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Senate

The Senate met at 12:02 p.m., and was called to order by the Honorable LARRY E. CRAIG, a Senator from the State of Idaho.

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain, Norris A. Keirn, National Chaplain of the American Legion.

PRAYER

The guest chaplain offered the following prayer:

Eternal Father, You have been our shield and strength from the birth of our Nation to this present day. Our homeland has been preserved in the palm of Your hand. By inspiration of Your Holy Spirit, we have continuously moved to develop a more perfect union that would mirror Your divine purpose.

Through Your guidance, these Senators have been raised to make laws and direct efforts for the enduring betterment of the peoples of this Nation and the world. Grant great wisdom so that Your righteous purposes would be fulfilled. Afford each one the strength of will to be diligent dispensers of truth and justice. Bless them with solidarity that transcends personal views and political affiliations. Grant a bipartisan unity that would bring You glory!

Bless also those who defend this democracy and place themselves in harm's way. Dispatch Your angels to protect and to bring them home with victory over the evil forces that would attempt to destroy freedom. Enable them to break the bondage of oppression as You have so graciously granted in the past. In the Name of our Lord we pray, Amen.

PLEDGE OF ALLEGIANCE

The Honorable LARRY E. CRAIG led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 3, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LARRY E. CRAIG, a Senator from the State of Idaho, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. CRAIG thereupon assumed the chair as Acting President pro tempore. (Mr. CHAMBLISS assumed the chair.)

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER. The Senator from Idaho is recognized.

SCHEDULE

Mr. CRAIG. Mr. President, the Senate will spend the day in executive session trying to reach an agreement for a time to vote on the Estrada nomination. The nomination has been pending before the full Senate since February 5. The majority leader has attempted on a number of occasions to reach a time certain for this nomination. Each time there has been an objection by the other side of the aisle.

If Members desire to speak, they are encouraged to do so during today's session.

As a reminder to all Members, there will be a rollcall vote today beginning at 5:30. Under the unanimous consent agreement reached last Thursday, the vote will be on the confirmation of Marian Blank Horn to serve on the

U.S. Court of Federal Claims. I thank all Members for their attention.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

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

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

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

The PRESIDING OFFICER. The assistant minority leader is recognized.

Mr. REID. The manager of the bill is on the floor and the acting leader, Senator CRAIG, is also here. Senator BINGAMAN is here and wishes to speak. I understand Senator CRAIG wishes to speak for about 15 minutes. I wonder if I may direct attention to the distinguished chairman of the Judiciary Committee, Chairman HATCH. Senator BINGAMAN is here and I would like to see if we can get him in the queue to speak after Senator CRAIG. I know the Senator from Utah is managing this bill and, of course, I am sure he wishes to speak. I wonder if he has any objection to Mr. BINGAMAN speaking.

Mr. HATCH. I have no objection.

Mr. REID. He only wants about 5 to 10 minutes.

Mr. HATCH. I will have no objection, and I have no objection to Senator CRAIG speaking as well.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Mr. REID. Mr. President, I ask unanimous consent that Senator CRAIG be recognized for 15 minutes and then Senator BINGAMAN for up to 10 minutes.

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

The Senator from Idaho is recognized.

MASSIVE GOVERNMENT SUBSIDIES TO HYNIX
SEMICONDUCTOR

Mr. CRAIG. Mr. President, I rise today to visit with my colleagues about something that is going on in Idaho and across this Nation at this moment that is critical to our economy, and especially critical to the economy of the State of Idaho. The situation that a company in Idaho finds itself in at this moment has resulted in its need to lay off 10 percent of its workforce because of actions taken by the Korean Government to prop up a bankrupt competitor of Micron.

Micron is a company in Idaho that has been in place and is the world's second largest producer of memory chips. As a result of the Korean Government's propping up of the Hynix Semiconductor Corporation, the market now is tremendously softened and layoffs are occurring.

In the mid-1980s, Micron almost went out of business because of dumping by Japanese companies. At that time, I acted in concert with the Bush Government. President Bush at that time worked with the Department of Commerce to put duties on that offset, but eventually that overrode that impact and it allowed that company, Micron, to become the second largest of the semiconductor companies in the world today.

Micron, as I mentioned, is critical to the technological base of the United States. It employs 13,000 people—invaluable high-tech jobs in the U.S. and in other parts of the world. It produces D-RAM semiconductors, or random memory chips, a key component in countless electronic systems, from personal computers to satellites to military command and control systems.

Most importantly, Micron is the only remaining producer of D-RAM chips in the United States. There used to be a half dozen of these companies a decade ago, but they all left the business in large part due to the unfair trade practices of other countries such as and including Korea.

Now I believe I must do what I can to address this new situation that is costing U.S. jobs in the United States, is weakening our technology base, and is having a substantial impact on the State of Idaho.

My bill, introduced last week, S. 492, reflects just how far, in my opinion, the Government of Korea has pushed with what I call illegal subsidies, and it reflects just how far I think we must go to respond to that situation.

My bill would impose a duty on Hynix semiconductors as they come into the country. My bill "suspends liquidation" for these Korean semiconductors, which is another way of

saying it watches them at the border. Then my bill requires a cash deposit of estimated countervailing duties in the 80-percent range. That is a serious step. Yet it is a legal and an appropriate step and, yes, it is actionable under the WTO, but it focuses us as a country on the problem we are facing with this kind of competition that I believe is illegal and is heavily Government supported.

I am angry, and I say that straightforwardly, at the Government of Korea and their continued unrelenting campaign of illegal subsidies to Hynix in an attempt to bring our domestic producer not only to its knees, but to destroy it altogether and then dominate the semiconductor industry.

Since October of 2000, the Korean Government, acting through the banks it owns and controls, has provided an incredible \$16 billion—let me repeat that—the banks of Korea have provided an incredible \$16 billion in subsidies to Hynix, the Korean producer of D-RAM semiconductors. How much has our Federal Government subsidized Micron? Nada; not one bit.

I think it is time we at least put up a barrier and test the international trade community to understand whether this is or is not an illegal action. We have that argument before the ITC at this moment. We hope there is a finding soon. But until then, I hope this Senate and the Finance Committee can come on point to recognize the critical environment that is being created by a company such as Hynix and a government backing them that strictly supports them for the purpose of dominating a world market and keeping its people employed.

In the 1990s, Government-controlled banks in Korea lent heavily to Hynix at cheap rates, and Hynix built up massive capacity, over 90 percent of which it exports. Ninety percent of what it produces in Korea leaves for the world market.

The Government of Korea built up this company with one goal in mind: to create an export powerhouse. It succeeded, and Hynix became the No. 3 producer of D-RAM chips in the world.

When Hynix became unable to repay the debt coming due in 2001, the Government of Korea stepped in and essentially wiped out the debt by providing over \$16 billion in debt forgiveness and debt restructuring over the past 2½ years. There is no rational economic justification for Government support for Hynix. Hynix has been unable to repay its debt, and it has lost \$8 billion over the past 3 years. The subsidies it has received have permitted Hynix to stay in business and continue to run all its D-RAM plants at full capacity, flooding the market with subsidized product.

They cannot make money. They have lost money, \$8 billion over the last 3 years; and yet the Government still dumps money into them, and they are dumping money into them at a time when they are out building new capac-

ity. The most recent Hynix bailout came 2 months ago when the Government provided \$4.1 billion in debt relief and another \$4.1 billion in subsidy. Hynix only had \$2.4 billion in sales last year. It just does not add up. Take a chalkboard out and outline that for the world to see, and the world will say that is a Government-controlled, Government-subsidized plant that is not even making a profit and, in fact, is losing large amounts of money.

Hynix will use the debt forgiveness to continue to expand capacity. Just last week—this is almost like a slap in the face to the American workforce and to Micron and its companies—just last week Hynix announced it would begin work on new fabrication lines to produce D-RAMs on state-of-the-art 300 mm wafers which will result in even more subsidized D-RAM from Hynix. They cannot make a profit, they are being subsidized heavily, and they are going to build more capacity. That does not make any sense at all, but then again putting a lot of people out of work in Idaho does not make any sense either when we are asking a company to compete against this producer at well below market prices.

