immune from attack through many decades—with the exception of Pearl Harbor and the attack on this city and on Baltimore in the War of 1812—is we were protected by those big oceans, and with friendly neighbors to the north and south. But those days are gone. You can get on a jet plane from anywhere. You can be in a cave in Afghanistan and use your computer. You can transfer information about attacks and about weapons of mass destruction with the flick of a mouse.

So we have to upgrade and transform our homeland defense, just as we have to think differently about our military readiness and capacity. This does not come cheaply. This is not easy to do. I spend a lot of time talking with police, firefighters, hospital administrators, and front line doctors and nurses; they are ready to make the sacrifice to perform in whatever way they are expected to do so to protect us. But we are not giving them the help they need.

Now, we can remedy this. It was a good sign when the President admitted today that he and his administration have not funded homeland security, and I am glad to hear they have finally admitted that. But now we have to do something about that admission. It cannot be just a one-day headline. We have to figure out, OK, now that you are seeing what we see, what we have been worried about, let's do something. Let's make sure that whatever budget is sent up here has money in it for these important functions, so we can look in the eyes of our police officers, firefighters, and emergency providers, and say we have done the best we know how to do.

That doesn't mean we are 100 percent safe. There is no such thing. That is impossible. That is not something we can possibly achieve. But we have to do the best we can. I believe it is probably a good old adage to "hope for the best, but prepare for the worst." When you have done all you knew how to do, when something does happen, hopefully, you are prepared to deal with it.

From my perspective, Mr. President, this is a national priority that cannot wait. Many of the commentators and pundits of the current theme talk about the likely military action necessitated by Saddam Hussein's refusal to

disarm, and point to the possibility that such action will trigger an upsurge in potential attack not only here at home but on American assets and individuals around the world. It would be impossible to write any scenario about the next 10 years without taking into account the potential of future terrorism.

But what is not impossible—in fact, what is absolutely necessary—is for us to be able to say to our children and the children of firefighters and police officers and emergency responders that we did all we knew to do; we were as prepared as we possibly could be. That is what I want to be able to say, and I know we cannot do that without the resources that will make it a real promise of security, instead of an empty promise.

So, Mr. President, it is my very strong hope that in the wake of the administration's recognition of the failure thus far to fund homeland security, now we can get down to business; that we not only can fund it, but do it quickly, get the money flowing, and get local communities ready to implement it, and we can get about the business of making America safer here at home. I will do everything I can to realize that goal. I look forward to working with my colleagues on both sides of the aisle as we provide the kind of homeland security Americans deserve.

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

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. PRYOR. Mr. President, I ask unanimous consent that I be permitted to speak in morning business for up to 25 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The Senator from Arkansas is recognized.

(The remarks of Mr. PRYOR are printed in today's RECORD under "Morning Business.")

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

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

Mr. GRASSLEY. Mr. President, I rise once again to speak in support of the confirmation of Miguel Estrada, an exceptionally well qualified nominee who does not deserve to have his nomination obstructed by this filibuster. I have been a strong supporter of Mr.

Estrada's since he came before the Judiciary Committee last year. At that time, I argued that his nomination should come up for a floor vote, but we were not allowed to vote on his nomination then. Here we are a year later, and I am still strongly supporting Mr. Estrada, and I am still arguing for a floor vote, and that vote is still being refused. I think it is shameful to continue holding up the vote on this very qualified judicial nominee, who, by the way, will make an excellent member of the US Court of Appeals for the DC Circuit.

I know my colleagues heard Mr. Estrada's credentials many times last week. In fact, I am pretty sure that some of my colleagues could quote his credentials in their sleep. However, I think it is important that the Senate is reminded of how qualified this nominee is who is being filibustered. Not only is he regarded as one of the Nation's top appellate lawyers, having argued 15 cases before the Supreme Court of the United States, but the American Bar Association, which I think Democrats consider the gold standard of determination of the person's qualifications to be a judicial nominee, has given him a unanimous rating of, in their words, "well qualified." This happens to be the highest American Bar Association rating. It is a rating they would not give to just any lawyer who comes up the pike. According to the American Bar Association, quoting from their standard:

To merit a rating of well qualified, the nominee must be at the top of the legal profession in his or her legal community, having outstanding legal ability, breadth of experience, the highest reputation for integrity and either have demonstrated or exhibited the capacity for judicial temperament.

We ought to demand that more qualified people like Miguel Estrada be appointed to the bench rather than fighting his nomination.

As my colleagues know, I am not a lawyer. There is nothing wrong with going to law school, but I did not. I have been on the Judiciary Committee my entire time in the Senate. I know some of the qualifications that are needed to be a Federal judge, particularly a Federal judge on this DC Circuit that handles so many appeals from administrative agencies and is often considered, by legal experts, to be the second highest court of our land.

Mr. Estrada's academic credentials are stellar. He graduated from Columbia University with his bachelor's degree magna cum laude and was also a member of Phi Beta Kappa. Then he earned his juris doctorate from Harvard University, also magna cum laude, where he was editor of the Harvard Law Review. Mr. Estrada did not just attend Harvard Law School; he graduated with honors. He also served as the editor of the Harvard Law Review. To be selected as the editor of a law review is a feat that only the most exceptional of law students attain.

While Mr. Estrada certainly has the intellect required to be a Federal

judge, his professional background also gives testament to his being qualified for a Federal Court of Appeals judgeship as opposed to just any judgeship.

After law school, Mr. Estrada served as a law clerk to the Second Circuit Court of Appeals and as a law clerk to Justice Kennedy, on the United States Supreme Court. Subsequently, he served as an Assistant US Attorney and deputy chief of the appellate section of the US Attorney's Office of the Southern District of New York, and then as assistant to the Solicitor General of the United States of America.

Mr. Estrada has been in the private sector as well. He is a partner with the Washington, DC, office of the law firm of Gibson, Dunn & Crutcher. In this exceptional career, Mr. Estrada has argued 15 cases before the United States Supreme Court. He won nine of those cases. Mr. Estrada is not just an appellate lawyer; he is one of the top appellate lawyers in the country. So for a young lawyer, I think I can give my colleagues a person who can truly be labeled an American success story. In fact, instead of degrading his ability to serve as a circuit court judge, we should all be proud of Mr. Estrada's many accomplishments.

This is the nominee that the Democrats are filibustering. I fail to understand why a nominee of these outstanding qualifications, and who has been honored by the ABA with its highest rating, would be the object of such obstruction. In all my years on the Judiciary Committee—and that has been my entire tenure in the Senate—Republicans never once filibustered a Democratic President's nominee to the Federal bench. There are many I may have wanted to filibuster, but I did not do it—we did not do it—because it is not right.

In fact, as I understand it, in the entire history of the Senate neither party has ever filibustered a judicial nominee. Going back over 200 years, Republicans and Democrats have resisted the urge to obstruct a nominee by filibustering. Good men of sound judgment have come to the conclusion that to use this tool of last resorts to obstruct a nomination is, at best, inappropriate, and, at worst, just down right wrong.

This nominee, like all nominees, deserves an up-or-down vote. Anything less is absolutely unfair. I hope my colleagues on the other side of the aisle will reconsider this filibuster. The Senate should not cross this Rubicon and establish new precedent for the confirmation process.

Over 40 newspapers from across the country have published editorials advocating that the Senate give Mr. Estrada a vote. Even the Washington Post, which is not exactly a bastion of conservatism, published an editorial last week entitled, "Just Vote." In that editorial, the Post correctly characterized the Democrats obstructionist efforts. With regard to the Democrat request for the internal memos Mr. Estrada drafted while he was in the Solicitor General's Office, the Post said

that this filibuster of Mr. Estrada goes beyond the normal political confirmation games, because,

Democrats demand, as a condition of a vote, answers to questions that no nominee should be forced to address—and that nominees have not previously been forced to address.

I agree with the Post:

It's long past time to stop these games and vote.

I make a unanimous consent request that this Washington Post editorial, "Just Vote" be printed in the RECORD after my statement.

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

[See exhibit 1.]

Mr. GRASSLEY. Those denying the Senate an up-or-down vote on Mr. Estrada's nomination claim that he has not answered questions or produced documentation, and so he should not be confirmed to the Federal bench. I can think of a number of Democratic nominees who did not sufficiently answer question that I submitted to them, but that did not lead me to filibuster. As far as I know, Mr. Estrada has answered all questions posed to him by the Judiciary Committee members.

His opponents claim that he has refused to hand over certain in-house Justice Department memoranda. What actually is happening is that the Democrats on the Judiciary Committee have requested that the Department of Justice submit to the Committee, internal memoranda written by Miguel Estrada when he was an attorney in the Solicitor General's Office. These internal memos are attorney work product, specifically appeal, certiorari, and amicus memoranda, and the Justice Department has rightly refused to produce them.

The Department of Justice has never disclosed such sensitive information in the context of a Court of Appeals nomination. These memoranda should not be released, because they detail the appeal, certiorari and amicus recommendations and legal opinions of an assistant to the Solicitor General. This is not just the policy of this administration, the Bush administration, a Republican administration. This has also been the policy under Democratic Presidents.

The inappropriateness of this request prompted all seven living former Solicitors General to write a bipartisan letter to the Committee to express their concern regarding the Committee's request and to defend the need to keep such documents confidential. The letter was signed by Democrats Seth Waxman, Walter Dellinger, Drew Days III and Republicans Ken Starr, Charles Fried, Robert Bork and Archibald Cox. The letter notes that when each of the Solicitors General made important decisions regarding whether to seek Supreme Court review of adverse appellate decisions and whether to participate as amicus curiae in other high profile cases, they:

relied on frank, honest and thorough advice from [their] staff attorneys like Mr. Estrada . . .

and that the open exchange of ideas which must occur in such a context

Simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure.

The letter concludes that

Any attempt to intrude into the Office's highly privileged deliberations would come at a cost of the Solicitor General's ability to defend vigorously the United States litigation interests, a cost that also would be borne by Congress itself.

The Democratic committee member's request has even drawn criticism from the editorial boards of the Washington Post and Wall Street Journal. On May 28, 2002, in an editorial entitled "Not Fair Game" the Washington Post editorialized that the request

For an attorney's work product would be unthinkable if the work had been done for a private client. . . . [and] legal advice by a line attorney for the federal government is not fair game either.

According to the Post editorial

. . . In elite government offices such as that of the solicitor general, lawyers need to speak freely without worrying that the positions they are advocating today will be used against them if they ever get nominated to some other position.

On May 24, 2002, the Wall Street Journal in an editorial entitled "The Estrada Gambit" also criticized the request, calling it "one more attempt to delay giving Mr. Estrada a hearing and a vote." The Journal further criticized the Committee's request in a later editorial, entitled "No Judicial Fishing", calling the request "outrageous" and noting that the goal of the request "is to delay, trying to put off the day when Mr. Estrada takes a seat on the D.C. Circuit Court of Appeals."

Mr. President, I ask unanimous consent that these two editorials also be printed in the RECORD after my statement.

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

[See exhibit 2.]

Mr. GRASSLEY. Mr. Estrada is not the only former deputy or assistant to the Solicitor General nominated to the Federal bench. In fact, there are seven others now serving on the Federal Courts of Appeals. None had any prior judicial experience, and the committee did not ask the Justice Department to turn over any confidential internal memoranda those nominees prepared while serving in the Solicitor General's Office. The seven nominees were: Samuel Alito on the 3rd Circuit, Danny Boggs on the 6th Circuit, William Bryson and Daniel Friedman on the Federal Circuit, Frank Easterbrook and Richard Posner on the 7th Circuit, and A. Raymond Randolph on the D.C. Circuit. Why should Mr. Estrada be treated any differently?

During Mr. Estrada's hearing, Judiciary Committee Democrats alleged that the committee has reviewed the work product of other nominees, including memos written by Frank Easterbrook, by Chief Justice Rehnquist when he served as a clerk to Justice Jackson,

and by Robert Bork when he was an official at the Justice Department.

For the record, there is no evidence that the Department of Justice ever turned over confidential memoranda prepared by Frank Easterbrook when he served in the Solicitor General's Office. There also is no evidence that the committee even requested such information.

