Senate. Instead, the White House Counsel's Office insists on substituting its judgment for the Senate's and tells the Senate that we already have sufficient information about this nominee.

We on this side of the aisle are making the simple request that judicial nominees for these lifetime positions fully and forthrightly answer legitimate questions so the Senate can make informed decisions. Even more important than this or any other nomination itself is the straightforward principle that no nominee should be rewarded with a lifetime appointment to the second highest court in the land for stonewalling the Senate and the American people. Getting a lifetime post on the Federal courts is a privilege, not a right.

I have voted for many, many judges whose judicial philosophy I disagreed with, but at least I knew what their judicial philosophies were. In fact the Democratic Senate confirmed 100 of President Bush's judicial nominees by the end of last year, and I voted for nearly all of them. The same can be said for each and every Senator on this side of the aisle.

I hope that after getting this letter off its chest, the administration will now begin to work with us. If they did we could end the stalemate they have created.

Those of us who want to resolve this in a way that upholds the principle of the Senate being able to make an informed judgment on this and on any judicial nominees welcomed the constructive discussion on the floor yesterday that Senator BENNETT initiated, about the potential for reaching agreement on making the Justice Department documents available to the Senate. I hope this is a signal that there is at least a chance that the administration will yet comply with our request, so that this standoff can be resolved.

With the White House, the House and the Senate now all controlled by one party, we are already seeing an erosion of accountability. Democratic members of the Senate are standing up for the Senate's constitutional role in the installation of judges on the Federal courts.

Beyond the difficulties we have encountered in obtaining straightforward answers from Mr. Estrada and in obtaining his work documents, in recent weeks the overall process of evaluating judicial candidates has begun to resemble a conveyor belt for rubber stamping nominees. The conveyor belt has been going faster and faster—so fast that the nominations have begun piling up at the end of the belt. We should be trying to minimize and not maximize those kinds of ''I Love Lucy'' moments. We have had an unprecedented hearing in which not one but three controversial circuit court nominees were considered, en bloc.

In the 107th Congress, the Democratic Senate confirmed 100 of President Bush's nominees, and we did so in an orderly process and with a steady pace of hearings every single month that greatly improved on the slow and halting pace set by the previous Republican Senate in the handling of President Clinton's judicial nominees. The choice does not have to be between the slow pace of the earlier Republican Senate in the handling of President Clinton's nominees and the frenetic pace of the new Republican Senate in the handling of President Bush's nominees. We can and should find a responsible pace somewhere between those extremes.

The court to which Mr. Estrada has been nominated, the Circuit Court of Appeals for the District of Columbia, has been called the second most powerful court in the land, and for good reason. This court, in particular, affects every single American in many ways, in its decisions on everything from clean air and water issues to the voting rights of Latinos and other minorities to the health and employment rights of working men and women.

No circuit court in the Nation is more important to Hispanic Americans than the DC Circuit. I commend the Congressional Hispanic Caucus for the time, the effort its members have invested and the courage its members have shown in closely examining the record, in interviewing Mr. Estrada, and in offering its judgment about the importance of this nomination for the interests of Hispanic Americans everywhere.

What kind of cases does this court handle, and what is at stake in the decisions it renders? There is a big hint in a front page story that ran a few days ago in Roll Call, in which leaders on the other side of the aisle are reminding lobbyists for big business groups that they have a major stake in who gets on this crucial circuit court.

This process starts with the President. With a simple directive to the Justice Department, he can help the Senate resolve this. I was encouraged early in his term when the President said he wanted to be a uniter and not a divider. Yet he has sent several judicial nominations, selected foremost for their ideology, and not for their fairness, that have divided the American people and divided the Senate. And in terms of fairness, it also needs to be pointed out that the Republican Senate blocked President Clinton's nominees to this very same court.

What are we asking for? It is a simple request: We ask only for sufficient answers and information so that the Senate can make informed decisions about candidates for lifetime appointments to the Federal judiciary.