Now we read in the papers that Hynix and other Hyundai companies are being investigated for illegally transferring \$500 million to North Korea in 2000. If that is true, that is a real slap in the face of Americans and the American worker. Of course, they did that for lucrative contracts. It did so with the help of South Korean banks and with the approval of the President of South Korea. I say that again. North Korea is being investigated for illegal actions with that country. This is the country that plans to reactivate its nuclear arms program and, we are now told, has just started one of its reactors. I hope the world will not tolerate this situation, and I hope our Senate will speak up to the issue.

Korea is a developed country. It is one of the most developed economies in Asia. The Korean Government has absolutely no business keeping a company going when it would otherwise be bankrupt, and there is no question about it. Like I said, pull a chalkboard out, and run those figures. You have one conclusion: Unless your banker or your best friend—and in this instance, the bank is the best friend. The Government owns the bank and the bank owns the company and you bail them out for \$16 billion. The purpose is obvious.

The purpose of my legislation is to urge the Department of Commerce and other U.S. trade agencies to do everything in their power to fix this problem. That is what our trade laws are for. Do I like doing what I am doing? Absolutely not. Will I apologize for trying to protect an American company and a workforce against a heavily subsidized dominating company that wants to control the world marketplace with an undercost product? No, I will not apologize for that whatsoever.

Is the action I take if the Senate were to pass my bill and were it to become law actionable at the WTO? Absolutely, and it ought to be to test whether what we have done is appropriate or whether, in fact, what Korea is doing at this moment is illegal, as I believe it is, and as I think the world marketplace would believe and the World Trade Organization.

Once again, the ITC is reviewing this. We hope by late March that decision will be out there. The European Union is already reviewing Hynix. I am told they are finding them in violation. Why should American workers, Idaho workers, a great American company, one of the great American success stories, have to shut itself down and put itself in financial stress because it is being dumped on in a world market?

Those are the problems we face. That is why I have introduced the legislation. My colleague, Senator CRAPO, has introduced a resolution and has spoken to it. On the House side, Congressman BUTCH OTTER speaks to it. Clearly, Idaho and Idaho's economy will take a tremendous hit because the Koreans are illegally playing the world trade game, heavily subsidized by their banks and by their government.

I yield the floor.

The PRESIDING OFFICER. Under the previous unanimous consent, the Senator from New Mexico is recognized for 5 minutes.

The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that I be given 1 minute. I do have the approval of the distinguished Senator from New Mexico.

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

Mr. HATCH. Mr. President, I compliment my colleague from Idaho. He has called it exactly the way it is. What is going on is a matter of unfair competition. It is a matter of improper governmental subsidization in competition with a company that is doing it all without government subsidization. I personally thank him for his good remarks; I agree with them and I would like to be associated with them.

Mr. CRAIG. I thank my colleague.

The PRESIDING OFFICER. The Senator from New Mexico.

LACK OF SPR POLICY

Mr. BINGAMAN. Mr. President, I appreciate the chance to speak for a few minutes about the Strategic Petroleum Reserve and the lack of action by the administration to deal with the problems we see in our oil markets today. What we are seeing by the administration is not bad policy, as such. What it is is a lack of policy for how we will use the Strategic Petroleum Reserve at a critical time such as the one we are in today. This indecision, this failure to articulate a policy, is hurting consumers and it is hurting our economy.

We have an oil supply crisis on our hands right now. Oil prices hit \$40 a barrel last week. Domestic crude and product stocks are at an all-time low

and oil prices are now hovering at levels that we have not seen since the gulf war. High energy prices such as this do hurt consumers and the economy. The question is, What has the administration done to minimize this economic pain that Americans are feeling?

The average consumer may not know what the price of oil is on a daily basis, but the average consumer does know the price of gasoline at the pump, and American consumers have had to bear the brunt of several weeks of very high gasoline prices while Saudi Arabia has been ramping up their production to maintain, if not to increase, their market share.

I do not know the connection between our national policy and Saudi Arabia's maintenance of market share. That has not been explained to me. But last fall, after the elections, when crude supply was first impacted and prices began to rise, the administration was urged to act to do a test sale of the Strategic Petroleum Reserve oil by several oil analysts.

A Strategic Petroleum Reserve release on this small scale would have been appropriate then. It would have been a simple statement outlining the administration's SPR policy, and it would have helped to calm jittery markets, which is certainly what we have seen in recent days and weeks. The situation we now face, in which the curtailment of oil supplies is hurting our national economic security, is precisely what we foresaw when Congress created the Strategic Petroleum Reserve. The curtailment has been months in the making. The current crisis in Venezuela has pushed the supply situation to a level that is beyond "severe".

The Strategic Petroleum Reserve was established in 1975, in direct response to the Arab oil embargo. Today, the Strategic Petroleum Reserve contains a total of 599.3 million barrels, almost 60 days' worth of imports. When this body considered the Omnibus Appropriations Act for 2003, I offered an amendment to extend our authority to use the SPR. That authority was set to expire later this year. I am pleased that the Senate adopted that provision and that as a result we have another 5 years of authority during which we can use SPR as a response to oil supply crises.

However, the authority was enacted for a reason. There is a supply problem. We have known this for some time now. In December, 3 million barrels of Venezuelan crude came off the market altogether. This has had a larger supply impact than removing all Iraqi crude will have under a war scenario, which we all, I believe, consider to be very likely.

Prior to December 2002, Venezuela was one of the world's five largest oil exporters. Its net exports averaged 2.4 million barrels per day. During the first 9 months of 2002, oil from Venezuela supplied approximately 14 percent of U.S. net oil imports, or about 1.5 million barrels per day.

The United States depends on Venezuela for substantial volumes of gasoline imports as well as oil imports. A 10-week general strike in Venezuela has resulted in a sharp decrease in Venezuela's exports to the United States. The strike comes at a time when markets are already tight.

On Tuesday, in the Committee on Energy and Natural Resources, we heard testimony from the Secretary of Energy that everything was getting better in Venezuela, that the crisis was passing. Recent events, though, suggest that this may not be the case. A key factor in the uncertainty that is keeping prices up is the uncertainty surrounding the administration's intentions about using the SPR. A clear statement from the administration of the conditions under which oil would be released from the SPR would have an immediate effect on lowering oil prices.

A cryptic phrase that is used by the administration is that they would release oil from the SPR only in the case of "a severe supply disruption." But since the administration will not elaborate on what a severe supply disruption entails, the suspicion is that they will never release oil from SPR absent an all out war in the Persian Gulf that involves major damage to Saudi oilfields. For that reason, the psychology of the market largely discounts the existence of the Strategic Petroleum Reserve at this time, and consumers are paying all-time high prices at the pump.

Gas prices have risen more than 30 cents a gallon since December. Gas prices are high in part because our crude stocks are down. We are operating at minimum operating levels in the refining sector. With high crude prices, increased refining output means even higher prices at the pump.

Demand for gasoline is high as we head into the driving season. Since most spare capacity in the market is in the Middle East, it is going to take awhile to get the oil we need. It does not take much to send prices spiking again. Cold weather can do it. Disruption in supply from Venezuela or Nigeria could do it. War in the gulf could do it.

My colleagues have listened to many speeches over the last year bemoaning the fact we do not have an energy policy. I am not going to ask that we come to closure today on a universal, all-encompassing, comprehensive energy policy. I would settle for a single action by the administration. That would be a clearly enunciated and understandable policy for when we will use the Strategic Petroleum Reserve.

The administration may be sufficiently captive to a minimalist ideology in dealing with this oil crisis, that they never actually plan to use the Strategic Petroleum Reserve, and I hope very much that is not the case.