During Robert Bork's hearings, the Department did turn over memos Judge Bork wrote while serving as Solicitor General, but none of these memos contained the sort of deliberative materials requested of Mr. Estrada and the Justice Department. The Bork materials include memos containing Bork's opinions on such subjects as the constitutionality of the pocket veto, and on President Nixon's assertions of executive privilege and his views of the Office of Special Prosecutor. None of the memos contain information regarding internal deliberations of career attorneys on appeal decisions or legal opinions in connection with appeal decisions. Moreover, the Bork documents reflected information transmitted between a political appointee, namely the Solicitor General, and political advisors to the President, rather than the advice of a career Department of Justice attorney to his superiors, as is the case with Mr. Estrada.

You see, the Judiciary Committee has never requested and the Department of Justice has never agreed to release the internal memos of a career line attorney. To ask that Mr. Estrada turn over his memos is unprecedented, and frankly unfair. No Member of this body would ever condone a request to turn over staff memos. What my staff communicates to me in writing is internal and private. I am sure every other Senator feels the same way as I do. This Democrat fishing expedition needs to stop. Miguel Estrada is a more than well qualified nominee and he deserves a vote on his nomination, today.

In conclusion, we are again seeing an attack on another very talented, very principled, highly qualified legal mind. It all boils down to this, Mr. Estrada's opponents refuse to give him a vote because they say they do not know enough about him. They further contend that the Justice Department memos, which they know will never be released, are the only way they can find out what they need to know about Mr. Estrada. It is a terrible Catch-22.

These obstructionist efforts are a disgrace and an outrage. We must put a stop to these inappropriate political attacks and get on with the business of confirming to the Federal bench good men and women who are committed to doing what judges should do, interpret law as opposed to making law from the bench, because it is our responsibility to make law as members of the legislative branch.

I yield the floor.

EXHIBIT 1

[From the Washington Post, Feb. 18, 2003]

JUST VOTE

The Senate has recessed without voting on the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit. Because of a Democratic filibuster, it spent much of the week debating Mr. Estrada, and, at least for now, enough Democrats are holding together to prevent the full Senate from acting. The arguments against Mr. Estrada's confirmation range from the unpersuasive to the offensive. He lacks judicial experience, his critics say—though only three current members of the court had been judges before their nominations. He is too young—though he is about the same age as Judge Harry T. Edwards was when he was appointed and several years older than Kenneth W. Starr was when he was nominated. Mr. Estrada stonewalled the Judiciary Committee by refusing to answer questions—though his answers were similar in nature to those of previous nominees, including many nominated by Democratic presidents. The administration refused to turn over his Justice Department memos—though no reasonable Congress ought to be seeking such material, as a letter from all living former solicitors general attests. He is not a real Hispanic and, by the way, he was nominated only because he is Hispanic—two arguments as repugnant as they are incoherent. Underlying it all is the fact that Democrats don't want to put a conservative on the court.

Laurence H. Silberman, a senior judge on the court to which Mr. Estrada aspires to serve, recently observed that under the current standards being applied by the Senate, not one of his colleagues could predictably secure confirmation. He's right. To be sure, Republicans missed few opportunities to play politics with President Clinton's nominees. But the Estrada filibuster is a step beyond even those deplorable games. For Democrats demand, as a condition of a vote, answers to questions that no nominee should be forced to address—and that nominees have not previously been forced to address. If Mr. Estrada cannot get a vote, there will be no reason for Republicans to allow the next David S. Tatel—a distinguished liberal member of the court—to get one when a Democrat someday again picks judges. Yet the D.C. Circuit—and all courts, for that matter—would be all the poorer were it composed entirely of people whose views challenged nobody.

Nor is the problem just Mr. Estrada. John G. Roberts Jr., Mr. Bush's other nominee to the D.C. Circuit, has been waiting nearly two years for a Judiciary Committee vote. Nobody has raised a substantial argument against him. Indeed, Mr. Roberts is among the most highly regarded appellate lawyers in the city. Yet on Thursday, Democrats invoked a procedural rule to block a committee vote anyway—just for good measure. It's long past time to stop these games and vote.

EXHIBIT 2

[From the Wall Street Journal, May 24, 2002]

THE ESTRADA GAMBIT

Senate Judiciary Chairman Patrick Leahy keeps saying he's assessing judicial nominees on the merits, without political influence. So why does he keep getting caught with someone else's fingerprints on his press releases?

The latest episode involves Miguel Estrada, nominated more than a year ago by President Bush for the prestigious D.C. Circuit Court of Appeals. Mr. Estrada scares the legal briefs off liberal lobbies because he's young, smart and accomplished, having served in the Clinton Solicitor General's of-

fice, and especially because he's a conservative Hispanic. All of these things make him a potential candidate to be elevated to the U.S. Supreme Court down the road.

Sooner or later even Mr. Leahy has to grant the nominee a hearing, one would think. But maybe not, if he keeps taking orders from Ralph Neas at People for the American Way. On April 15, the Legal Times newspaper reported that a "leader" of the anti-Estrada liberal coalition was considering "launching an effort to obtain internal memos that Estrada wrote while at the SG's office, hoping they will shed light on the nominee's personal views."

Hmmm. Who could that leader be? Mr. Neas, perhaps? Whoever it is, Mr. Leahy seems to be following orders, because a month later, on May 15, Mr. Leahy sent a letter to Mr. Estrada requesting the "appeal recommendations, certiorari recommendations, and amicus recommendations you worked on while at the United States Department of Justice."

It's important to understand how outrageous this request is. Mr. Leahy is demanding pre-decision memorandums, the kind of internal deliberations that are almost by definition protected by executive privilege. No White House would disclose them, and the Bush Administration has already turned down a similar Senate request of memorandums in the case of EPA nominee Jeffrey Holmstead, who once worked in the White House counsel's office.

No legal fool, Mr. Leahy must understand this. So the question is what is he really up to? The answer is almost certainly one more attempt to delay giving Mr. Estrada a hearing and vote. A simple exchange of letters from lawyers can take weeks. And then if the White House turns Mr. Leahy down, he can claim lack of cooperation and use that as an excuse to delay still further.

Mr. Leahy is also playing star marionette to liberal Hispanic groups, which on May 1 wrote to Mr. Leahy urging that he delay the Estrada hearing until at least August in order to "allow sufficient time . . . to complete a thorough and comprehensive review of the nominee's record." We guess a year isn't adequate time and can only assume they need the labor-intensive summer months to complete their investigation. (Now there's a job for an intern.) On May 9, the one-year anniversary of Mr. Estrada's nomination, Mr. Leahy issued a statement justifying the delay in granting him a hearing by pointing to the Hispanic group's letter.

These groups, by the way, deserve some greater exposure. They include the Mexican American Legal Defense and Educational Fund as well as La Raza, two lobbies that claim to represent the interests of Hispanics. Apparently they now believe their job is to help white liberals dig up dirt on a distinguished jurist who could be the first Hispanic on the U.S. Supreme Court.

The frustration among liberals in not being able to dig up anything on Mr. Estrada is obvious. Nam Aron, president of the Alliance for Justice, told Legal Times that "There is a dearth of information about Estrada's record, which places a responsibility on the part of Senators to develop a record at his hearing. There is much that he has done that is not apparent." Translation: We can't beat him yet.

Anywhere but Washington, Mr. Estrada would be considered a splendid nominee. The American Bar Association, whose recommendation Mr. LEAHY one called the "gold standard by which judicial candidates have been judged," awarded Mr. Estrada its highest rating of unanimously well-qualified. There are even Democrats, such as Gore advisor Ron Klaim, who are as effusive as Republicans singing the candidate's praises.

When Mr. Estrada worked in the Clinton-era Solicitor General's office, he wrote a friend-of-the-court brief in support of the National Organization of Women's position that anti-abortion protestors violated RICO. It's hard to paint a lawyer who's worked for Bill Clinton and supported NOW as a right-wing fanatic.

We report all of this because it reveals just how poison judicial politics have become, and how the Senate is perverting its advise and consent power. Yesterday the Judiciary Committee finally to help fellow Pennsylvania Brooks Smith.

Mr. Estrada doesn't have such a patron, so he's fated to endure the delay and document-fishing of liberal interests and the Senate Chairman who takes their dictation.

Ms. MIKULSKI. Mr. President, I rise in opposition to the nomination of Miguel Estrada to the United States Circuit Court of Appeals for the District of Columbia.

The President has the right to make judicial nominations. The Senate has the Constitutional responsibility to advise and consent. I take this responsibility very seriously. This is a lifetime appointment for our nation's second most important court. Only the Supreme Court has a greater impact on the lives and rights of every American.

The District of Columbia Circuit is the final arbiter on many cases that the Supreme Court refuses to consider. That means it's responsible for decisions on fundamental constitutional issues involving freedom of speech, the right to privacy and equal protection.

In addition, the D.C. Circuit has special jurisdiction over Federal agency actions. That means the D.C. Circuit is responsible for cases on issues of great national significance involving labor rights, affirmative action, clean air and clear water standards, health and safety regulations, consumer privacy and campaign finance. The importance of this court highlights the importance of placing skilled, experienced and moderate jurists on the court.

I base my consideration of each judicial nominee on three criteria: competence, integrity and commitment to core Constitutional principles.

I don't question Mr. Estrada's character or competence. He is clearly a skilled lawyer. Yet the Senate does not have enough information to judge Mr. Estrada's commitment to core Constitutional principles.

He has refused to answer even the most basic questions during his hearing in Senate Judiciary Committee. For example, he was asked to give examples of Supreme Court decisions with which he disagreed. He refused to answer. He was asked basic questions on his judicial philosophy. He refused to answer.

The Constitution gives the Senate the responsibility to advise and consent on judicial nominations. This consent should be based on rigorous analysis. The nominee doesn't have to be an academic with a paper trail. Yet the nominee must be open and forthcoming. He or she must answer questions that seek to determine their commitment to core Constitutional principles.

This is a divisive nomination—at a time when our Nation should be united. Our Nation is preparing for a possible war in Iraq. We are already engaged in a war against terrorism. We are also facing a weak economy. Americans are stressed and anxious. The Senate should be working to reduce this stress—to make America more secure; to strengthen our economy and to deal with the ballooning cost of health care.

I urge the administration to nominate judicial candidates who are moderate and mainstream—and to instruct those nominees to be forthright and forthcoming with the Senate so the Senate can address the significant issues that face our Nation today.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Oklahoma.

Mr. NICKLES. Madam President, I ask unanimous consent to proceed as if in morning business.

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

(The remarks of Mr. NICKLES pertaining to the introduction of S. 2 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, one of our most important responsibilities as Senators is the confirmation of Federal judges. Federal judges are appointed for life, and they will be interpreting laws affecting the lives of all our citizens for many years to come. Yet my colleagues across the aisle suggest that something far less than a full review of a nominee's record is warranted. Republican Senators pretend that by seeking additional information to help us understand Mr. Estrada's views and judicial philosophy, we are upsetting the proper constitutional balance between the Senate and the executive branch. They claim the Senate has to consent to the President's judicial nominees, as long as they have appropriate professional qualifications.

In fact, the Constitution gives a strong role to the Senate in evaluating nominees. The role of the Senate is fundamental to the basic constitutional concept of checks and balances at the heart of the Federal Government. And when we say "check" we don't mean blank check.

The debates over the drafting of the Constitution tell a great deal about the proper role of the Senate in the judicial selection process. Both the text of the Appointments Clause of the Constitution and the debates over its adoption make clear that the Senate should play an active and independent role in selecting judges.

Given recent statements by Republican Senators, it is important to lay out the historical record in detail. The Constitutional Convention met in Philadelphia from late May until mid-September of 1787. On May 29, 1787, the Convention began its work on the Constitution with the Virginia Plan introduced by Governor Randolph, which

provided "that a National Judiciary be established, to be chosen by the National Legislature." Under this plan, the President had no role at all in the selection of judges.

When this provision came before the Convention on June 5, several members were concerned that having the whole legislature select judges was too unwieldy. James Wilson suggested an alternative proposal that the President be given sole power to appoint judges.

That idea had almost no support. Rutledge of South Carolina said that he "was by no means disposed to grant so great a power to any single person." James Madison agreed that the legislature was too large a body, and stated that he was "rather inclined to give [the appointment power] to the Senatorial branch" of the legislature, a group "sufficiently stable and independent" to provide "deliberate judgements."

A week later, Madison offered a formal motion to give the Senate the sole power to appoint judges and this motion was adopted without any objection. On June 19, the Convention formally adopted a working draft of the Constitution, and it gave the Senate the exclusive power to appoint judges.

July of 1787 was spent reviewing the draft Constitution. On July 18, the Convention reaffirmed its decision to grant the Senate the exclusive power. James Wilson again proposed "that the Judges be appointed by the Executive" and again his motion was defeated.

