

said we need to study this. We have been studying the mining laws since 1872, and the law is still fully intact, just as crass, just as base, just as unfair now as it was in 1872, and we are still studying it.

We will study this some more. Somebody will make the suggestion, "We have to study this. We don't know what the full impact of it is."

Let me shift gears a moment to another item, and this is always shocking to anybody you tell it to. Unhappily, most things said on the U.S. Senate floor don't get any higher than the dome here. Nobody hears it. Forty-five States in this country have a use tax. Arkansas has one. It says to L.L. Bean, if you ship merchandise into Arkansas, the person you sell it to is liable for the Arkansas use tax. It is the same thing as a sales tax. In my State, it is 5 percent.

How many people in Arkansas do you think realize that when they buy something from a remote seller, they are responsible for that use tax? Maybe about 1 in 200,000. Nobody knows it. Yet, 45 States have it. Just 10 to 15 States—I forget which number—but it was 10 in 1995; so it is maybe 15 or 20 by now—have laws that say you must report on your State income tax whether or not you bought anything from out of State.

Now, the State of Maine does something that is really unique and, in my opinion, patently unconstitutional. If you live in Maine, when you fill out your income tax return, there is a line that says, "Did you buy anything from out of State?" You put in "yes" or "no," and if the answer is yes, you put the amount down.

Let's assume you bought some furniture for \$1,000. I don't know what the sales tax is in Maine, but if it is 5 percent, you are liable for \$50. "Please multiply 5 percent times the amount you bought." And so everybody kind of routinely ignores that because they don't want to pay it and they don't have to admit that they bought anything from out of State.

So do you know what else Maine does? They say that if this line is empty and you don't report having bought anything out of State from a mail-order house, please multiply .0366 times whatever your income is. If you make \$30,000 a year, you put \$11 on that line.

As I say, in my opinion, that is powerfully unconstitutional. That is a tax that nobody ought to have to pay, and it is the wrong way to do it. A lot of people get rude awakenings. One couple from Florida went up to North Carolina because they saw this big catalog saying, "Buy your furniture at the factory in North Carolina and pay no sales tax." Not many people do this anymore. When I started in on this issue years ago, it was very common. Or, "Buy your tile or your linoleum for your kitchen from"—such-and-such—"no sales tax."

So this couple went from Florida to North Carolina and bought \$25,000 to

\$35,000 worth of furniture. Later on, the North Carolina furniture company is audited and they find that they have sold this couple in Florida, as well as couples in a lot of other places, \$25,000 worth of furniture. They notify Florida, and Florida calls these people up and say, "You owe us \$1,000," or whatever it is. Now, that is a rude awakening, isn't it? You thought you bought something that was tax free and you find out, to your regret, that you didn't.

Well, Mr. President, I have just been handed a note that the majority leader wants to have a vote. Frankly, I don't like being interrupted in the middle of a debate. It is nothing but a bed check vote. But the majority leader apparently wants the floor by 10:30 and they want me to yield the floor. I got a note that I was going to yield so that Senator LEAHY and somebody else could talk about a judicial nomination. I don't see Senator LEAHY here. I don't see Senator HATCH here. Neither one of them is half as entertaining as I am either.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### EXECUTIVE SESSION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider Executive Calendar No. 529, the nomination of Sonia Sotomayor to be a U.S. circuit judge for the second circuit.

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

#### NOMINATION OF SONIA SOTOMAYOR, OF NEW YORK, TO BE A UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

The legislative clerk read the nomination of Sonia Sotomayor, of New York, to be a United States Circuit Judge for the Second Circuit.

Mr. MCCAIN. Mr. President, I ask unanimous consent that there be 20 minutes for debate equally divided in the usual form. I further ask consent that following the debate the Senate proceed immediately to a vote on the confirmation of the nomination. I finally ask consent that following that vote the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

Mr. MCCAIN. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, the chairman of the Judiciary Committee is delayed in a committee of conference, but I understand that he has no objection to this side beginning on this nomination. I also notify colleagues that if we reach a point where neither side has further members wishing to speak on the nomination, it is going to be the intention of the managers to yield back whatever time we have. I mention that so that people understand that it is possible that this rollcall may occur sooner than 20 minutes from now.

Mr. President, at long last, this day has finally arrived. Senate confirmation of Judge Sonia Sotomayor has been stalled for 7 long months without any explanation or justification. I have spoken on behalf of this outstanding nominee more than a dozen times. In fact, the most recent time was Monday of this week. I hope that now those who have had the secret hold on this nomination will come forth and claim "credit" for preventing this qualified nominee from helping end the emergency that has confronted the Second Circuit since March. Throughout all the time that there have been secret holds that have kept her nomination from going forward, she has been denied her rightful seniority on the court as others have gone forward. It has not been the Senate's finest hour.

I recall the glowing statement of support from Senator MOYNIHAN to the Judiciary Committee at her hearing back in September 1997, a year ago. I appreciate, as well, the strong statement Senator MOYNIHAN made to the Senate on behalf of this outstanding nominee this summer when her nomination was being stalled. I very much appreciate the efforts he has made on behalf of this outstanding nominee. He has been persistent in his support and in seeking to bring this nomination to the floor without delay. As members of the minority party, that has been a very, very difficult task.

Along with a number of Senators, I wrote to the majority leader on April 9, 1998, urging "prompt and favorable action on the nomination of Judge Sonia Sotomayor." We noted then the judicial emergency that had to be declared by Chief Judge Winter of the Second Circuit. Since March 23, he has had to cancel hearings and proceed with three-judge appellate panels that contain only one Second Circuit judge. That crisis is continuing.

What is happening is when they have these three-judge panels, only one of the judges is from the Second Circuit. They have to bring judges from elsewhere, or retired judges to hear cases. Judge Sonia Sotomayor's nomination has taken over 15 months in spite of