I call on the President to give us a clear and understandable signal as to what his policy is. Merely saying we

will wait for a severe supply disruption is not an adequate response. Consumers deserve more. The costs to our economy may become unacceptable. It certainly is a severe issue weighing down our economy at the present time.

I yield the floor and 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. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MEASURE PLACED ON CALENDAR—H.R. 534

Mr. HATCH. Mr. President, as in legislative session, I understand H.R. 534 is at the desk and is due for its second reading.

The PRESIDING OFFICER. The Senator is correct.

The clerk will read the title of the bill for the second time.

The assistant legislative clerk read as follows:

A bill (H.R. 534) to amend title 18, United States Code, to prohibit human cloning.

Mr. HATCH. I object to further proceeding.

The PRESIDING OFFICER. The objection having been heard, the bill will be placed on the calendar.

Mr. HATCH. Mr. President, I ask we now go back into executive session.

The PRESIDENT pro tempore. The Senate is in executive session.

Mr. HATCH. Mr. President, it has now been nearly 4 weeks since we began debating the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia Circuit. We have heard all of the arguments for and against his nomination. What we have not heard is a good reason why this filibuster should continue. We have not heard any good reason why his nomination should not be brought for an up or down vote.

One of the reasons that some of my Democratic colleagues say they oppose Mr. Estrada is because he allegedly did not answer their questions at his hearing. I do find this complaint unpersuasive, particularly given that (1) the hearing was chaired by a Democratic Senator, (2) the hearing lasted all day, (3) Mr. Estrada answered question after question on a broad variety of topics, and (4) every committee member had the right to ask Mr. Estrada follow-up questions in writing but only two did.

Nevertheless, in a letter dated last Thursday, February 27, 2003, White House Counsel Alberto Gonzales sent a letter to all 100 Senators directing them to additional sources of information on Miguel Estrada. This is an important letter, and I will take a moment to read the letter:

DEAR SENATOR FRIST, SENATOR DASCHLE, SENATOR HATCH, AND SENATOR LEAHY: I write in connection with the nomination of Miguel Estrada. Some Democrat Senators have indicated that they would like to know more

about Mr. Estrada's record before a vote occurs. As I stated in my letter of February 12 to Senator Daschle and Senator Leahy, we believe that the Senate has had sufficient time and possesses sufficient information to vote on Miguel Estrada. More important, a majority of Senators have indicated that they possess sufficient information and would vote to confirm him.

But if some Senators believe they must have more information before they will end the filibuster of this nomination, we respectfully suggest that there are three different and important sources of information that have been and remain available and that would appropriately accommodate the request for additional information. We ask that you encourage interested Senators to avail themselves of these sources as soon as possible.

First, as I have written to you previously, individual Senators who wish to meet with Miguel Estrada may and should do so immediately. We continue to believe that such meetings could be very useful to Senators who wish to learn more about Mr. Estrada's record and character.

Second, Senators who have additional questions for Mr. Estrada should immediately pose such questions in writing to him. We propose that additional questions (in a reasonable number) be submitted in writing to Mr. Estrada by Friday, February 28. Mr. Estrada would endeavor to answer such questions in writing by Tuesday, March 4. He would answer the questions forthrightly, appropriately, and in a manner consistent with the traditional practice and obligations of judicial nominees, as he has before.

Third, Senators who wish to know more about Mr. Estrada's performance and approach when working in the United States Government—and, in particular, how that relates to his possible future performance as a Circuit Judge—should immediately ask in writing for the views of the Solicitors General, United States Attorney, and Judges for whom Mr. Estrada worked and ask them to respond by Tuesday, March 4. In particular, interested Senators could immediately send a joint letter to each of the following individuals for whom Mr. Estrada has worked in the United States Government: Judge Amalya Kearse, Justice Anthony Kennedy, former United States Attorney Otto Obermaier, former Solicitor General Ken Starr, former Solicitor General Drew Days, former Solicitor General Walter Dellinger, and former Solicitor General Seth Waxman. In our judgment, these men and women could provide their views on Mr. Estrada's background and suitability to be a Circuit Judge by March 4 without sacrificing the integrity of the decisionmaking processes of the Judiciary, United States Attorney's office, and Solicitor General officer. And their views could assist Senators who seek more information about Mr. Estrada.

We believe that these sources of information, which have been available for some time, would readily accommodate the desire for additional information expressed by some Senators who have thus far supported the filibuster of a vote on this nominee. We ask that you encourage Senators who have objected to the scheduling of a vote to avail themselves of these sources of information. And we respectfully ask that the Senate vote up or down as soon as possible on Mr. Estrada's nomination, which has been pending for nearly two years.

Please do not hesitate to contact me with any questions.

Sincerely,

ALBERTO R. GONZALES,
Counsel to the President.

Mr. HATCH. As far as I know, none of the Senators who have sought more in-

formation about Mr. Estrada have availed themselves of any of these sources. This brings to mind the story of the young man who killed both his parents, then threw himself on the mercy of the court because he was an orphan. Here, my Democratic colleagues who are complaining the loudest about not having enough information about Mr. Estrada are the very ones who are apparently not interested in finding out more about him through readily available means. Meanwhile, the filibuster goes on and on.

Another significant letter was circulated on Wednesday of last week, this one signed by more than 50 of our colleagues in the House. This, too, is a powerful letter. Let me read the letter:

WASHINGTON, DC,
February 26, 2003.

Senator TOM DASCHLE,
Senator HARRY REID,
Senator PATRICK LEAHY,
U.S. Senate, Washington, DC.

DEAR SENATORS: It is our understanding that the major objection raised by the Senate Democratic Leadership and many members of the Senate Democratic Caucus to the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia Circuit is that you have not been provided sufficient information about his legal views. Specifically, we understand that you are opposing his nomination because of the Administration's failure to provide you with internal memoranda prepared by Mr. Estrada while he served as Assistant to the Solicitor General.

We are deeply concerned that your objection to the Administration's refusal to produce these memoranda not only breaks with precedent but is also a threat to the ability of Executive Branch Officials, members of the Judiciary, and Members of Congress to receive confidential legal advice.

As you are no doubt aware, the Clinton Administration memoranda you are requesting in the case of Mr. Estrada were not requested for the seven previous nominees to the Courts of Appeals who had worked in the Solicitor General's office. Understandably, the improper appearance of a double standard for this particular nominee has been created. In addition, every living former Solicitor General—Democrat and Republican—signed a joint letter to the Senate Judiciary Committee, stating that the memoranda request would have a debilitating effect on the ability of the Department of Justice to represent the United States before the Supreme Court.

Forcing the disclosure of confidential memoranda in this instance would do serious institutional harm to all three branches of government. For example, should legal memoranda prepared for you by one of your staff be available for review by future senators (or by the Administration) in the event that the staff member were to be nominated or be considered to a judicial or other post? This appears to be the precedent you are attempting to set. As we trust you understand, such a precedent would no doubt impact the type and quality of advice we seek and receive from our staff.

We strongly urge you to reconsider your objections and drop your request for the confidential memoranda of the Clinton Justice Department.

Mr. HATCH. Mr. President, I stood on the Senate floor last week when the debate on Mr. Estrada's nomination entered its third week, and I said that there is a simple solution to the logjam

that has become the Senate. It is a straightforward solution that does not require the release of confidential memoranda or questionable claims that Mr. Estrada failed to answer questions before the committee. The solution is for Senators to vote on Mr. Estrada's nomination. Vote for him or vote against him; do what your conscience dictates. Just vote.

One reason I believe we are not voting, and the filibuster continues, is because our friends on the other side of the aisle know Mr. Estrada has enough votes to be confirmed to the Circuit Court of Appeals for the District of Columbia.

I have mentioned before that Mr. Estrada has a substantial and impressive record, despite the claims to the contrary of some of my Democratic colleagues.

One very substantial part of his record consists of the 15 cases he has argued before the United States Supreme Court. In each of these cases, a brief was filed that is publicly available for everyone and anyone to review. And in each of these cases, there is a transcript of Mr. Estrada's argument before Supreme Court.