The issue was considered again on July 21, and the Convention again agreed to the exclusive Senate appointment of judges.

In a debate concerning the provision, George Mason called the idea of executive appointment of Federal judges a "dangerous precedent." The Constitution was drafted to read: "The Senate of the United States shall have power to appoint Judges of the Supreme Court."

Not until the final days of the Convention was the President given power to nominate Judges. On September 4, 2 weeks before the Convention's work was completed, the Committee proposed that the President should have a role in selecting judges. It stated: "The President shall nominate and by and with the advice and consent of the Senate shall appoint judges of the Supreme Court." The debates, make clear, however, that while the President had the power to nominate judges, the Senate still had a central role.

Governor Morris of Pennsylvania described the provision as giving the Senate the power "to appoint Judges nominated to them by the President." The Constitutional Convention adopted this reworded provision giving the President the power, with the advice and consent of the Senate, to nominate and appoint judges.

The debates and the series of events proceeding adoption of the "advise and consent" language make clear, that the Senate should play an active role. The Convention having repeatedly re-

jected proposals that would lodge exclusive power to select judges with the executive branch, could not possibly have intended to reduce the Senate to a rubber stamp role.

The reasons given by delegates to the Convention for making the selection of judges a joint decision by the President and the Senate are as relevant today as they were in 1787. The framers refused to give the power of appointment to a "single individual." They understood that a more representative judiciary would be attained by giving members of the Senate a major role.

From the start, the Senate has not hesitated to fully exercise this power. During the first 100 years after ratification of the Constitution, 21 or 81 Supreme Court nominations—one out of four—were rejected, withdrawn, or not acted on. During these confirmation debates, ideology often mattered. John Rutledge, nominated by George Washington, failed to win confirmation as Chief Justice in 1795.

Alexander Hamilton and other Federalists opposed him, because of his position on the controversial Jay Treaty. A nominee of President James Polk was rejected because of his anti-immigration position. A nominee of President Hoover was rejected because of his anti labor view. Our Republican colleagues are obviously aware of this. Their recent statements attempting to downplay the Senate's role stand in stark contrast to the statements when they controlled the Senate during the Clinton administration. At that time, they vigorously asserted their right of "advice and consent."

Indeed, while public debate and a demand to fully review a nominee's record is consistent with our duty of "advice and consent," many of the actions by Republicans were damaging to the nominations process. Democrats have made clear our concerns about whether Mr. Estrada has met the burden of showing that he should be appointed to the DC Circuit, but Republicans resorted to tactics such as secret holds to block President Clinton's nominees. For instance, it took four years to act on the nomination of Richard Paez, a Mexican-American, to the Ninth Circuit. Senate Republicans repeatedly delayed floor action on Judge Paez through use of anonymous holds.

Republicans voted to indefinitely postpone action on Judge Paez's nomination. Finally, in March 2000, 4 years after his nomination and with the Presidential election on the horizon, Judge Paez was confirmed, after cloture was invoked.

Reviewing Mr. Estrada's nomination is our constitutional duty. We take his nomination particularly seriously because of the importance of the DC Circuit, the Court to which he has been nominated. The important work we do in Congress to improve health care, protect workers rights, and protect civil rights mean far less if we fail to fulfill our responsibility to provide the

best possible advice and consent on judicial nominations. Tough environmental laws mean little to a community that can't enforce them in our federal courts. Civil rights laws are undercut if there are no remedies for disabled men and women. Fair labor laws are only words on paper if we confirm judges who ignore them.

What we know about Mr. Estrada leads us to question whether he will deal fairly with the range of important issues affecting everyday Americans that came before him.

Mr. Estrada has been actively involved in supporting broad anti-loitering ordinances that restrict the rights of minority residents to conduct lawful activities in their neighborhoods. Mr. Estrada has sought to undermine the ability of civil rights groups like the NAACP to challenge these broad ordinances which affect the ability of minority citizens to conduct activities such as drug counseling and voter outreach in their communities.

Information we need to know about Mr. Estrada's record has been hidden from us by the Department of Justice. Democratic Senators have asked for Mr. Estrada's Solicitor General Memoranda. We have moved for unanimous consent to proceed to a vote on his nomination, after those memoranda are provided. Yet, the White House refuses to provide any of Mr. Estrada's memos, even though there is ample precedent for allowing the Senate to review these documents.

Even as Republicans refuse to allow us to see Mr. Estrada's memos from his time in public office—and even as Mr. Estrada declined to answer many basic questions about his judicial philosophy and approach—Republicans repeatedly make clear that they are familiar with Mr. Estrada's views and judicial philosophy.

Since his nomination, Republican Senators have repeatedly praised Mr. Estrada as a "conservative." A recent article from Roll Call states that the Republican Party is confident that Mr. Estrada will rule in support of big business. The article also states that the Republican Party has asked lobbyists to get involved in the battle over Mr. Estrada's nomination.

I have spoken in recent days about the importance of the DC Circuit and its shift to the right in the 1980s and 1990s. In the 1960s and 1970s, the DC Circuit had a significant role in protecting public access to agency and judicial proceedings, protecting civil rights guarantees, overseeing administrative agencies, protecting the public interest in communications regulation, and enforcing environmental protections. In the 1980s, however, the DC Circuit changed dramatically because of the appointment of conservative judges. As its composition changed, it became a conservative and activist court—striking down civil rights and constitutional protections, encouraging deregulation, closing the doors of the courts to many citizens, favoring employers

over workers, and undermining federal protection of the environment.

It seems clear that Mr. Estrada has been nominated to the DC Circuit in the hope that this court will continue to be more interested in favoring big business than in protecting the rights of workers, consumers, women, minorities, and other Americans.

Mr. Estrada's nomination is strongly opposed by those concerned about these rights. Republicans repeatedly praise Mr. Estrada as a Hispanic—but many Hispanic groups oppose his nomination. The Congressional Hispanic Caucus, the Mexican American Legal Defense Fund, the Southwest Voter Registration Project, 52 Latino Labor Leaders representing working families across the country, the California League of United Latino Citizens, the California La Raza, the Puerto Rican Legal Defense Fund and fifteen past presidents of the Hispanic National Bar Association, whose terms span from 1972 until 1998 have stated their opposition to Mr. Estrada. As these Presidents write:

Based upon our review and understanding of the totality of Mr. Estrada's record and life's experiences, we believe that there are more than enough reasons to conclude that Mr. Estrada's candidacy falls short. [These] reasons include: his virtually non-existent written record, his verbally expressed and un-rebutted extreme views, his lack of judicial or academic teaching experience (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his poor judicial temperament, his total lack of connection whatsoever to, or lack of demonstrated interest in the Hispanic community, his refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to other straightforward questions of Senate Judiciary Committee Members.

I would like to include in the RECORD statements at the end of my remarks of two of the past National Presidents of the League of United Latin American Citizens opposing Mr. Estrada's nomination. The first statement is from Belen Robles, a native Texas who has a long and active involvement in the Latino civil rights community. He writes that he is "deeply troubled with the nomination of Miguel Estrada." He is troubled by the positions that Mr. Estrada has taken on racial profiling, and on whether the NAACP had standing to put forward the claims of African-Americans arrested under an anti-loitering ordinance.

Mr. Robles writes:

As a former National President of LULAC, I know very well that on many occasions LULAC has been a champion of the rights of its membership in civil rights cases. We asserted those rights on behalf of voters in voting cases in Texas, and in many other civil rights cases. Under his view, Mr. Estrada could decide that a civil rights organization such as LULAC would not be able to sue on behalf of its members. NO supporter of civil rights could agree with Mr. Estrada's confirmation.

Ruben Bonilla, an attorney in Texas who is also a past National president of LULAC, opposes the confirmation of Mr. Estrada.

Mr. Bonilla writes:

I am deeply troubled with the double standard that surrounds the nomination of Mr. Estrada. It is particularly troubling that some of the Senators have accused Democrats or other Latinos of being anti-Hispanic, or holding the American dream hostage. Yet, these same Senators in fact prevented Latinos appointed by the Clinton Administration from ever being given a hearing. Notably, Corpus Christi lawyer Jorge Rangel, and El Paso attorney Enrique Moreno, and Denver attorney Christine Arguello never received hearings before the judiciary committee. Yet, these individuals who came from the top of their profession were schooled in the Ivy League, were raised from modest means in the Southwest, and in fact truly embodied the American Dream. These highly qualified Mexican-Americans never had the opportunity to introduce themselves and their views to the Senate, as Mr. Estrada did.

Mr. President, the Senate is entitled to see Mr. Estrada's full record. Both the Constitution and historical practices require us to ignore the Administration's obvious ideological nominations. Judicial nominees who come before the Senate should have professional qualifications and the right temperament to be a judge. They should be committed to basic constitutional principles. Many of us have no confidence that Mr. Estrada has met this burden. I urge the Senate to reject this nomination.

I ask unanimous consent that supporting material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HNBA'S PAST PRESIDENTS' STATEMENT,
FEBRUARY 21, 2003

We the undesignated past presidents of the Hispanic National Bar Association write in strong opposition to the nomination of Miguel A. Estrada for judgeship on the Court of Appeals for the District of Columbia Circuit.

Since the HNBA's establishment in 1972, promoting civil rights and advocating for judicial appointments of qualified Hispanic Americans throughout our nation have been our fundamental concerns. Over the years, we have had a proven and respected record of endorsing or not endorsing or rejecting nominees on a non-partisan basis of both Republican and Democratic presidents.

In addition to evaluating a candidate's professional experience and judicial temperament, the HNBA's policies and procedures governing judicial endorsements have required that the following additional criteria be considered: The extent to which a candidate has been involved in, supportive of, and responsive to the issues, needs and concerns or Hispanic Americans, and the candidate's demonstrated commitment to the concept of equal opportunity and equal justice under the law.

Based upon our review and understanding of the totality of Mr. Estrada's record and life's experiences, we believe that there are more than enough reasons to conclude that Mr. Estrada's candidacy falls short in these respects. We believe that for many reasons including: his virtually non-existent written record, his verbally expressed and un-rebutted extreme views, his lack of judicial or academic teaching experience, (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his

poor judicial temperament, his total lack of any connection whatsoever to, or lack of demonstrated interest in the Hispanic community, his refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to the other straightforward questions of Senate Judiciary Committee members, and because of the Administration's refusal to provide the Judiciary Committee the additional information and cooperation it needs to address these concerns, the United States Senate cannot and must not conclude that Mr. Estrada can be a fair and impartial appellate court judge.

Respectfully submitted,

JOHN ROY CASTILLO, ET AL.

[From The Oregonian, Feb. 24, 2003]

ESTRADA WOULD DESTROY HARD-FOUGHT VICTORIES

(By Dolores C. Huerta)

As a co-founder of the United Farm Workers with Cesar Chavez, I know what progress looks like. Injustice and the fight against it take many forms—from boycotts and marches to contract negotiations and legislation. Over the years, we had to fight against brutal opponents, but the courts were often there to back us up. Where we moved forward, America's courts helped to establish important legal protections for all farm workers, all women, all Americans. Now, though, a dangerous shift in the courts could destroy the worker's rights, women's rights, and civil rights that our collective actions secured.

It is especially bitter for me that one of the most visible agents of the strategy to erase our legal victories is being called a great role model for Latinos. It is true that for Latinos to realize America's promise of equality and justice for all, we need to be represented in every sector of business and every branch of government. But it is also true that judges who would wipe out our hard-fought legal victories—no matter where they were born or what color their skin—are not role models for our children. And they are not the kind of judges we want on the federal courts.

Miguel Estrada is a successful lawyer, and he has powerful friends who are trying to get him a lifetime job as a federal judge. Many of them talk about him being a future Supreme Court justice. Shouldn't we be proud of him?

I for one am not too proud of a man who is unconcerned about the discrimination that many Latinos live with every day. I am not especially proud of a man whose political friends—the ones fighting hardest to put him on the court—are also fighting to abolish affirmative action and to make it harder if not impossible for federal courts to protect the rights and safety of workers and women and anyone with little power and only the hope of the courts to protect their legal rights.

Just as we resist the injustice of racial profiling and the assumption that we are lesser individuals because of where we were born or the color of our skin, so too must we resist the urge to endorse a man on the basis of his ethnic background. Members of the Congressional Hispanic Caucus met with Miguel Estrada and came away convinced that he would harm our community as a federal judge. The Mexican American Legal Defense and Educational Fund and the Puerto Rican Defense and Education Fund reviewed his record and came to the same conclusion.