The PRESIDING OFFICER. The Senator from Alaska.

LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

The minority whip.

Mr. REID. Mr. President, Senator STEVENS had asked some time ago if we could move things along. The Senator from Iowa has agreed to allow the Senator from Minnesota, who has been waiting here a long time, to give a speech on a subject, I believe it is Iraq. And he originally wanted to speak for 20 minutes. I asked him if he would speak for 10, and he has graciously consented to do that. It is my understanding the Senator from Arizona wishes to speak.

I ask unanimous consent that following the Senator from Minnesota speaking for 10 minutes, the Senator from Arizona be recognized for a period not to exceed—how much time?

Mr. MCCAIN. One hour.

Mr. REID. One hour. I ask unanimous consent that be the order.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Actually, I object. I will not take a time agreement at this time. I will agree. I withdraw my objection.

Mr. REID. I say, before the Chair enters that, if the Senator from Arizona needs more time, we will certainly arrange that.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I thank my colleague from Nevada for this agreement. And I thank the distinguished senior Senator from Alaska, Mr. STEVENS, and Senator MCCAIN also for graciously granting me this opportunity.

IRAQ

Mr. DAYTON. Mr. President, the Senate has been dealing with some important matters these days, with a judicial nomination to the second highest court in the country, and shortly to bring up an appropriations bill that will determine spending across this country with hundreds of billions of dollars for the rest of this fiscal year.

But there is something else going on in this country which is of overwhelming importance which really should supersede all of this, and that is the imminent prospect of a war against Iraq.

At the same time we are talking about these other matters, this country is under a condition code orange, the second highest level of security we have. Our citizens have been told in the last few days to go out and get duct tape and sheets of plastic and water.

Today at the Senate Armed Services Committee hearing, of which I am a member, the Secretary of Defense called the time that we are in now ''the most dangerous security environment that the world has ever known.'' It is for those reasons I wrote the majority leader and urged we not take a recess as planned next week, that we stay in

Washington, stay in session, because I think this is a matter of such urgency and such paramount importance to our country and to the world that we should be continuing to focus on that matter.

The ominous forewarnings of this last couple of days affirm to me what Robert Kennedy said after the Cuban missile crisis. He said:

> No action is taken against an adversary in a vacuum. The escalation on one side brings a counterresponse. A government of people will fail to understand this only at their great peril.

For the last 55 years the leaders of this country have understood that principle. They, too, faced dangerous dictators who possessed weapons of mass destruction, who headed countries that were hostile to the United States, the former Soviet Union, China, North Korea. But they didn't attack another country to eliminate those threats, even though they persisted, even though we disagreed with those countries, what their leaders did to their own people, the threats they were around the world. The principal reason was we understood the doctrine of mutual assured destruction. We understood their destruction against the United States would be an intolerable cost for our destruction of them and for the objectives we might accomplish militarily.

I believe these forewarnings we have received the last few days should cause us to ask this administration why would they expect Iraq to be any different. If the United States intervenes and begins to destroy that country and its cities, cause civilian casualties, why would we not expect Iraq to retaliate with every destructive force it has available to it within our own borders, against our own cities and our own citizens?

Why wouldn't we expect Osama bin Laden to do his worst to exploit this situation, to twist facts to be seen by the rest of the world other than as they are, but in ways that would be destructive to United States standing around the world and to our own national security now and in the days and months ahead?

Why does this administration believe it should disregard the lessons that other Presidents, Republican and Democrat, have recognized and observed and proven to be as valid then as they are today? What is different about this situation?