The briefs and transcripts of each of Mr. Estrada's 15 Supreme Court cases are right here. As you can see, there is a very substantial record on Mr. Estrada. I invite any one of my Democratic colleagues who have not reviewed or acknowledged this record to do so. You can get a pretty good idea of the cases he argued, the reasoning he used, the legality that he cites, the law he applies—more than almost any other nominee for the Circuit Court of Appeals in the history of the country.

But in case any of my Democratic colleagues are finding themselves short on time these days—after all, perpetuating a filibuster does require a substantial amount of effort—I want to spend a few moments on the cases Mr. Estrada argued before the Supreme Court. A look at these cases and the significance of the legal issues argued in them should dispel any notion that Mr. Estrada has no record.

Let's start with the 1999 case of Strickler v. Greene, which Mr. Estrada argued pro bono on behalf of a death row inmate. He argued that the Commonwealth of Virginia violated the seminal Supreme Court case of Brady v. Maryland by withholding material exculpatory evidence. Although he spent hundreds of hours in his quest to overturn Tommy Lee Strickler's death sentence, he lost the case by a 7-2 margin.

In another case, Richards v. Wisconsin, Mr. Estrada argued on behalf of the United States as amicus curiae that it generally is reasonable for police officers who have a warrant to search a dwelling for evidence of drug trafficking, to enter the dwelling to execute the warrant without a prior announcement of their presence and purpose. A unanimous Supreme Court agreed with him; he won 9-0.

In the case of Old Chief v. United States, Mr. Estrada argued for the United States that the district court properly exercised its discretion, in a prosecution of a convicted felon for possession of a firearm, to admit evidence of the defendant's prior felony conviction even though the defendant offered to stipulate to that fact. He narrowly lost that case by a 5-4 margin.

The case of United States v. Gonzales dealt with 18 U.S.C. §924(c), which provides that "[n]otwithstanding any other provision of law" prison terms under the statute "shall [not] run concurrently with any other terms of imprisonment." Mr. Estrada argued on behalf of the United States that a court may not order that a sentence imposed under §924(c) is to run concurrently with a State-law sentence that the defendant is already serving. He won this case 7-2.

In Montana v. Egelhoff, Mr. Estrada argued for the United States as amicus curiae that the Due Process Clause does not bar a State from preventing a jury in a criminal case from considering evidence of the defendant's voluntary intoxication in determining whether he possessed the mental state required for the crime charge. He won this case 5-4.

In Degen v. United States, Mr. Estrada argued for the United States that the district court had properly invoked the so-called fugitive disentitlement doctrine to bar the petitioner from contesting a civil forfeiture action. A unanimous Supreme Court ruled against him in this case, which, of course, just goes to show that you can't win them all.

Mr. Estrada did score a unanimous victory in Citizens Bank v. Strumph. In that case, Mr. Estrada argued on behalf of the United States as amicus curiae that a bank's temporary refusal to pay a debt upon the debtor's demand was not an exercise of its setoff right in violation of §326 of the Bankruptcy Code, which stays a creditor's right of setoff pending an orderly determination of the debtor's and creditor's rights.

The case of Reno v. Koray considered 18 U.S.C. §3585, which provides that a criminal defendant generally must "be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences." Mr. Estrada argued for the United States that a Federal prisoner does not receive credit on his sentence for time he spent released on bail. He won this case 8-1.

In United States v. Robertson, Mr. Estrada argued on behalf of the United States that the interstate movement of goods and people in connection with the operation of a gold mine is sufficient to justify the conclusion that the activities of the gold mine affect interstate commerce within the meaning of the RICO statute. He won this case 9-0.

In United States v. Mezzanatto, Mr. Estrada argued on behalf of the United

States that the Government may use statements made in the course of plea discussions to impeach a criminal defendant's contrary testimony at trial, when the defendant and his counsel expressly agreed before those statements were made that the government would have the right to use them. He won this case 7-2.

In United States v. Alvarez-Sanchez, Mr. Estrada argued for the United States that a delay between a defendant's arrest on State narcotics charges and presentment to a Federal magistrate on subsequent Federal charges did not require suppression of an inculpatory statement to Federal agents that was made while defendant was in custody on the State charges. He won this case 9-0.

The case of Powell v. Nevada considered the rule of County of Riverside v. McLaughlin, which provides that a judicial probable cause determination must be made within 48 hours of a warrantless arrest. Mr. Estrada argued on behalf of the United States as amicus curiae that the rule did not apply retroactively. The Supreme Court ruled against his position 7-2.

In NOW v. Scheidler, Mr. Estrada argued on behalf of the United States as amicus curiae that RICO does not require proof that either the racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose. It just so happens that in this case, the defendant against whom Mr. Estrada argued was an abortion protector, and Mr. Estrada argued on the same side as NOW. His position prevailed when an unanimous court agreed with him.

In Austin v. United States, Mr. Estrada argued for the United States that the Eighth Amendment's excessive fines clause does not apply to civil forfeiture proceedings. He lost this case 9-0.

Last but not least, in Deal v. United States, Mr. Estrada argued for the United States that a defendant who is convicted in a single proceeding of multiple violations of 18 U.S.C. §924(c) is not subject to the statute's provisions imposing a more severe sentence for a "second or subsequent conviction." He won this case 6-3.

What these cases show, Mr. President, is that in 6 years Mr. Estrada compiled an impressive record before the Supreme Court. He argued 15 cases, winning 10 of them. In half of those cases, he won in a unanimous decision. There can be no question that Mr. Estrada has a record that anyone would be proud of by any standard.

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. HARKIN. 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. HARKIN. Mr. President, there are a couple things I will speak about during this period of time: One, I do want to address myself to the issue now before us; that is, the issue of whether or not Miguel Estrada should proceed to the District of Columbia Circuit Court of Appeals. Then I will talk a little while about the events over the weekend as they pertain to the looming war in Iraq.

But as pertains to Mr. Estrada, as long as this person is in front of us on the floor of the Senate, as long as my good friend from Utah keeps taking the floor to ask for a vote on Mr. Estrada, this Senator will continue to take the floor to continue to remind my good friend from Utah of what happened to Bonnie Campbell under the Clinton administration when the Republicans controlled the Judiciary Committee.

My friend, the Senator from Utah said:

An up-or-down vote, that is all we ask. If the Democrats have enough votes to defeat Miguel Estrada, I am not going to complain about it. I might feel badly about it. I might think it is the wrong thing to do, but they have a right to do that. If my colleagues disagree, and don't like this, they can speak out, they can give their reasoning and vote no. Politics ought to be left out of it.

It is unfortunate we did not hear that when President Clinton's nominees were sent to the Senate for confirmation. In fact, I said the same thing as my friend from Utah said at the time on the nomination of Bonnie Campbell to serve on the Eighth Circuit. Bonnie Campbell is a former attorney general of the State of Iowa, an individual who, by all reckoning, did an outstanding job at the Department of Justice, heading the Office of Violence Against Women.

She was nominated by President Clinton to be on the Eighth Circuit, and we could not even get a vote on her. She received her hearing in May of 2000 and answered whatever questions were propounded to her. She stood willing to produce any and all documents she had ever written for anyone. No, not once did any Republican Senator complain that Bonnie Campbell was not forthcoming. In fact, I am told that not once did a Republican Senator complain that a Clinton nominee did not adequately answer these questions.

So here she was, ready to answer, ready to move on. The hearing was held. She had the ABA stamp of approval. As I said, she had a long and distinguished history in the field of law. There were Members on both sides of the aisle who supported her nomination. Both Senator GRASSLEY and I, from the State of Iowa, supported her nomination.

On September 21, 2000, I said right here:

If, for some reason, you think she is unqualified—I can't imagine why—then cast your vote, but at least let's bring the nominee to the floor. This, I think, is a black mark on the operations of the Senate, another indication of how the leadership of this Senate refuses to do the people's business, to

let things come out on the floor so we can vote things up or down.