Are these groups fighting Miguel Estrada because they are somehow anti-Hispanic? Are they saying that only people with certain political views are "true" Latinos? Of course not. They are saying that as a judge this man would do damage to the rights we

have fought so hard to obtain, and that we cannot ignore that fact just because he is Latino. I think Cesar Chavez would be turning over in his grave if he knew that a candidate like this would be celebrated for supposedly representing the Hispanic community. He would also be dismayed that any civil rights organization would stay silent or back such a candidate.

To my friends who think this is all about politicians fighting among themselves, I ask you to think what would have happened over the last 40 years if the federal courts were fighting against worker's rights and women's rights and civil rights. And then think about how quickly that could become the world we are living in.

As MALDEF wrote in a detailed analysis, Estrada's record suggests that "he would not recognize the due process rights of Latinos," that he "would not fairly review Latino allegations of racial profiling by law enforcement," that he "would most likely always find that government affirmative action programs fail to meet" legal standards, and that he "could very well compromise the rights of Latino voters under the Voting Rights Act."

Miguel Estrada is only one of the people nominated by President Bush who could destroy much of what we have built if they become judges. The far right is fighting for them just as it is fighting for Estrada. We must fight back against Estrada and against all of them. If the only way to stop this is a filibuster in the Senate, I say, Que viva la filibuster!

STATEMENT OF RUBEN BONILLA, IN OPPOSITION TO THE CONFIRMATION OF MIGUEL ESTRADA

I write to join other Latinos in opposing the confirmation of Miguel Estrada to the DC Circuit Court of Appeals. I have a long history of involvement in the Latino civil rights community. I am an attorney in Corpus Christi, Texas, and am a past National President of LULAC. I am deeply concerned with the betterment of my community.

I am deeply troubled with the double standard that surrounds the nomination of Miguel Estrada. It is particularly troubling that some of the senators have accused Democrats or other Latinos of being anti-Hispanic, or holding the American dream hostage. Yet, these same senators in fact prevented Latinos appointed by the Clinton Administration from ever being given a hearing. Notably, Corpus Christi lawyer Jorge Rangel, and El Paso attorney Enrique Moreno, and Denver attorney Christine Arguello never received hearings before the judiciary committee. Yet, these individuals who came from the top of their profession were schooled in the Ivy League, were raised from modest means in the Southwest, and in fact truly embodied the American Dream. These highly qualified Mexican Americans never had the opportunity to introduce themselves and their views to the Senate, as Mr. Estrada did.

In addition to my concerns regarding this double standard, I am also concerned that Mr. Estrada showed himself unwilling to allow the Senate to fully evaluate his record. He was not candid in his responses. Yet, Mr. Estrada, as every other nominee who is a candidate for a lifelong appointment, must be prepared to fully answer basic questions, particularly where there is no prior judicial record or scholarly work to scrutinize. By declining to give full and candid responses, he frustrated the process. Individuals with values should be called to explain those values honestly and forthrightly. We can demand no less from those who would hold a lifelong appointment in our system of justice.

Finally, I am also concerned with some of the answers that Mr. Estrada did give when

he was pressed. For example, I understand that as an attorney he argued that the NAACP did not have legal standing to press the claims of African Americans who had been arrested under a particular ordinance. As a former National President of LULAC, I know that on many occasions LULAC has represented the rights of its membership in voting cases, and in other civil rights matters. I would be troubled that if he were confirmed, Mr. Estrada would not find a civil rights organization to be an appropriate plaintiff, and would uphold closing the courthouse door on them.

Given these concerns, I oppose the confirmation of Mr. Miguel Estrada.

STATEMENT OF BELEN ROBLES IN OPPOSITION TO THE CONFIRMATION OF MIGUEL ESTRADA

I write to join other Latino leaders and organizations in opposing the confirmation of Miguel Estrada to the DC Circuit Court of Appeals. As a native Texan, I have a very long and active involvement in the Latino civil rights community and have worked hard to ensure that Latinos have real choices about their lives. I am a past National President of the League of United Latin American Citizens (LULAC).

I am deeply troubled with the nomination of Miguel Estrada. I am very troubled with the positions he seems to have taken about our youth being subjected to racial profiling. As I understand his position, he does not believe that racial profiling exists, and has many times argued that the Constitution gives police officers unbridled authority and power. In our communities, racial profiling does exist and our children have been subjected to it. This is an issue that Latino organizations, including LULAC have long cared about. In all of the years that I was involved with civil rights, LULAC always stood to protect our community, including our youth when law enforcement exceeds their authority.

I am also concerned that Mr. Estrada did not allow the Senate to fully evaluate his record. He was not open in his responses, but instead was evasive. Yet, anyone appointed to a lifelong position has to be willing to answer questions fully. The American people have a right to know who sits in our seats of justice. And to demand that the person be fair.

Mr. Estrada has also taken actions against organizations that make me believe that he would not be fair. For example, as an attorney he argued that the NAACP did not have legal standing to put forward the claims of African Americans who have been arrested under a particular ordinance. As a former National President of LULAC, I know very well that on many occasions LULAC has been a champion of the rights of its membership in civil rights cases. We asserted those rights on behalf of voters in voting cases in Texas, and in many other civil rights cases. Under his view, Mr. Estrada could decide that a civil rights organization such as LULAC would not be able to sue on behalf of its members. No supporter of civil rights could agree with Mr. Estrada's confirmation.

I oppose the confirmation of Mr. Miguel Estrada.

HISPANIC BAR ASSOCIATION OF PENNSYLVANIA,

Philadelphia, PA, January 28, 2003.

Hon. Senator EDWARD M. KENNEDY,
Senate Committee on the Judiciary, Dirksen
Senate Office Building, Washington, DC.

DEAR HONORABLE SIR: I am writing on behalf of the Hispanic Bar Association of Pennsylvania (HBA) to inform you that we oppose the appointment of Miguel Angel Estrada to the United States Court of Appeals for the District of Columbia Circuit. For the reasons

that follow, we urge you to vote against Mr. Estrada's confirmation.

The HBA recognizes that Mr. Estrada's nomination was pending for some time prior to his hearing before the Senate Judiciary Committee on September 26, 2002. Nevertheless, it was the Hispanic National Bar Association's public endorsement of this candidate that prompted our organization to initiate its own evaluation of Mr. Estrada.

To that end, the HBA created a Special Committee on Judicial Nominations to develop a process for reviewing and potentially endorsing not only Mr. Estrada, but also all future candidates for the Judiciary. As part of the process, we contacted Mr. Estrada, asked to interview him, and invited him as a guest of the HBA to meet the members of our organization. Mr. Estrada, for stated good cause, declined our invitations. Notwithstanding Mr. Estrada's non-participation, the Committee completed its work and reported its findings to the HBA membership on November 14, 2002. Following the Committee's recommendation, the membership voted not to support Mr. Estrada's nomination.

The HBA recognizes and applauds Mr. Estrada for his outstanding professional and personal achievements. Indeed, the HBA adopts the American Bar Association's rating of "well-qualified" with regard to Mr. Estrada's professional competence and integrity. However, employing the ABA's seven established criteria for evaluating judicial temperament, the HBA finds Mr. Estrada to be lacking. Our organization could find no evidence that Mr. Estrada has demonstrated the judicial position. In addition, the HBA seeks to endorse individuals who have "demonstrated awareness and sensitivity to minority, particularly Hispanic concerns." Sadly, we also could find no evidence of this quality in Mr. Estrada.

The HBA shares the concern of the president of the Judiciary Committee that only the best-qualified and most suitable individuals be appointed to the federal bench. Furthermore, the HBA appreciates the efforts, as evidenced by Mr. Estrada's nomination, to consider and promote members of the rapidly growing Latino population to positions of high visibility and importance. However, we believe that there are a myriad of other well-qualified Latinos whose integrity, professional competence, and judicial temperament would be beyond reproach and who would therefore be better suited for this position.

The Hispanic Bar Association of Pennsylvania regrets that it cannot support the nomination of Mr. Estrada to the United States Court of Appeals for the District of Columbia Circuit. We respectfully request that you oppose the confirmation of his nomination.

Respectfully submitted,

ARLENE RIVERA FINKELSTEIN,
President, and the Special Committee on
Judicial Nominations on behalf of the
Hispanic Bar Association of Pennsylvania.

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

The PRESIDING OFFICER (Mr. CRAPO). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LAUTENBERG. Mr. President, today is the 12th day, as remarkable as that seems, that the Senate is debating this nomination instead of doing what

it has to for the important business of the American people, as I see it. It is quite clear the other side is just not going to get cloture on this nomination. So the choice is either bring forward a cloture motion or move on to other business.

The Nation's Governors are in Washington meeting with President Bush and Members of Congress to discuss critically important issues, such as homeland security, rising unemployment, and increasing State deficits. These are serious issues that need attention, but we are delaying tending to the needs of the American people with endless debate on a judicial nominee who is refusing to tell the Senate almost anything about his judicial philosophy or decisionmaking process.

This hide-the-ball strategy being used by Mr. Estrada, frankly, I think is an affront to the Senate and the American people. We have the right to get complete and thoughtful answers to legitimate concerns about his approach to his interpretation of the U.S. Constitution and the laws of the country.

I was formerly a businessman. Sometimes there are processes that are not dissimilar to our functions here. One of them is to be able to understand what a nominee or an appointment of a high-ranking executive might include and a review of that person's potential, that person's experience, that person's attitude before you put him to work.

My fellow Senators on the other side of the aisle would have the Senate, considered the most deliberative body in world history—and, I assume, also considered one of the most thoughtful places in the world in terms of Government and deliberative bodies—vote to confirm a nominee to a lifetime—lifetime, and it is important people realize that means you cannot be fired from the job; this means you can go as long as you want to, and when you are finished with your service, your salary continues at exactly the same level it did when you went to work every day—a lifetime appointment without disclosure of what I and my colleagues consider required information.

In the business world, this practice would have been unheard of, and the American people deserve better. If someone were seeking a post and they appeared before a congressional committee or a department head and said, I would like the job, but I am not willing to answer that questionnaire, that would make that aspirant unacceptable under any condition. It should be a requirement when a lifetime-tenured job is under discussion, something so important as the circuit court of appeals where people, after getting a decision from district court, go to get the judgment of wise and experienced people. His unwillingness to answer questions, to talk about what he stands for, and what he believes is a shocking disregard for appropriate behavior.

Responsible business owners do not hire senior managers without first conducting a complete and thorough re-

view of that candidate's job application. The candidate would answer questions that give interviewers an opportunity to measure the candidate's decisionmaking process and views on work-related issues. A candidate cannot simply refuse to answer important questions of fitness, philosophy, or temperament. No business executive would hire a candidate who refused to answer basic inquiries. These are not private matters. They become the matters of the employer, be it government or business. Those in business would put their businesses at risk and leave themselves susceptible to future lawsuits based on negligent hiring practices.

No one is doubting the fact Mr. Estrada is bright and intelligent, but his repeated refusal to provide the Senate with any insight into his views on the law and the U.S. Constitution is incomprehensible. I just cannot understand it. How can we make an informed decision about a judicial nominee if the nominee refuses to provide the Senate with sufficient information about his judicial philosophy and, therefore, his temperament?

The questions being asked are not prohibited by law or judicial or professional ethics codes. Instead of entertaining continuing with these dilatory tactics, the Senate should simply move on to the important business of the American people concerned about the protection of their homeland; move on to repair a hemorrhaging Federal budget that under this administration has been converted from a \$5.6 trillion surplus into a 2.51 trillion deficit; move on to provide States that are experiencing dire economic conditions with more Federal assistance that would help them weather the storms during these times of increasing unemployment, threatening war with Iraq, and a sustained fear of potential terrorist acts.

In the most recent CNN Gallup poll, 50 percent of Americans believe the economy is the most pressing issue confronting the Nation. Thirty percent of Americans believe the war with Iraq is the most important issue, second to jobs and the economy.

The nomination of Mr. Estrada did not make the list of important concerns facing the Nation. Since January 2001, the number of unemployed Americans has increased by nearly 40 percent, with nearly 8.3 million Americans out of work.