At the Senate Armed Services Committee hearing this morning I asked the Secretary of Defense his assessment of our ability to protect our citizens from retaliatory attacks against them if we were to invade Iraq. I asked that question twice. How do you assess, Mr. Secretary, our ability to protect our citizens in their homes and their schools and our cities from an enemy attack? Neither time did I receive a direct answer to that question. Neither time. I have the highest regard for the Secretary of Defense. He has an enormous responsibility. He brings tremendous experience and ability and a heroic dedication to our country to this task. But if all this administration can offer the American people, when our national security alert is raised to the second highest level, is duct tape, sheets of plastic and water, there is something very seriously wrong, if this administration intends to start a war, not against the most urgent threat to this country, not the threat that endangered us before, attacked us before and endangers us now, according to many of their own officials, al-Qaida, Osama bin Laden, the tape that was released this week that issues that threat against us and our citizens once again, not an attack against al-Qaida but against Iraq, against a country that, no question, is ruled by an evil man, a dangerous dictator, a man who almost certainly, as the Secretary of State has demonstrated, the President in the State of the Union, possesses biological and chemical weapons and has for the last 12 years, ever since the first President Bush made a strategic decision at the conclusion of the gulf war to leave him in power, which may have been the right decision given the other options that were available.

Yes, an evil dictator, but one who has been constrained in key respects by active, ongoing efforts of diplomacy with our allies and containment by international forces by both former President Bush and by President Clinton. Contained, constrained, not perfectly, not easily, certainly not voluntarily on his part, but effectively, more effectively than has been acknowledged in recent months. He is weaker, according to reports I have seen, militarily in most respects than he was before the gulf war. He does, by all accounts that we can obtain, not possess nuclear warhead capabilities at this time, which I agree with the President would be intolerable for this country to permit. He has not attacked his neighbors—not because he wouldn't like to, probably, but because he has not had the capability to do so under these containment policies for the last 12 years. And as far as I have been informed in various briefings, he was not actively threatening our country or his neighbors or anyone else when he was dusted off the shelf by this administration right after Labor Day.

The President has properly refocused the world spotlight on this man and his intent. The President has drawn a line very clearly, which I support, that it would be intolerable for this Nation to permit that dictator to possess nuclear weapons or the missile capabilities to deliver those warheads or any warheads against this country or against neighbors in the region surrounding him.

Certainly after September 11 and Operation Enduring Freedom, no one in this world could question the steely resolve of our President and his willingness, if necessary, to use military force. After Operation Enduring Freedom, no one could raise a doubt about the might of the United States Armed Forces and the strength we can bring to bear anywhere in the world as a last resort, as truly a last resort.

But there is another lesson from September 11, which is that no matter how great our military might, we are not invulnerable. We are too big a country. We have too wide an expanse. We have too many possible targets for terrorists. And we saw on September 11 tragically, horribly, the damage and the destruction and the cost of human life and the untold human suffering and misery of families that a very small number of fanatical men could cause.

I don't think we should back down or be deterred by any threat. I think we should do what we must to defend this country, and the principles we have established in the last half century of dealing with these threats have been ones that have prevented war, preserved our peace, and strengthened this country economically and socially in its position of leadership in the world.

It would be a very dangerous precedent if we were to do, except as a very last resort, what no President in this country has done before, which is to start a war, which is to launch a preemptive attack against another country based on what it might in the future do to us. And I think we should consider what that precedent would mean if other nations were to follow that example. If we set a precedent in this ''new world order,'' as it has been called, that a preemptive attack against a possible future threat is the way to resolve crises or standoffs, what will happen when other countries adopt that path?

We have seen now—and we have been forewarned—that the nuclear proliferation that we are seeing other countries undertake is the worst nightmare that many predicted years ago, decades ago if we didn't—the superpowers—bring to a halt the nuclear arms race and remove them from the shelves of the nations of the world. Now we are told that half a dozen countries—and more to come soon—will have them. That should be and must be a warning to us. What happens if we lead down a path on which we don't want other nations to follow?

If we set a precedent of preemptive attack, that path is one that the world will follow at its peril. I urge the President to take that into the most careful consideration as he makes this fateful decision.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is to be recognized for up to 60 minutes.

OMNIBUS APPROPRIATIONS

Mr. MCCAIN. Mr. President, usually I begin my diatribes on the appropriations bill by lifting up the appropriations bill for all to see; one, it hasn't been delivered and, two, I note by the