On October 3, 2000, I said:

It is clear who is playing politics with judgeships.

The Republican leadership of the Senate is playing the most bold-faced politics. It is not alleged these nominees are not qualified; it is simply they were nominated by a Democratic President. That is all.

I have not heard one person on the Republican side tell me that Bonnie Campbell is not qualified to be a circuit judge.

Then during the month of October 2000, I brought up Bonnie Campbell's nomination seven times on the floor. I asked unanimous consent to go to it on the executive calendar, and seven times the Republican majority objected.

My friend from Utah has talked about the Democrats' double standard. My first instinct is to call that laughable, but in reality, it is outrageous because so many extremely well-qualified Clinton nominees not only never got an up-or-down vote on the floor, they never got a vote on committee. In many cases, they didn't even get a hearing.

I mentioned this a week or so ago. My friend from Utah said Bonnie Campbell's nomination came too late in the last year of the last administration. Well, I know for a fact two of Senator KYL's district judges were nominated after Bonnie Campbell was nominated, and they were confirmed on October 3, 2000. In fact, I have a list of all the Clinton judicial nominees who were never allowed a vote. There were 79 who were not confirmed—31 circuit, 48 district. Fifty-nine were never even allowed a vote. Allen Snyder, DC Circuit, never given a vote by Republicans; Elena Kagen, DC Circuit, never given a vote by Republicans; Robert Cindrich, Third Circuit, never given a vote by Republicans. I will not read the whole list. There are 59 of them. But obviously one of those is Bonnie Campbell.

As long as Mr. Estrada is going to be here, I will keep reminding people of what they did to someone eminently well qualified who answered all the questions, was open to giving any writings, documents, or whatever anyone had asked of her. Yet she was stopped and wasn't even given a vote.

I ask unanimous consent to print in the RECORD a list of all the judicial nominees who were not confirmed that President Clinton nominated, with a list of how many were never even given a vote.

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

SEVENTY-NINE CLINTON JUDICIAL NOMINEES NOT CONFIRMED IN CONGRESS FIRST NOMINATED

(31 CIRCUIT/48 DISTRICT—59 OF THESE NEVER ALLOWED VOTES BY REPUBLICAN-CONTROLLED SENATE)

91 CIRCUIT COURT NOMINEES (22 BLOCKED FROM GETTING VOTE OR BEING CONFIRMED)

Merrick Garland, D.C. Circuit.

Allen Snyder, D.C. Circuit, never given a vote by Republicans/not confirmed.

Elena Kagen, D.C. Circuit, never given a vote by Republicans/not confirmed.

Robert Cindrich, 3rd Circuit, never given a vote by Republicans/not confirmed.

Stephen Orlofsky, 3rd Circuit, never given a vote by Republicans/not confirmed.

Robert Raymar, 3rd Circuit, never given a vote by Republicans/not confirmed.

James Beatty, 4th Circuit, never given a vote by Republicans/not confirmed.

Andre Davis, 4th Circuit, never given a vote by Republicans/not confirmed.

Elizabeth Gibson, 4th Circuit, never given a vote by Republicans/not confirmed.

Roger Gregory, 4th Circuit, never given a vote by Republicans/confirmed '01.

J. Rich Leonard, 4th Circuit, never given a vote by Republicans/not confirmed.

James Wynn, 4th Circuit, never given a vote by Republicans/not confirmed.

H. Alston Johnson, 5th Circuit, never given a vote by Republicans/not confirmed.

Enrique Moreno, 5th Circuit, never given a vote by Republicans/not confirmed.

Jorge Rangel, 5th Circuit, never given a vote by Republicans/not confirmed.

Eric Clay, 6th Circuit.

Kent Markus, 6th Circuit, never given a vote by Republicans/not confirmed.

Kathleen McCree Lewis, 6th Circuit, never given a vote by Republicans/not confirmed.

Helene White, 6th Circuit, never given a vote by Republicans/not confirmed.

Bonnie Campbell, 8th Circuit, never given a vote by Republicans/not confirmed.

Marsha Berzon, 9th Circuit.

James Duffy, 9th Circuit, never given a vote by Republicans/not confirmed.

William Fletcher, 9th Circuit.

Barry Goode, 9th Circuit, never given a vote by Republicans/not confirmed.

Ronald Gould, 9th Circuit.

Margaret McKeown, 9th Circuit.

Richard Paez, 9th Circuit.

Christine Arguello, 10th Circuit, never given a vote by Republicans/not confirmed.

James Lyons, 10th Circuit, never given a vote by Republicans/not confirmed.

Timothy Dyk, Fed. Circuit.

Arthur Gajarsa, Fed. Circuit.

(Helene White waited more than 1,500 days, never to be allowed a hearing or a vote.)

(Richard Paez waited more than 1,500 days to be confirmed.)

48 DISTRICT COURT NOMINEES (37 BLOCKED FROM GETTING VOTE OR BEING CONFIRMED)

Steven Achelpohl, District Court, never given a vote by Republicans/not confirmed.

Ann Aiken, District Court.

Richard Anderson, District Court, never given a vote by Republicans/not confirmed.

Joseph Bataillon, District Court, never given a vote by Republicans/not confirmed.

Steven Bell, District Court, never given a vote by Republicans/not confirmed.

John Binger, District Court, never given a vote by Republicans/not confirmed.

David Cercone, District Court, never given a vote by Republicans/confirmed '02.

Patricia Coan, District Court, never given a vote by Republicans/not confirmed.

Jeffrey Colman, District Court, never given a vote by Republicans/not confirmed.

Valerie Couch, District Court, never given a vote by Republicans/not confirmed.

Legrome Davis, District Court, never given a vote by Republicans/confirmed '02.

Rhonda Fields, District Court, never given a vote by Republicans/not confirmed.

S. David Fineman, District Court, never given a vote by Republicans/not confirmed.

Robert Freedberg, District Court, never given a vote by Republicans/not confirmed.

Dolly Gee, District Court, never given a vote by Republicans/not confirmed.

Melvin Hall, District Court, never given a vote by Republicans/not confirmed.

William Hibbler, District Court.

Faith Hochberg, District Court, never given a vote by Republicans/not confirmed.

Marian Johnston, District Court, never given a vote by Republicans/not confirmed.

Richard Lazzara, District Court, never given a vote by Republicans/not confirmed.

J. Rich Leonard, District Court, never given a vote by Republicans/not confirmed.

Stephen Lieberman, District Court, never given a vote by Republicans/not confirmed.

Matthew Kennelly, District Court.

James Klein, District Court, never given a vote by Republicans/not confirmed.

John Lim, District Court, never given a vote by Republicans/not confirmed.

Harry Litman, District Court, never given a vote by Republicans/not confirmed.

Frank McCarthy, District Court, never given a vote by Republicans/not confirmed.

Donald Middlebrooks, District Court.

Jeffrey Miller, District Court.

Margaret Morrow, District Court.

Sue Myerscough, District Court, never given a vote by Republicans/not confirmed.

Lynette Norton, District Court, never given a vote by Republicans/not confirmed.

Susan Oki Mollway, District Court.

Virginia Phillips, District Court, never given a vote by Republicans/not confirmed.

Robert Pratt, District Court.

Linda Riegle, District Court, never given a vote by Republicans/not confirmed.

Anabelle Rodriguez, District Court, never given a vote by Republicans/not confirmed.

Michael Schattman, District Court, never given a vote by Republicans/not confirmed.

Gary Sebelius, District Court, never given a vote by Republicans/not confirmed.

Kenneth Simon, District Court, never given a vote by Republicans/not confirmed.

Christina Snyder, District Court.

Clarence Sundram, District Court, never given a vote by Republicans/not confirmed.

Hilda Tagle, District Court, never given a vote by Republicans/not confirmed.

Thomas Thrash, District Court.

Cheryl Wattle, District Court, never given a vote by Republicans/not confirmed.