Since President Bush took office, 2.3 million private sector jobs have been lost and the unemployment rate for Latinos by way of example has increased 33 percent. According to the Department of Labor, there are now 2.4 jobseekers for every job opening. So rather than focusing on creating jobs for 8.3 million Americans, the Senate is targeted on the job of one attorney, a very successful attorney who made a lot of money. But how does that influence what the American people see as their need?

This is the same thinking that has produced an economic stimulus package that overwhelmingly favors the top 1 percent of American taxpayers while giving very little to those who really need some economic help.

The Senate needs to move on to the important work of protecting the homeland. CIA Director Tenet and FBI Director Mueller have both testified that America is still vulnerable to terrorist attack, and we keep on hearing alarms described in different colors. The American public does not understand what the difference between red and yellow is. They just know it scares them. It panics them. They do not know what to do. I get phone calls from people in New Jersey asking, Should we stay out of New York City? Should we not take our children on a trip? Should we stay home? The answer to all of those is that we do not really know, but we ought to get on with finding out.

The omnibus appropriations bill provides less than half of the \$3.5 billion in funding promised to law enforcement people, firefighters, and emergency medical personnel. Meanwhile, America's ports, borders, and critical infrastructure remain dangerously unprotected.

Once again, instead of focusing on protecting the homeland and funding our first responders, the work of the Senate is being delayed in order to secure the appointment of a judicial nominee who refuses to share his views with the American people.

I do not intend to demean or diminish the importance of this nomination. It is very important. To the contrary, the nomination at issue is to the U.S. Court of Appeals for the DC Circuit, which is the most powerful intermediate Federal appellate court, second only to the U.S. Supreme Court. The DC Circuit is more powerful, it is observed, than other Federal courts because it has exclusive jurisdiction over a broad array of far-reaching Federal regulations that enforce critical environment, consumer, and worker protection laws.

As history has shown, DC Circuit Court judges are often tapped to serve on the Supreme Court. Presently, three of the nine Supreme Court Justices—Justices Antonin Scalia, Clarence Thomas, and Ruth Bader Ginsburg—previously served on the DC Circuit.

The Senate has a constitutional responsibility. The constitutional judicial confirmation process grants authority to the President of the United States to make the nominations and gives the Senate an equally significant role to agree by advising and consenting with the President's recommendation before a nominee can sit on the Federal bench. These important, mutually coexisting roles of the President and the Senate are central to the democratic system of separation of powers and checks and balances.

Mr. Estrada must provide the Senate with a full and complete understanding

of his views of the law and the Constitution, including important civil rights laws that protect all Americans, especially minorities, women, the elderly, and the disabled. However, if he is unwilling or the White House is unwilling to nominate judicial nominees who are willing to answer reasonable, nonintrusive, and legitimate inquiries of the Senate, then these nominees should not be confirmed.

The role of the Senate in the confirmation process is advise and consent. It does not say anyplace to rubberstamp all Presidential nominations. The Senate should not abdicate its responsibility to thoroughly review judicial nominations. It is a responsibility, it is an obligation, for each one of us. Rather, the Senate is dutybound to ensure that each nominee maintains the utmost commitment to upholding the Constitution of our country—following precedent, listening to arguments without fear or favor, and rendering judgment without personal bias. Miguel Estrada has failed to respond to legitimate inquiries to the Senate and the American people.

As I said before, it is time to move on to the important work of the American people, and let this appointment fall as it should unless Mr. Estrada has a reckoning with himself and his obligation and comes to the Senate to discuss his views in response to questions posed by the Senate.

Mr. REID. Will the Senator yield for a question?

Mr. LAUTENBERG. Yes.

Mr. REID. The Senator is from the State of New Jersey. Of course, the State of New Jersey is very aware of the news that is put out in the New York Times and the editorials put out in the New York Times. Is that a fair statement?

Mr. LAUTENBERG. It is a very important paper, yes.

Mr. REID. I do not know if the Senator is aware that I read into the RECORD this morning a New York Times editorial from last fall dealing with Estrada. I ask the Senator if he is aware of the first paragraph of an editorial written February 13, 2003, in the New York Times?

Is the Senator also aware that last night the majority read into the RECORD a number of editorials from around the country?

Mr. LAUTENBERG. I am aware of that.

Mr. REID. Does the Senator from New Jersey know the circulation of the New York Times?

Mr. LAUTENBERG. I do not know precisely, but it is in the—

Mr. REID. It is in the millions.

Mr. LAUTENBERG. I am sorry?

Mr. REID. It is over a million.

Mr. LAUTENBERG. Over a million certainly on the weekends.

Mr. REID. Yes, I am sure it is.

Is the Senator aware of this editorial that says, paragraph No. 1, "The Bush administration is missing the point in the Senate battle over Miguel Estrada,

its controversial nominee to the powerful DC Circuit Court of Appeals. Democrats who have vowed to filibuster the nomination are not engaging in 'shameful politics,' as the President has put it, nor are they anti-Latino, as Republicans have cynically charged. They are insisting that the White House respect the Senate's role in confirming judicial nominees"?

Mr. LAUTENBERG. I am. I am also aware of the fact that there are Latino organizations that are unalterably opposed to this nomination.

Mr. REID. If the Senator will yield for a question, is he aware that it is led by the Congressional Hispanic Caucus?

Mr. LAUTENBERG. I am aware of all that.

Mr. REID. If the Senator will yield for a further question, it would be difficult, would it not, to say that the Congressional Hispanic Caucus was anti-Hispanic?

Mr. LAUTENBERG. I absolutely agree that there would typically be a determination by them to support the nomination, but they are not. If the Senator will help sharpen my memory, I think they said keep on talking in the close of that editorial piece.

Mr. REID. We are going to find out. If the Senator would yield for another question?

Mr. LAUTENBERG. I would be happy to.

Mr. REID. I ask if the Senator from New Jersey agrees with that first paragraph of the editorial that I just wrote—read. I wish I had written it, but I read it.

Mr. LAUTENBERG. I agree with the Senator and wish I had written it as well.

Mr. REID. It is a short editorial. It is only three paragraphs. I will ask the Senator a question if he would yield.

Mr. LAUTENBERG. Yes.

Mr. REID. "The Bush administration has shown no interest in working with Senate Democrats to select nominees who could be approved by consensus, and has dug in its heels on its most controversial choices. At their confirmation hearings, judicial nominees have refused to answer questions about their views on legal issues. And Senate Republicans have rushed through the procedures on controversial nominees. Mr. Estrada embodies the White House's scorn for the Senate's role. Dubbed the 'stealth candidate,' he arrived with an extremely conservative reputation but almost no paper trail. He refused to answer questions, and although he had written many memorandums as a lawyer in the Justice Department, the White House refused to release them."

Does the Senator from New Jersey agree with the statement made in this editorial, second paragraph, by the New York Times?

Mr. LAUTENBERG. I agree with it fully. I read that editorial. I was in total agreement with their logic, coming from New Jersey where we had candidates who were recommended for the

appeals court languish—nothing happening for months and months and months. The protests we hear now from our friends on the other side about the process are a bit shameless because we had a nominee from California, Mr. Paez, who waited, I believe, 1,500 days.

Mr. REID. One thousand five hundred four days.

Mr. LAUTENBERG. Waiting for a review by the committee, and could not get that.

If we talk about obstinate approaches to the process about deliberate obstruction, the record is very clear.

When we presented candidates, when the Democrats were a majority, they could not move them because the Republican side of the Senate would not permit any action at all.

Mr. REID. Will the Senator yield for an additional question?

Mr. LAUTENBERG. I am happy to yield to my friend from Nevada.

Mr. REID. The final paragraph of this short but powerful editorial, does the Senator from New Jersey agree with this:

The Senate Democratic leader, Tom Daschle, insists that the Senate be given the information it needs to evaluate Mr. Estrada. He says there cannot be a vote until senators are given access to Mr. Estrada's memorandums and until they get answers to their questions. The White House can call this politics or obstruction. But in fact it is Senators doing their jobs.

Would the Senator agree with this statement?

Mr. LAUTENBERG. I agree 100 percent with that statement, and I think we ought to get on with the business of the American people.

Mr. REID. If the Senator will yield for another question before he leaves the floor. The Senator mentioned there were aspirants to be appellate judges, and is the Senator aware that a number of these people were from New York? Is that true?

Mr. LAUTENBERG. Indeed, that is true.

I just got a letter from a district court judge in New Jersey, considered one of the most brilliant and able district court judges, who was recommended for the circuit court of appeals in our district and decided after a long wait that he was not going to get a chance to be heard for a circuit court job. He informs me in his letter that he is going back to the law firm after 10 years on the Federal bench—a distinguished jurist, a great loss. He could not get a hearing, so he decided to withdraw rather than sit there and be dangled like a kite in the wind.

Mr. REID. Is the Senator aware of the names of 79 Clinton judicial nominees who were not confirmed by the Republicans?

Mr. LAUTENBERG. I am fully aware of that. I listened when the distinguished Democratic whip read that list the first time, and I took the liberty of reading the list a second time to make sure it was clearly understood.

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

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

Mr. THOMAS. Mr. President, it is very interesting to hear the discussions. It is very similar to what we have heard now for a couple of weeks. I could not agree more with the Senator from New Jersey who says let's get on with it. I have a suggestion as to how we can do that. There are more than a majority in this Senate who are satisfied with this candidate and ready to vote. All we need to do is have an up-or-down vote. Those who are opposing that are in the minority. They can study as many things as they choose. The fact is, the majority of the people on this floor are satisfied this candidate is the right candidate and it is time to go. I could not agree more.

We have a lot of things to do. We have gone through the hearings, we have gone through all the background, and certainly most of us would like to get away from this delay tactic and get on with our work. I have to say that when the majority is ready to go, that is what we ought to do. I suggest that.

I will discuss another subject for a moment.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. I thank the Chair.

(The remarks of Mr. THOMAS pertaining to the introduction of S. 475 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. THOMAS. Mr. President, again I hope we find ourselves in a position to move forward. I don't think there is a soul here who would not admit we have talked enough about this judicial nomination. I don't think there is a soul here who would deny we have all made up our minds, we all know exactly what we are going to do. It is very clear that the majority on this floor is prepared to vote for this nominee and we are being held up over here by a minority that simply continues to ask for something that is not necessary because the majority has already been determined. So I hope we can move on and do the business of this country for these people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I rise today to submit a resolution.

(The remarks of Mr. CRAPO pertaining to the submission of S. Con. Res. 11 are printed in today's RECORD under "Submission on Concurrent and Senate Resolutions.")

JUDICIARY COMMITTEE ACTION

Mr. DASCHLE. Mr. President, I wanted to come to the floor this afternoon to discuss a matter that occurred in the Judiciary Committee today that is deeply troubling.

During a mark-up of 3 controversial circuit court nominees, the Chairman of the Judiciary Committee refused to observe the long-standing rules of the committee and brought two circuit court nominations to a vote despite the fact that there was a desire by several members of the minority to continue debate.

This situation is very specifically addressed by Committee Rule No. 4, which reads as follows:

The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bring the matter to a vote without further debate, a rollcall vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.

At the time that the chairman attempted to bring the nominations of John Roberts and Deborah Cook to a vote, objections were lodged by at least 2 members of the committee.

In fact, I believe that this rule was read into the RECORD in an effort to make clear to the chairman that it was not appropriate under the committee rules to bring these matters to a vote.

Despite the fact that this action represented a clear violation of the committee rules, the chairman ended debate on these nominations and conducted a roll call vote.

This reckless exercise of raw power by a chairman without regard to the agreed-upon standards of conduct that members of the committee have agreed to is ominous.

Senate committees either have rules or they do not. It cannot be the case that the rules of a committee will apply unless the chairman deems them inconvenient or an obstacle to a goal he seeks at any given moment.

This body has, for over 200 years, operated on the principle that civil debate and resolution of competing philosophies require rules. If the actions taken today indicate the new standard to which the majority plans to hold itself, then I propose that we simply repeal committee rules altogether and acknowledge that "might makes right" and there is no respect for minority interests.

How can we expect the Judiciary Committee to place on the bench individuals who respect the rule of law if the very process that the committee uses to confirm those individuals violates the Senate rules themselves?

I hope that upon reflection the chairman of the Judiciary Committee will reconvene the committee and allow for the committee to report out these nominations in a manner that is consistent with the committee rules.

If not, he must recognize that he is setting a terrible precedent regarding the operation of Senate committees in the future, regardless of which party may be in control.