Wenona Whitfield, District Court, never given a vote by Republicans/not confirmed.

Ronnie White, not confirmed by floor vote.

Frederic Woocher, District Court, never given a vote by Republicans/not confirmed.

Mr. HARKIN. I want to address briefly the issue of whether or not this is anti-Hispanic, something like that. I keep hearing this talk that Democrats are going to be accused of being against Hispanics. Again, we do have to point out some history.

Enrique Moreno, Jorge Rangel, and Christine Arguello were all nominated to the circuit courts by President Clinton, but were never afforded a hearing or vote in the Judiciary Committee under Republicans. My colleague from Iowa, Mr. GRASSLEY, was quoted in the Dallas Morning News of January 31 of this year:

If we give Mr. Estrada the position on the DC circuit, it would be to shut the door on the American dream of Hispanic Americans everywhere.

Well, let's take a look at the reality and the record. There are more than 1,000 local, State, or Federal judges of Hispanic heritage. Yet President Bush has nominated only one Hispanic to any of the 42 vacant appellate positions. This administration has failed to nominate a single Hispanic judge for

any of the circuits covering Texas, California, Arizona, New Mexico, Florida, New York, New Jersey, or Puerto Rico, where there are sizable minorities of Hispanic Americans. In contrast, President Clinton nominated 11 Latinos to these circuit courts and 21 to the district courts—quite a difference.

Again, my friend from Utah said on February 12:

What gets me is, we are in the middle of a filibuster of a Federal judge when the Constitution says we should give advice and consent, not advice and obstruction, not advice and filibuster, not advice and unfairness.

Again, I wish I would have heard that when Bonnie Campbell had come up before the committee. As long as Mr. Estrada is here, I will continue, as I have today and as I have in the past, to bring up the issue of Bonnie Campbell because obviously it remains a dark mark on the Senate, one that was held up simply for purely partisan political reasons and nothing else.

IRAQ

Mr. President, I rise to talk about some of the events over the weekend as it pertains to the looming war in Iraq. I didn't listen to all of the talk shows, but if you listen to some of them and then you read some of the quotes in the paper by some of the people high up in this administration, particularly meaning Under Secretary Paul Wolfowitz and also Mr. Pearl, you come away with the feeling and the sense that they decided some time ago they were going to go to war against Saddam Hussein and Iraq, regardless. There is really nothing that could be done that would in any way turn away the full force and effect of the U.S. military from a full scale war in Iraq. Because no matter what happens, they have a counter, and they keep coming back to the fact that it is too little, too late, we can't wait any longer for disarmament. But the fact is, over the last 12 years, containment has worked. Even though we did not back it with as much force as we probably should have at that time and the fact that we did withdraw our inspectors in the latter part of the 1990s, when that never should have been done, the fact is, during those 12 years, Saddam Hussein never marched on another country, never started another war, and even though this administration has tried their darnedest, they have never made a link between Saddam Hussein and al-Qaida.

Now they are talking about some guy who got injured in Afghanistan and he came to Baghdad to get his leg treated because he had his leg amputated. He is somewhere around Baghdad, we don't know where. We don't even know if he is there. They suspect he is there and that is proof that Saddam is working with al-Qaida.

Perhaps one of the most outlandish statements was a couple weeks ago when this purported tape of Osama bin Laden came out. Secretary Powell said at that time that—I am paraphrasing—

this just goes to show you, once again, the link between al-Qaida and Osama bin Laden and Saddam Hussein, when in fact on the tape whoever is speaking, whether it was Osama bin Laden or not, is basically saying, it is all right to use Saddam Hussein to defeat the Americans, but it is not all right to support Saddam Hussein because he, too, is an infidel, not a true Islamist. Somehow we just ignore that. But there has never been a proven link, even though they have tried awfully hard to find one. So—

Mr. HATCH. Will the Senator yield on that point?

Mr. HARKIN. Sure, I will yield for a question, without losing my right to the floor.

Mr. HATCH. I have been listening to the Senator, and I will rebut his earlier remarks later.

Is the Senator aware of Mr. Zarqawi, who is in Iraq right now, who is definitely connected with the al-Qaida people?

Mr. HARKIN. I ask the Senator, is this the guy who went to get his leg amputated?

Mr. HATCH. He is an operative working within Iraq—

Mr. HARKIN. He was injured in Afghanistan. I don't remember the name.

Mr. HATCH. This is the fellow known to be in Iraq right now—or at least has been in the last number of months—and who is one of the principal operatives for the al-Qaida group, and who has been organizing and doing other matters within Iraq itself, and who appears to have at least the go-ahead from the Iraqi Government.

If the Senator is not aware of that, then I understand why he is making these comments. But that is only one illustration. Is the Senator aware that there may be other illustrations as well?

Mr. HARKIN. Well, I have read about them and heard about them—that there may be some people in and out, or some who may have come in. The most I have heard is the one I think the Senator is talking about, but I think he came there to get his leg fixed or something. No doubt he was well connected with al-Qaida.

But I say to my friend from Utah, the Government of Iraq said they cannot find this guy. Well, our people have said it is ridiculous; of course, you can find him. Well, we cannot find Osama bin Laden in Afghanistan. We have more spy satellites and listening equipment than Iraq ever dreamed of having. I don't know whether this guy is there or not. There have been some in and out of Iraq.

Again, it is very tenuous as to whether or not there are any connections. I am sure the Senator from Utah also knows that there has been a long-standing feud between Osama bin Laden and his fundamentalists and the Iraqi dictator, Saddam Hussein. I say a pox on both their houses. But the fact is, in the eyes of Osama bin Laden and those fundamentalists, Saddam Hussein is a secular leader, not a true

Islamist. What they have always wanted was to get rid of Saddam Hussein to put in power a religious government in Iraq. So there never has been, in all the briefings I have ever had, any love lost between Saddam Hussein and the al-Qaida network. They just have different ideologies and a different way of approaching how they should govern. So, again, they have been trying to make these links between al-Qaida and Saddam Hussein, and they have never done it.

I say to my friend from Utah, there is an interesting piece in the Sunday Washington Post. When they caught Khalid Sheik Mohammed, one of the most dangerous men in al-Qaida, they captured him in Pakistan. On page A-26, there was a picture of all the high-value targets, those who have been involved with al-Qaida. No. 1 is Osama bin Laden. And then there is Khalid Sheik Mohammed, the one they just caught. Then there is Abu Zubaida, still at large. Others have died or have been captured.

What is interesting about all of this—tier 1, tier 2, tier 3, is Osama bin Laden is a Saudi. Zawahiri is Egyptian. Saif Al-Adil is Egyptian. Khalid Sheik Mohammed is Pakistani. Then down here is a Jordanian, a Palestinian, a Saudi, a Yemeni, an Indonesian, a Kuwaiti, and an Egyptian. One thing kind of leaps out at you: Not one of them is an Iraqi.

You would think that if Iraq were so closely tied in with al-Qaida, they might have some operatives in there. Not one is Iraqi. So we are going to go kill a lot of innocent Iraqis, innocent civilians, women and children. Where are the Iraqis in that lineup? You would think, with that list, we would go to war against Egypt. Look at all the Egyptians—or even the Saudis. Look at all the people who are in tier 1, tier 2, and tier 3 of the high-value targets, and more than just a few are Saudis. Maybe that ought to be the target of our invasion.

After all, we know it has been the Saudis who, with their deep pockets, have been funding the fundamentalists in their efforts in that part of the world. It is the Saudis, with their deep pockets, who have been buying and paying for Al-Jazeera television with all of the inflammatory tirades against the United States and Israel that come across that television station. Not Iraq. It wasn't Saddam Hussein paying for that. It was the Saudis paying for it.

So over the weekend we have the capture of Khalid Sheik Mohammed, perhaps, as they say, the brains behind al-Qaida, and the brains behind September 11—the operations chief and mastermind. That is a great capture. I applaud the FBI agents, CIA agents, whoever was involved in tracking this guy down and getting him. They did a great job, and I hope they get whatever commendations and medals that is appropriate for that. But there is someone else that also helped capture

Khalid Sheik Mohammed, and that is the Government of Pakistan.

I have taken this floor many times in the past several years to talk about our relations with Pakistan and how through the years, clear back to the founding of Pakistan as a nation, they have been on our side in every war. There isn't one conflict in the world that the U.S. has been involved in that the Pakistani Government and troops have not been on our side. Even in Haiti we had Pakistani soldiers with us. In Korea. In Vietnam. In the Gulf War in 1991, Pakistan was there with us. Every single time that we have had a capture and a turnover to us of a terrorist, it has been Pakistan that has helped us.

The first bombers at the World Trade Center caught—almost a dozen years ago now—were turned over to us by Pakistan. The shooter at the CIA in the mid-1990s who killed so many people escaped and went to Pakistan. Pakistan caught him and turned him over to us. The bombers of the embassies in Kenya and Tanzania were caught by Pakistan and turned over to us. And now this is the latest in a long string of terrorists who have killed Americans here at home and abroad. Here is the latest. Khalid Sheik Mohammed was captured in Pakistan.

Yes, with the help of our FBI and CIA, and I don't know what other intelligence agencies, but it mentions the FBI here, but also with the help of the Pakistani Government. It could not have happened unless President Musharraf and others came to our aid and assistance to capture this guy. Yet how do we treat Pakistani Americans? So many Pakistani Americans who are in this country, who have been working, many have children who are Americans, have provided health care in our country in many cases and in many situations. They are university professors, businesses entrepreneurs all over America. Yet we have told them they have to march into INS and get fingerprinted and do all this within a month. In other words, it is treating Pakistani Americans as if they are part of this network of Saudis, Yemenis, Egyptians, Jordanians, and everybody else. One might find a Pakistani in there someplace, I do not know.

The Pakistanis have always helped us out, and they are continuing to help us out today. We need to help them to combat terrorism in their own country.

After the war in Afghanistan was over, there were over a million refugees from Afghanistan and Pakistan. They now think it is probably between 1 and 2 million. We provided little—I can almost say no help to the Pakistanis to take care of these refugees, to help them get resettled, and, as far as I know, we are not doing anything to help them now to get back into Afghanistan to resettle. They remain a burden on the Pakistani Government.

It makes one wonder sometimes just what our response is going to be if, in fact, we do have a war in Iraq and we

have an occupation, when we see how we have treated the Pakistanis for all these years.

There were a couple other interesting events this weekend. The Iraqi Government has continued to destroy some of the Al-Samoud missiles. I think it is up to 10 now. They said they destroyed six more missiles. There is an interesting quote in the paper this morning. It said:

"If it turns out at an early stage this month that America is not going to a legal way, then why should we continue?" Saddam Hussein's scientific adviser, Lt. Gen. Amer al-Saadi, said Sunday.

In other words, what he is saying is—I read the story—we are willing to destroy the missiles, it takes time, but if the United States is going to commit war on us anyway, why should we?

A Senior U.S. official—

There is always one of those—

said today the White House remained unimpressed with Iraq's move. "The standard for cooperation demanded by U.N. Resolution 1441 is full and immediate, not grudging and late," the official said. The resolution approved last fall authorized a new round of weapons inspections in Iraq.

You wonder sometimes what the rush to judgment is. If we can continue with more inspectors and Iraq continues to destroy the missiles, and to continue the containment policy on Saddam Hussein, isn't that what we want?

There is another unnamed military source that says these missiles have questionable accuracy anyway. I am told they went over the line by 26 miles.

It was 100 kilometers, and they went over by 26 miles. I had a conversation this weekend with someone who said: These missiles could be used to hit Israel or hit Europe or maybe even America. That is not the case at all. They went 26 miles over the line. Again, it was more than what was allowed and they should be destroyed and they are being destroyed.

I guess the point I am making is why are we in such a rush to say that is not enough; we are going to go to war anyway? As I said at the beginning of my remarks, every time I listen to Mr. Wolfowitz, it seems as if this man has made up his mind: We are going to war no matter what, unless, as I read between the lines of what he is saying, someone assassinates Saddam Hussein and they set up a government and invite us in to run operations, then maybe we will not go to war. That seems to me about the only scenario that would keep a war from happening, according to Mr. Wolfowitz and those around him.

The other important event that happened this weekend was the vote in the Turkish Parliament. The vote was close. We lobbied heavily. We put up, I do not know, I am told \$15 billion or \$26 billion—take your pick—to get the Turkish Government to allow us to use their territory for our troops, for loading troops, the provisioning of troops, and the movement of troops across

Turkish national territory to Iraq. Even with that, the Parliament turned it down. It was a close vote, but they turned it down.

Then I saw a poll—you can get a lot of information off the Web on the weekend when you are working on these issues—there was a poll taken in Turkey. I do not know, I have no knowledge of how accurate this poll is or who took the poll, but it was a public opinion poll that showed that 94 percent of Turkey's citizens were opposed to the war in Iraq—94 percent. Even if the poll is off a little bit, one can understand why the Turkish Parliament was so reticent even in the face of billions of dollars of U.S. money pouring in.

Someone said on the floor last week, this is not the coalition of the willing; it is the coalition of the bought confronting Iraq. If we have to go to those measures, \$26 billion is what I was told—I stand corrected if that is not right. Even if it is \$15 billion or someplace in between, we are not funding education, we have a problem in Medicare, our deficits are going out of sight, but somehow we have \$26 billion to give to Turkey to allow our troops to go across their territory. That should raise some real questions as to what is happening here.

Lastly, one has to question what is it we are about underneath it all?

Again, I read from a speech that President Bush gave last week to the American Enterprise Institute and some of the comments that were made regarding that issue. President Bush said in his speech that we are going to have an Iraqi Government that will be representative of the people and that we would ensure that happened.

I went back because I wanted to check to make sure this was official, so I looked at the White House document that was sent to us on January 20, 2003. It is the report from the President required by the Iraqi resolution that was passed by Congress last fall.

Of course, it was supposed to have been in 60 days. It was just another 30 days overdue. I read it over. There is an interesting part in the report that President Bush signed and sent to us. I will venture to say that not many Senators have read this report. But it is called the "Future of Iraq." It is in the report of the President sent to us on January 20. I am going to quote from it. It says:

Should it become necessary for the United States and coalition armed forces to take military action against Iraq, the United States, together with its coalition partners—

Who are getting fewer and fewer, by the way—

will play a role in helping to meet the humanitarian, reconstruction, and administrative challenges facing the country in the immediate aftermath of a conflict. . . . We will work to transfer authority as soon as practical to the Iraqis themselves, initially in an advisory role. . . . The U.S. is fully committed to stay as long as necessary to fulfill these responsibilities, but is equally committed to leave as soon as the Iraqi people

are in a position to carry out these responsibilities themselves.

Interesting. "The U.S. is fully committed"—I do not remember us ever having a debate about that commitment, that we are committed to stay as long as necessary to fulfill these responsibilities, but are equally committed to leave as soon as the Iraqi people are in a position to carry out these responsibilities themselves.

The question is: Who decides that? Who decides when the Iraqi people are in a position to carry out these responsibilities themselves?

There is a quote in the paper from Youssef Ibrahim from the Council on Foreign Relations. He said:

I think Arabs almost without exception would welcome more democracy and more freedom of expression and to be liberated from the police states they all—in one form or another—live under.

Mr. Ibrahim goes on:

It does not follow that they would trust America to do this for them. The view over there is totally different from the view expressed here.

Critics also warn that the Bush administration must overcome a credibility gap borne of long memories and unpopular U.S. policies.

University of Maryland Professor Shibley Telhami warned that an invasion of Iraq and subsequent occupation by United States-led forces would feed an image of United States imperialism and undermine the very goals the administration has set.