Mr. President, I am very deeply troubled. This is a body of rules. This is a

country of laws. I cannot imagine that there is ever a time that any one of us—any one of us—ought to be in a position to say: The rules in this case are not going to apply, the law in this case will not apply.

And how ironic—how ironic—that in the Judiciary Committee, the committee which passes judgment on those who will interpret the rule of law, that very committee violated the rule today.

So, Mr. President, we call attention to this extraordinary development with grave concern about its implications, about its precedent, about the message it sends. And I must say, it will not be tolerated.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

HOMELAND SECURITY

Mr. REID. Mr. President, there have been a number of statements over the past many months about the fact that we should have been spending more money on homeland security.

For example, this week, I had a woman come to me from Las Vegas, who is in charge of the 9-1-1 center at the Metropolitan Police Department, a very large police department, with hundreds and hundreds of police officers representing that urban area of some 1.5 to 1.7 million people.

She indicated to me there is a real problem. If you have a telephone call coming from a standard telephone, that person can be identified. They know the location of that telephone. Or if it is a pay phone, they know the location of that pay phone. But today a lot of people are getting rid of their standard telephones, as we know them, and are using computers, and millions of people are using cell phones.

She said that for virtually every place in the United States, including the Las Vegas area, if you call 9-1-1 from a cell phone, they have no idea who is making the phone call or where it is coming from. And, of course, with the computer, that is absolutely the case also.

She was lamenting the fact that the technology is there. It is easy to do what needs to be done to make sure that 9-1-1 calls that come from cell phones can be located.

People have lost their lives and have been injured and harm caused to them as a result of 9-1-1 not being able to identify when the emergency call comes in. This is only one example of how technology could handle the problem.

Why isn't it being done in Las Vegas and other places? There isn't enough money. With what happened on Sep-

tember 11, there is tremendous need for more money to be spent for homeland security. This was certainly the opinion of the Governors who were in town this week. They are having all kinds of problems.

So, Mr. President, I would like to refer again to the New York Times. I have talked about an editorial, as did my friend from Idaho, in the New York Times. I want to refer to a news story from the New York Times, dated today, February 27, 2003, written by one Philip Shenon, entitled "White House Concedes That Counterterror Budget Is Meager." In effect, what this news article says is the White House now recognizes that there isn't enough money to take care of the problems of homeland security.

In this article, among other things, the President blames the leadership of the House and the Senate. And, of course, that does not include the Democratic leadership, because everyone knows, including the President, that we have been crying for more money for more than a year.

There are just a couple things from this news article I would like to point out to the Senate:

... the long delayed Government spending plan for the year does not provide enough money to protect against terrorist attacks on American soil.

Mr. President, this is a statement from this administration. This is not a statement from the Senator from West Virginia, the senior member of the Appropriations Committee, who has spoken for hours and hours on the need for more money. This is not a statement from Senator DASCHLE, the Democratic leader. This is coming from the administration: White House concedes that counterterror budget is meager.

The article goes on to say:

... because it had failed to provide adequate money for local counterterrorism programs.

Mr. President, throughout America today you can't have police agencies talking with each other. In Las Vegas, as an example, you have the Las Vegas Metropolitan Police Department, the city of Henderson, and Boulder City, and they can't talk to each other in an emergency. The technology is there. They can do that. But these governments simply don't have the money to do that. Fire departments can't talk to police departments all over America. It is not only a problem in Nevada.

We have been asking that the President help with these moneys, and he has been unwilling to do so. He, in effect, vetoed a multibillion dollar proposal we had in a bill just a short time ago. In the bill we had, the big omnibus bill, we asked for a small amount of money for all the demands in here. We asked for \$3.5 billion, but it contains only, as this article indicates, about \$1.3 billion in counterterrorism money for local governments.

Now, these remarks struck some of the audiences unusually sharp, given that "both Houses of Congress are con-

trolled by the President's party," as the article indicates.

Now, there is more in this article, and the day is late, and the snow is falling, but I do want to read this to make sure the picture is plain.

This is a quote from Governor Gary Locke of Washington, which is in the article:

We have a lot of police agencies in the state that were assured by the administration, repeatedly, that this money was on the way.

Still quoting from the article:

He said that many police and fire departments had bought [for example] hazardous-materials protective suits and other counterterrorism equipment in the expectation that they would be reimbursed by the federal government.

"And now," Governor Locke said, "they're going to have to scramble to terminate other programs in order to cover those costs."

It is not only Democratic Governors complaining. Republican Governors are complaining. Governor Bob Taft, a Republican, said lawmakers did not appropriate the amount that was recommended and earmarked for what they appropriated. So it is very clear there are things we need to do on this Senate floor that deal with more than the employment of one man, Miguel Estrada, a man who today, I am sure, is billing big hours down at his plush office here in Washington, a man who makes hundreds of thousands of dollars a year.

There have been statements made on this floor that it is extremely important that we shift from this man's employment, one man's employment, to the millions of people who are unemployed, and millions who are underemployed, people who have no health insurance and are underinsured and the many other problems we face.

UNANIMOUS CONSENT REQUEST—S. 466

Based upon the New York Times article and the fact that the President of the United States has now acknowledged that the counterterror budget is meager, I ask unanimous consent that the Senate return to legislative session and then proceed to the immediate consideration of S. 466, a bill to provide \$5 billion for first responders, introduced today by Senator DASCHLE.

The PRESIDING OFFICER. Is there objection?

Mr. CRAPO. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, this is no surprise. I hope that people will understand the need to go to other legislation. When we have our own President who, for more than a year, has said we have enough money, there is money in the pipeline, now agreeing that we have a problem, that we don't have enough money. The State of Nevada, I spoke to the State legislature there a week ago last Tuesday, 10 days ago, 9 days ago. I told the legislature there, which is like 45 other State legislatures around America today, they have a State that is in red ink. I told them there are a number of reasons they are

in red ink. One is we have passed a bill called Leave No Child Behind, and we are leaving lots of children behind because we passed on to the State of Nevada and other States unfunded mandates that create financial problems for the States.

I also told the State legislature that what we have done in passing different measures dealing with terrorism, we have passed on to the State and local governments unfunded mandates, costing the State of Nevada and local governments millions of dollars, causing their budgets to be in the red significantly.

The President is wrong. He must help us address the problem. Senator DASCHLE's bill for \$5 billion for first responders is not enough, but it is a step in the right direction.

We are fighting. We have now here the former chairman of the Armed Services Committee, now ranking member. As we speak, American forces are in a war in Afghanistan. People every day are being wounded and killed in Afghanistan. But that has been overwhelmed by what is going on in Iraq, or what soon will go on in Iraq.

We have lots of problems. We have problems in North Korea, which is a real serious one. They have started their second reactor there in the last few days. I was present at a briefing the other day with somebody from the administration who should know about how much the war is going to cost, and they don't know. The war in Iraq, they don't know. But we know we have a war going on here at home to fight terrorism, and we are not spending enough money to protect American people.

We have interests in the Middle East. We have interests in Afghanistan. We have interests on the Korean peninsula. We have interests here, and they are being neglected. The President acknowledges that. What are we doing here, spending 3 weeks dealing with Miguel Estrada. It is wrong. I am not surprised this unanimous consent request was objected to, but even though I am not surprised, it doesn't take away from the significance and really how depressed I am as a result of not having the adequate resources we need to take care of the problems dealing with homeland security.

Mr. LEVIN. I wonder if the Senator will yield for one question?

Mr. REID. I am happy to yield to my friend.

Mr. LEVIN. We have heard now with some regularity from the administration that they have no idea, no estimate as to what the cost of the war with Iraq will be, nor what the aftermath would cost; in other words, assuming there is a war, assuming that we occupy Iraq with or without others. According to General Shinseki, that could actually involve up to 100,000 troops there for some unlimited period of time. But even if they disagree with that, which apparently some members of the Pentagon do, we have not been

able to obtain—and they claim there is none—an estimate of the cost of the aftermath of a war with Iraq at the same time that they are asking us to put in place an additional tax cut.

Does it not strike my good friend from Nevada as being irresponsible to put into place tax cuts with huge costs to the Treasury when we are likely on the verge of a war which has no particular estimated cost, and then the aftermath of that war, which could last years, in turn also has no estimated cost? Does it not strike the Senator from Nevada as simply not being the responsible thing to do to be imposing or putting into place tax reductions which means losses to the Treasury, when we are right on the verge of potential expenditures which could be literally hundreds of billions of dollars over a reasonably short period of time?

Mr. REID. Even though I would disagree with what the administration would do if they had the information and wouldn't give it to us, I wouldn't like that, but I would at least feel more comfortable that they were on top of their game. But for them to come to us and say, we don't know, that says it all. If they don't know and have no estimates as to the cost of what post-Iraq is going to be, we should all be concerned. If the general is 50 percent wrong, and it is only 100,000 troops, that is a lot of troops to keep there for a period of time. They don't know whether it is 2 days, 2 years or 2 decades.

Mr. LEVIN. And the answer we get is there is no way to know with certainty. These specifics are simply not available. There are too many imponderables. That is true, there are clearly some uncertainties. But it seems obvious to me the planners at the Pentagon must have some range of time or else there is no exit strategy, or else it is forever.

Previous administrations have been criticized for not having exit strategies, not having estimates in time, for making their estimate too short: They will be home by Christmas. But that is no excuse for not having some range—that we will be there from 1 to 3 years according to the best estimate. The worst case scenario is X number of years, best case scenario is such and such. The best case scenario is we won't have problems with the Kurds or the Shia will not be attacking the Sunni. The worst case scenario is we will have those kinds of civil wars. There are best case and worst case scenarios which allow planners who are working actually on estimated costs and exit strategies to come up with some kind of an estimate upon which we can base future resources and expenditures of this Nation.

Mr. REID. People in the administration who try to be candid with Congress get in trouble. Larry Lindsey, the chief economic adviser to the President, told us the war would cost \$100 billion. He lost his job. I don't know if that is the only reason, but the gen-

eral, a couple days ago, said: We will have to have 200,000 troops. There was a mad rush to that poor man to get him to change his opinion, and he changed his opinion and said: Maybe I was wrong, maybe it will be—and he mumbled around a little bit, but he gave an honest answer.

Mr. LEVIN. He did.

Mr. REID. Let's hope he doesn't lose his job. Let me also say this. We have all been impressed with this movie "A Beautiful Mind," which a year ago won the Academy Award. The principle of that movie and the book that I read, written by a woman named Nasar, was that this brilliant man, Nash, figured out what was called the game theory. This doesn't necessarily mean playing checkers.

He was able to determine through this brilliant mind that he had what would happen if more than two people were engaged in an activity and, as a result of the work he did, that is what much of the cold war planning was based upon—his theory, his game theory.

Now, for me to be told that this mighty Nation, the United States of America, with 260 million people, with the finest educational institutions in the world—there are about 121 great universities in the world, and we have about 112 of them; basically they are all in America. So for someone to tell me that we don't know what it is going to cost postwar, that simply is not being candid. They know. There are different scenarios and they have them all in those computers, and they know what the different costs are going to be.

I say to my friend from Michigan that, through mathematics, through computer modeling, you can figure about anything out. As most everybody knows, my last election was real close. I won election night by 401 votes. By the time it was over, I picked up 27 more votes. But on election night, I had a computer man who worked with me for many years. He was a fine man. He had run a number of different models for the 17 counties in Nevada and he told me after the vote was out of Clark County: You cannot lose. I have run every model there is and you cannot lose. It will be close, but you cannot lose. He figured out with mathematical certainty that I could not lose. Now, I didn't believe him, but he knew because he believes math doesn't lie.

So without belaboring the point to the Senator from Michigan, somebody knows in this administration, but they are not going to tell us because they are afraid the American people are going to lose more confidence. As reported yesterday, the Wall Street Journal reports that soaring energy costs, the threat of terrorism, and a stagnant job market has sent consumer spirits plunging to levels only seen in recessions. That was from yesterday. That is why they are not telling us.

I have given the Senator a very long answer to a short question, but I believe the administration knows and

they are afraid to fess up to the Congress and to the American people what this war is going to cost.

Mr. LEVIN. Just to add one further thought, it seems to me it would be absolutely irresponsible not to have a range or an estimate of what the cost of a war would be in the best and worst case scenarios.

Mr. REID. Or middle case.

Mr. LEVIN. Yes, or at least a range on what is the worst case scenario and what is the best case scenario. I cannot believe the planners at the Pentagon and the OMB do not have a range. If they don't have a range, it would be irresponsible because how in heaven's name can the administration then say that we can afford a tax cut of the size they are proposing, when we have an impending demand for resources in a war that could be lengthy, costly, and then the aftermath could be lengthy and costly? It borders on the reckless, in terms of an economy, to say we don't have an estimate, we don't know whether or not it is going to be \$20 billion, \$40 billion, \$100 billion—we don't have a range; yet they are trying to persuade a majority of the Congress that we ought to shrink the resources coming into the Government at the same time we are on the verge of war and the aftermath of a war, which doesn't have any estimated length, any estimated cost, and no troop estimate. We were given about a 200,000 estimate. Well, that is too high. OK, what is the ceiling that is more realistic to the people who say 200,000 is too high? We are completely devoid of that.

What we are not devoid of, though, is the effort to shrink resources to this Government through a tax cut, which has a number of problems to it. One of them is that when we are facing what we are in terms of expenditures, it is not the responsible thing to do.

Mr. REID. I would like to respond, not in a very direct way, but to point out problems the Senator has outlined in his statement to me. Is the Senator aware that yesterday I talked about a Pew Research Center poll? It is a non-partisan organization. They are not for Democrats or Republicans. This was a real big poll, where 1,254 adults were contacted between February 12 and 18. For the first time in this administration, the American people do not approve of the way George W. Bush is handling the economy; 48 percent of the people disapprove. Is the Senator aware of that?

Mr. LEVIN. I wasn't aware of the Senator's remarks, but I was aware of the poll.

Mr. REID. And the Senator talked about tax policy. This same poll says that 44 percent of the American people disagree of George W. Bush's handling of tax policy. So the Senator said it all. I appreciate his asking me a question.

Mr. LEVIN. Mr. President, I am going to speak about the very budget document that the Senator from Nevada and I have been discussing, perhaps in an indirect way. I wish to share

some thoughts with the Senate about the proposed budget for 2004, which the President has now sent to Congress.

As always, I wanted to see where the President's priorities were—not in sound bites, but the actual nitty-gritty numbers in the budget document. While every budget request is important, with the economy sputtering the way it is and with huge Federal deficits looming and critical domestic and international issues unresolved, particularly when we are facing the potential of a war and a very lengthy and complicated, expensive aftermath to that war, this budget requires special attention.

I have been keenly disappointed by what this attention revealed. The President's budget would do exactly what he recently said he did not want to do, which was to pass our problems along to the next generation. The President made a very eloquent statement in the State of the Union Address, saying that we are not going to pass our problems along to the next generation. But when you look at the details of the budget, that is precisely what this budget request does.

By the administration's own calculations, this budget would have us run a deficit of over a trillion dollars for the next 5 years, including record-setting deficits of over \$300 billion for this year and next.

Now, the contrast here between this projection of deficit and the \$5.5 trillion 10-year surplus that was projected in January of 2001 is simply stunning. That contrast between just what 2 years ago was projected for our economy—a \$5.5 trillion surplus—now there are projections of deficits upon deficits upon deficits—a projected deficit of over a trillion dollars over the next 5 years.

The administration's plan estimates a non-Social Security deficit totaling over \$2.5 trillion to the year 2008, which would leave us with an additional debt of \$5 trillion in 2008, which is 150 times greater than what was projected just in the year 2001.

Why such dire fiscal predictions? First, while the tax cut in the year 2001 played a huge part in putting us into the current deficit ditch, the President's call for an additional \$1.5 trillion in new tax cuts—most of which disproportionately benefits upper income folks—will help ensure that we not only stay in the deficit ditch, which we are back into, but that it will be a deep deficit ditch.

Even Federal Reserve Chairman Alan Greenspan recognized the danger of such cuts when he spoke of the importance of curbing the deficit, not increasing it.

That perhaps came as a surprise to some people in the administration who were looking to Alan Greenspan to give support to the tax cut proposal and minimize, they hoped, the impact of deficits on future economies. That is not what Chairman Greenspan did. He straightforwardly recognized the dan-

ger of the tax cuts when he spoke of the importance of reducing deficits and not increasing deficits.

Mr. President, I see the Democratic leader is in the Chamber. I withhold the remainder of my comments at this time because he has a very important message relative to North Korea, and I wish to participate with him in a colloquy and presentation. So I withhold the remainder of my comments relative to the President's budget at this time.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

NORTH KOREA

Mr. DASCHLE. Mr. President, I thank the distinguished Senator from Michigan for his courtesy and appreciate very much his comments with regard to the budget and his extraordinary leadership with regard to many issues involving our military challenges and priorities abroad.

Three weeks ago, I came to the Senate floor to address the intensifying crisis in North Korea, a country and a situation that I believe poses a risk to our Nation every bit as serious as that posed by Saddam Hussein. At the time, I urged President Bush immediately and directly to engage the North Korean Government in discussions to bring about a verifiable end to that country's nuclear weapons program.

Unfortunately, the administration so far has failed to act, and, in the meantime, the crisis in North Korea continues to escalate. In recent days, we have seen reports that North Korea test-fired a new missile, evidently that regime's idea of an inauguration present for South Korea's incoming President. Just today, the newspapers contain reports that North Korea has restarted one of the reactors at its primary nuclear complex, a reactor that produces spent plutonium which can then be converted into weapons grade material.

Let's be clear about what this latest provocation means. It means North Korea could have a nuclear production line up and running and producing weapons grade nuclear material in a matter of months. It means the world's worst proliferator could have enough nuclear material to produce six to eight nuclear weapons by summer.

According to Brent Scowcroft, President George Bush's National Security Adviser, if we fail to act, it means "We will soon face a rampant plutonium production program that could spark a nuclear arms race in Asia and provide deadly exports to America's most implacable enemies."

Unfortunately, the administration continues to insist on downplaying this threat. These latest developments should confirm for anyone watching that this is a crisis that only grows with each day the administration fails to act. I come to the floor today to join with my colleague, the ranking member of the Armed Services Committee, to urge the administration to act now.

The first step toward action is to acknowledge there is a problem. Based on a series of administration statements that play down the threat posed by North Korea's actions, it appears many in the administration are not even willing to take this step. For example, for quite some time now, the administration refused to call this situation even a crisis.

Last month, North Korea announced its intention to withdraw from the Nuclear Non-Proliferation Treaty, the cornerstone of the world's non-proliferation efforts, and the response from Under Secretary of State John Bolton, "Not at all expected," and on Monday after the missile test, the administration is quoted as saying that this was "just a periodic event." Secretary Powell called the test "not surprising and fairly innocuous."

So what do we do? I believe we must begin by making certain we are on the same page as our allies. Failure to do so will only produce a failed policy. Unfortunately, while the administration says the right things about the importance of coalitions, it is unwilling or unable to do the right things to build a coalition.

The administration continues to insist on multilateral discussions with the North Koreans while our friends and others have consistently and repeatedly urged President Bush to engage in bilateral talks. Therefore, the administration must redouble its efforts with our allies in South Korea, Japan, with the Chinese, and the Russians.

Second, we must make it clear to the North Koreans that separating plutonium from the spent fuel rods at Yongbyon represents an unacceptable threat to our collective security. We should tell North Korea what we expect of them directly: That if it verifiably freezes all nuclear activities, we and our allies are prepared to discuss the full range of security issues affecting the peninsula, as well as other steps North Korea can take to reenter the international community.

This is not news to the administration. In fact, the President himself has suggested he is prepared to have just these kinds of talks.

Yet, I must say, regrettably, the administration still delays. It allows the crisis to deepen and relations with our friends who are most directly threatened by North Korea to suffer. In fact, what would reward North Korea is to continue to stand by while it builds a nuclear arsenal. The danger within North Korea is too urgent for the President to delay this any further.

Finally, let me also take advantage of having my colleague, Senator LEVIN, in the Chamber to discuss a recent exchange of letters with the administration on this issue. Senators LEVIN, BIDEN, and I laid out our concerns to the administration about its North Korean policies and provided recommendations in a series of letters. I recently received a response from Dr.

Rice, and I ask unanimous consent to print our January 31 letter and Dr. Rice's February 10 response in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, January 31, 2003.

Dr. CONDOLEEZZA RICE,
National Security Adviser, The White House,
Washington, DC.

DEAR DR. RICE: We wrote to you earlier this month about our increased concern regarding the crises on the Korean peninsula. Our concern has deepened significantly as a result of a report in today's New York Times, which was confirmed by the Administration, that the U.S. government has evidence that North Korea is removing spent nuclear fuel rods from storage. These rods, which had been securely stored under IAEA monitoring from 1994 until recently, reportedly contain enough plutonium to produce roughly a half dozen nuclear weapons.

As alarming as this report is, we are just as troubled by the Administration's reported reaction to these developments. Prior to this disclosure, the Administration said nothing publicly or privately to Congress about these activities. According to comments attributed to senior Administration officials, the Administration has consciously decided to hold this information in an effort to avoid creating a crisis atmosphere and distracting international attention from Iraq.

This muted response to the world's worst proliferator taking concrete steps that could permit it to build a nuclear arsenal stands in stark contrast to the President's statement on Tuesday evening that "the gravest danger in the war on terror . . . is outlaw regimes that seek and possess nuclear, chemical, and biological weapons." It is also increasingly difficult to square the Administration's rhetoric on Iraq and decades of U.S. policy aimed at discouraging the emergence of declared nuclear powers with its continued downplaying of the threat posed by North Korea's blatant disregard for international rules on proliferation.

As the crisis with North Korea continues to escalate, the Administration's policy has not gotten any clearer. The Administration's lack of a clear, consistent policy and our failure to take concrete steps to address this growing crisis has produced consternation and confusion. One result is that our allies in the region appear to be taking a course directly at odds with the Administration's latest pronouncements.

Given the stakes of the situation and the ongoing confusion about the Administration's policy, we request that you come brief the Senate as early as is practical to discuss that we know about North Korea's latest actions and what the United States is doing in response.

We look forward to hearing from you as soon as possible

Sincerely,

TOM DASCHLE,
JOSEPH R. BIDEN, JR.
CARL LEVIN.

THE WHITE HOUSE,

Washington, DC, February 10, 2003.

Hon. THOMAS A. DASCHLE,
Democratic Leader, U.S. Senate, Washington,
DC.

DEAR MR. LEADER: Thank you for your letter regarding U.S. policy on North Korea.

I agree with you about the need to take effective action in light of North Korea's recent actions to restart its nuclear facilities at Yongbyon. The United States is working closely with friends and allies toward our ob-

jective of the elimination of North Korea's nuclear weapons program in a verifiable and irreversible manner.

However, I disagree with the assertion contained in your letter that, prior to the New York Times article on January 31 on recent North Korean activities, "the Administration said nothing publicly or privately to Congress about these activities." I also reject any suggestion that the Administration consciously withheld information from Congress to avoid distracting attention from Iraq.

The Administration has regularly briefed and consulted Members of Congress regarding policy toward North Korea and Iraq. For example, Deputy Secretary Armitage briefed Senators on January 16 on recent intelligence on activities at North Korean nuclear facilities and steps taken by the Administration in response to these actions. He also testified before the Senate Foreign Relations Committee on February 4.

In addition, the CIA has routinely provided briefings and written reports to Members and its oversight Committees. CIA briefed Senate Foreign Relations staff on three occasions in December on North Korea WMD issues, and on January 29, published an article on North Korean nuclear-related activities in the Senior Executive Intelligence Brief (SEIB) that addressed the issues discussed in the New York Times on January 31. The January 29 article was one of nine such articles published in the SEIB on North Korea in January alone. The SEIB is delivered daily to the CIA's oversight Committees and to the Office of Senate Security where it is available to Senators and appropriately-cleared staff.

In the days and weeks ahead, it is my hope that we can work together to address the challenges we face on a range of critical national security issues, including North Korea and Iraq.

Sincerely,

CONDOLEEZZA RICE,
Assistant to the President
for National Security Affairs.

Mr. DASCHLE. Unfortunately, little in Dr. Rice's letter addresses our policy concerns. Rather, the bulk of her comments are dedicated to rebutting a claim in our letter that Congress has not been adequately consulted about some explosive findings revealed in a January 31 New York Times article.

The article stated that the U.S. Government has evidence North Korea had begun moving spent fuel rods out of a secure storage area, a development that was subsequently confirmed by the administration. Movement of spent fuel rods would either suggest that North Korea was getting ready to reprocess that fuel to build new weapons or was trying to hide the spent fuel from the international community. In either case, this is a very significant finding that we believed then and still believe deserves to be brought to the Congress's attention.

While Dr. Rice rightly points out that Congress has been briefed on North Korea issues generally, including a briefing by Deputy Secretary Armitage on January 16, we are not aware of any administration briefing that provided us with information on this specific development prior to the New York Times story. And in recent testimony before the Senate Foreign Relations Committee, Deputy Secretary Armitage implicitly acknowledged that fact.

The reason to bring this up is because we are facing a crisis on the Korean peninsula, a crisis with extremely high stakes, a crisis that demands robust American response, a crisis that demands we be clear with each other and with the American people. Given the stakes of the situation and the ongoing confusion about the administration's policy, we should expect no less.

I yield the floor.

Mr. LEVIN. Mr. President, will the Democratic leader yield just for some questions?

Mr. DASCHLE. Before I yield the floor, I am happy to yield to the distinguished Senator from Michigan.

Mr. LEVIN. Is the Senator aware of a statement which was made before us—I do not know how he would be, but let me brief him on it. We had the head of the Defense Intelligence Agency in front of the Armed Services Committee a couple of days ago, and we asked him whether or not in his judgment there was a crisis on the Korean peninsula because of the actions of North Korea in removing these seals from the spent fuel, eliminating the cameras and kicking out the inspectors. Even though the administration is unwilling to put the label "crisis" on what is going on on the Korean peninsula, Admiral Jacoby was more than willing to say, yes, this is a crisis.

I am wondering if the Democratic leader would agree that part of the problem that we have in dealing with the North Korean situation is the unwillingness to see it for what it is, which is a major proliferation threat when there is a country that has been the world's greatest proliferator, including Libya and Iran, missiles and missile technology, when there is a country with a nuclear program that they acknowledge removes the inspectors from its country, whether or not that would represent progress if we could just at least get the administration to acknowledge what the head of the Defense Intelligence Agency says, which is that we have a crisis on the Korean peninsula?

Mr. DASCHLE. I think the Senator asks a very good question. This is more than just a semantical issue. Whether one calls it a crisis, an emergency, whatever volatile term one wishes to apply, clearly this deserves more of a response than this administration has provided.

I wonder what would have happened if Iraq had been the country with the evidence now to suggest that weapons of mass destruction, nuclear weapons, would be produced with the degree of certainty that we now see them in North Korea, what would the administration have said to that? If Iraq had fired a test missile within the last 2 weeks, what would the administration have said of that? My hunch, is that they would have used the word "crisis" and then some.

They have already claimed, of course, that North Korea is a member of the so-called axis of evil, an unfortunate

term in my opinion. But to avoid using the word "crisis," I believe, lends a real serious credibility question to the administration's foreign policy with regard to the region. This is a crisis. Every expert has acknowledged that it is a crisis. Unless we are willing to recognize the reality of the implications of this crisis, I believe the crisis will only worsen.

The Senator from Michigan has made a very important point with his question.

Mr. LEVIN. In addition to looking a problem square in the eye and not sugarcoating it, if we are going to solve it, another part of the administration's platform relative to Korea, or approach to the Korean problem, is to say that the multilateral approach is the right approach. I am always glad to hear when the administration is willing to work multilaterally. I have been a critic of the administration because their unilateral rhetoric activities, it seems to me, have been counterproductive in many parts of the world. So whenever the administration talks about a multilateral approach or consulting with allies and friends, that is good news. But when they do the consultation, when they talk to South Korea, both its former President and its new President, as well as when they talk to China, as well as when they talk to Japan, as well as when they talk to other allies in the area, they are told the same thing. When they do use the multilateral approach, they are told: Engage in direct discussions with North Korea. As a matter of fact, the representative of the new President of South Korea, the special envoy of new President Roh, visited us. His name is Dr. Chyung, and he visited with us on February 3.

That was, again, the open advice, he said, of the South Korean Government, is to have the United States talk directly with North Korea so that they can hear from us what our concerns are; so that both sides can avoid any kind of miscalculations; so that we do not fuel the paranoia this isolated regime has. They are paranoid. They are isolated. They actually believe we might strike them with one of our preemptive strikes. They actually believe it.

So the advice we are getting when we talk to our allies and follow this multilateral approach is engage with North Korea, and yet we refuse to do so.

I am wondering whether the Senator would agree that it is not only important that we consult with allies, not necessarily follow the advice but at least give serious consideration to the advice they give us when they talk to us about a direct engagement with North Korea to avoid miscalculation, so that the North can hear directly from us what our major concerns are?

Mr. DASCHLE. I appreciate the question posed by the Senator from Michigan. This whole experience has turned logic on its head. We have 220,000 troops in the gulf. We are told that

there is almost an inevitability of war. We are told that the reason for this near inevitability is because of weapons of mass destruction that we have yet to find in Iraq and because of an unstable leader in Iraq.

These assertions have required the administration to go to great lengths to try to prove that their findings are ones that could be recognized by the world community. With all of their best effort, they have yet to demonstrate to the satisfaction of some of our allies that the threat exists to the extent the administration perceives it, and yet there is a clear set of circumstances that are undeniable in North Korea. There is a very questionable leader spurring development of nuclear weapons in the most rapid way, which we know could be sold quickly to terrorist organizations and used against us and the world community. Yet this administration chooses to ignore it.

The Senator asks the question, why would we not engage the community and recognize the importance of confronting North Korea? The administration says the answer to that is they do not want to reward bad behavior.

I argue that we are rewarding bad behavior by ignoring the circumstances as this administration has chosen to do. What could be worse behavior than what is going on right now?

As I understand it, we began to reship food assistance to the North Korean people within the last few days. We have no real guarantee that aid is going to get to the people, but it is a very unusual message they are sending to both Iraq and North Korea. Of all those who would be most confused it would be our allies. How do they explain all of this? What credibility do we have with them as we attempt to rationalize this odd position we find ourselves in today?

I appreciate the question, and I would simply say to my colleague that it begs further explanation by the administration which, again, because they refuse to call this a crisis, they have yet to provide.

Mr. LEVIN. This administration has blown hot and cold when it comes to policy relative to North Korea.

I just have one final question.

The Democratic leader points out just how confusing a policy it is, not just for North Korea but for our own allies. Our ally with the most at stake on the Korean peninsula is South Korea. They could be destroyed if there is a miscalculation. Their capital is within range of tens of thousands of artillery of North Korea.

On March 6, 2001, on the eve of a summit between then South Korean President Kim Jong-Il and President Bush, Secretary of State Powell said we plan to engage with North Korea and to pick up where President Clinton and his administration left off.

Within 24 hours was the Secretary of State's statement that we were going to engage with North Korea and pick

up where the Clinton administration left off because the Clinton administration obtained the framework agreement that resulted in the canning of that very material which is so dangerous which contains plutonium. Within 24 hours, at the summit the next day, President Bush basically said: We are not going to have any discussions with North Korea. We are not picking up where the Clinton administration left off. We do not trust North Korea.

No kidding. That is a mild statement, that we do not trust North Korea. If we did not talk to people we did not trust, we would not be talking to half of the world, including some of the most dangerous people in the world.

Talking to people does not mean we are going to reward anything. It simply means they will hear directly, eyeball to eyeball, from us as to what our concerns are, and also why we do not threaten them, and why, if they will terminate their nuclear program, they can rest assured they will get an agreement from us that there is not going to be any active aggression against them.

The blowing hot and cold, the erratic policy, the undermining not just of our own Secretary of State 24 hours after he said we would continue a policy, but undermining our South Korean allies with so much at stake, it seems to me has contributed to a very uncertain policy on the Korean peninsula, has sowed the seeds of confusion, and fueled and contributed to the paranoia that already existed in spades in North Korea.

I have been to Yongbyon, the place in North Korea where they were canning those fuel rods, where they had sealed them. I don't know that any other Member of the Congress got there, but I got there a couple years ago. I watched the International Atomic Energy Agency as they were sealing those fuel rods. That was a very positive thing to watch, to actually see, under IAEA inspection and supervision, those incredibly dangerous nuclear materials being canned instead of threatening to the rest of the world as potential proliferated material, to actually see it put under the supervision of the IAEA.

That is now out the window. We are starting from scratch. I understate my feelings on the matter when I say the Senator, the Democratic leader here, has so accurately stated the fact that we have a problem. Step 1 is to recognize we indeed have a crisis. Step 2 is not just to consult with allies but to seriously consider what they recommend when they talk about having direct engagement with the North Koreans.

I thank the Democratic leader for his constant determination to keep this Korean peninsula crisis in front of us. We cannot lose sight of it. It is a greater threat than Iraq because in North Korea you have a known proliferator who has removed the inspectors and who has nuclear material which could

be so easily distributed, shipped, or sold to people who could do great harm with it.

I thank my friend from South Dakota.

Mr. DASCHLE. I thank the distinguished Senator from Michigan.

We can learn a lot from history. History, for most of my lifetime, involved a cold war, a cold war with an arch-enemy—the Soviet Union—which had thousands of nuclear warheads pointed toward the United States. They posed an imminent threat that could at any moment destroy all of civilization.

We made the choice, for good reason, Republican and Democratic administrations made the choice, that rather than engage in conflict, we would contain, negotiate, disarm, and ultimately wear down those leaders of the Soviet Union. That is ultimately what happened. The Soviet Union collapsed, negotiations for disarmament continued, and I recognize the contribution of many Presidents, from Harry Truman on.

But it was Ronald Reagan who said: Trust but verify. He did not say: I don't trust the Soviet Union, so I'm not going to enter into dialog with them. He was criticized at times, but he said: I'm going to engage in dialog. I'm going to continue the effort of my predecessors. I'm going to trust. But then I'm going to verify.

What the Senator from Michigan noted is that a couple of years ago that verification process was underway. We trusted. And we verified. His site visit was an indication of that verification.

I can only hope that those responsible for the day-to-day decisions made with regard to U.S. foreign policy will recognize the importance of past precedent, that we engage our enemies, we engage those whom there is ample reason to distrust, but we recognize that without some communication, without some engagement, the only other option is conflict.

The only other option is to see what is happening today. Nuclear weapons are being constructed. Nuclear weapons are being stockpiled. Nuclear weapons could be shipped. Nuclear weapons could be used not only in the region but against this country, as well. Every day we delay, every day we lack the will to confront and communicate, every day we lack the desire to verify, every day we create a problem more complex for future leaders and for future American policy.

I hope this administration will very carefully reconsider their position. I hope they will listen to our allies. I hope they will engage the North Koreans. I hope they can give us greater appreciation with greater clarity of their intentions with regard to that part of the world.

I yield the floor.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate now return to legislative session and go into a period of morning business.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

IRAQ

Mr. BENNETT. Mr. President, this morning's Washington Post has an especially long editorial. Indeed, it takes up the entire length of the editorial page. It is entitled "Drumbeat on Iraq, a Response to Readers."

I have a dear friend in Utah who wrote me. She was distraught—is distraught, I am sure—about the prospect of going to war and expressed a great many concerns. I have been in the process of constructing what I hope is a responsible and thoughtful response to her concerns. As I read the editorial in this morning's Washington Post, I found that it does a better job than I could do of summarizing many, if not most, of the issues about which she is concerned. I want to read from sections of the editorial and then ask unanimous consent that it be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. BENNETT. In the editorial they say:

The right question, though, is not, "Is war risky?" but "Is inaction less so?" No one can provide more than a judgment in reply. But the world is already a dangerous place. Anthrax has been wielded in Florida, New York and Washington. Terrorists have struck repeatedly and with increased strength over the past decade. Are the United States and its allies ultimately safer if they back down again and leave Saddam Hussein secure? Or does safety lie in making clear that his kind of outlaw behavior will not be tolerated and in helping Iraq become a peaceable nation that offers no haven to terrorists? We would say the latter. . . .

As I say, I could not have put it better, which is why I have quoted it. I have raised the question on the floor before: What are the consequences if we do not follow through in Iraq? Some have said let's just leave the troops in place. And that means Iraq remains contained.

Leaving the troops in place is not an option. We must understand that the troops are where they are, poised to move into Iraq, because of the agreement of the governments in Qatar, Turkey, and Saudi Arabia, among others. Those governments will not allow our troops to remain on their soil indefinitely. They will not allow those troops to remain there while we contain Saddam Hussein for 6 months or 12 months or 12 years, which has been the period of "containment" that we have seen up until now. We must either withdraw those troops and say we are