Keep in mind, if we do, in fact, go to war in Iraq and occupy Iraq and set up this military type of government for however long we want to, it will be the first time ever that the United States has occupied an Arab country, the first time ever that we will be seen by the Arabs as occupiers, as establishing some kind of colonial power in the Arab world. And I think that is going to have severe ramifications.

Army Chief of staff Shinseki told the Senate Armed Forces Committee that several hundred thousand soldiers would be needed to secure postwar Iraq. Assistance from friends and allies would be helpful, he said.

Well, I wonder how much help we will get.

Mr. Wolfowitz is quoted as saying:

If, when Iraq is liberated, it can come up with a representative government that treats its people decently, I think it can have significant effects throughout the Middle East.

David Mack, vice president of the Middle East Institute, said they make it look like a no-brainer. Put me down as a skeptic. Americans are in such a hurry. The people in the region are not. They are worried that they are jumping over a precipice.

By one estimate, 65 million adults in the Middle East cannot read or write, 14 million are unemployed, and 10 million school-aged children are not enrolled in class.

When I listen to Mr. Wolfowitz and I read the report from President Bush of

January 20—I have not seen the movie yet, but I have read the book a couple of times, and I looked at it again this weekend, "The Quiet American" by Graham Greene. You read that and you think about how we got into Vietnam—the same kind of thing. We were going to build a democracy in Vietnam. We were going to end all this internal fighting and take care of the north, and we were going to set up democratic forms of government. That was the first, and then there were several others that followed. How many thousands of Americans lost their lives there? What did it do to our country, for a generation?

Now one goes to Vietnam and we have diplomatic relations. When we look at what is happening in Vietnam, we have to say, what was it all about? It was really about the misguided adventurism of, yes, well-meaning people in this country—I have no doubt that they meant well—to put a pax Americana, sort of a stamp of America, on a country in Southeast Asia, to set up a country that would look like us, mirror us. We were going to do it through military force.

I am sorry, it did not happen then, and it is not going to happen in Iraq. It may happen in Iraq at some point. We can encourage that. But it is not going to come about through a war that is going to kill countless civilians through the establishment of a military occupation and through us trying to impose upon the Iraqis our sense of what good government is. If only that were true. But history shows it is not.

We keep hearing from Mr. Wolfowitz and others what a grave threat Saddam Hussein is to us. They believe the war in Iraq will be quick, maybe 2 or 3 weeks and it will be over with. And that is probably true. I have no doubt that could possibly be true. Then one has to ask, if that is the case, are they really that big a threat?

Iraq has no navy. It has no air force to speak of. Its military is really in shambles. What kind of a threat are they, especially if we can keep inspectors there?

The other thing I wanted to check on was: Is there a limit on the number of inspectors U.N. Resolution 1441 permits? Or any previous resolution? Was there any limit by the surrender resolution in 1991 which first started the inspections? And the answer is no. There is no limit on the number of inspectors that the United Nations is allowed to have in Iraq. So why have 100? Why do we not have 500? Why do we not have 1,000 inspectors, duly trained and qualified, all over that country? Saddam Hussein cannot say, no, that is not allowed, because it is allowed. I submit, those 1,000 or 500 inspectors fully trained in Iraq, even if it takes the next 5 years, is cheaper monetarily than what the war is going to cost us, and certainly cheaper in terms of the loss of human life, both American lives and innocent lives in Iraq. Plus, I believe through that process we will have

the support and the admiration of other Arab countries.

A war in Iraq, I believe, will give the backup to the terrorists who are out there. I am not so naive to think that there are not terrorists even yet in this country, and in other parts of the world, who want to do us in. They are there, but it seems like right now they do not have a backup. There is not much of a backup. We are tearing up the network with the recent capture of Khalid Sheik Mohammed in Pakistan. We are destroying this network, and we should keep at it, too. But a war in Iraq then will give, I think, people in the Arab world who today are not feeling us any ill, will give them the reasons to support monetarily, through encouragement, through processors, those terrorists who are out there. It is one thing to be a terrorist by yourself someplace; it is another thing to be a terrorist backed up, backed up, and backed up, like countless other people who are willing to give money and support and intelligence to help in your terrorist activities. To me, that is what could happen if we go to war in Iraq.

Lastly, the civilian casualties. I remember the pictures that came back from 1991 after the war in Kuwait against the Iraqi Army—tanks, trucks, vehicles bombed and burned out, bodies lying all over in the desert. That did not provoke any outpouring of ill-will in the Arab world. It did not provoke any outpouring of a sentiment that somehow all of those people who were killed were somehow innocent. They were not. These were soldiers. These were Iraqi troops, used to invade and plunder Kuwait.

It will be different this time. This time it is not just the Iraqi Army. It will be innocent men and women in Baghdad who will get killed. And those are the pictures that will go around the Arab world. If we are just confronting the Iraqi Army, that is one thing. But with all the cruise missiles and the bombing and everything else that will go on in Baghdad, cruise missiles are very accurate, but sometimes they go astray and sometimes people are not where they are supposed to be. Sometimes they are in the wrong place at the wrong time. That is what will happen, the image of innocent women and children killed by the might of the American military in Baghdad.

That is why the best course of action is to continue the inspections, and if we need to, make 500 inspections, make 1,000 inspections. And then continue the program: planned destruction of weapons of mass destruction and others that Saddam Hussein now possesses in his arsenal. It may take more than a week, it may take more than a month, it may take 6 months or a year or 2 years or 4 or 5 years.

The article asked, what is the hurry? If it means less loss of human life, and it will certainly cost a lot less, it seems to me that would be the wise course of action.

We have a gang down there at the White House, Paul Wolfowitz, Richard Pearle, Negroponte, Elliot Abrams, Poindexter—do these names conjure up memories of the past? Sure does. A lot of the misguided adventures we got into in the 1980s—in Iran, in Central America, places like that—all these names kept popping up at that time because they were all involved in the misguided adventures. Now they got the adventure that will save us all, it will save America in the future—war in Iraq. And occupy Iraq with several hundred thousand troops, stay there as long as necessary to set up a government that somehow looks like ours.

I close my remarks by saying these people ought to go visit Vietnam. I have, several years ago, to find out how the people are getting along there. They seem to be getting along fine. I still may not approve of the kind of government they have. But the people seem to be getting along just fine. Saigon is bustling, Hanoi is bustling, the tourist industry is going up, manufacturing is going up. Again, it might not be the mirror image of our kind of government, but they seem to be doing all right.

So go visit Vietnam, and then go down to this wall down on The Mall and remember the misguided adventures of well-meaning politicians of the past before we commit our military to a massive invasion of Iraq.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Utah.

MR. HATCH. I notice some of my colleagues are here. I ask unanimous consent, after my few remarks, Senator DORGAN be permitted to speak for up to 25 minutes, and the Senator from South Carolina be permitted to speak for up to a half hour, then Senator SESSIONS for such time as he may use.

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

MR. HATCH. I will answer some of the questions that have been raised. The more I hear from some of my colleagues, I believe they believe the Clinton nominees, President Clinton's nominees were mistreated. The more I hear them say this, the more I believe, especially after listening to the distinguished Senator from Iowa, that what we are seeing here on Mr. Estrada, the filibuster is more about pay back than about Mr. Estrada.

Senator BOXER, the distinguished Senator from California, even said as much last week when they said, "What goes around comes around."

Let me take a minute or two to set the record straight. I have heard my colleague from Iowa say we Republicans are applying a double standard because some Clinton nominees, such as Bonnie Campbell, were not confirmed. Let me remind my friend that there were more nominees of the first President Bush—54—who were not confirmed than there were Clinton nominees not confirmed at the end of his administration. Two of these nomina-

tions were renominated by the current President Bush, John Roberts and Terrence Boyle. John Roberts for Circuit Court of Appeals for the District of Columbia, and Terrence Boyle for the Fourth Circuit Court of Appeals.

John Roberts was reported out of the committee last week with bipartisan support. He has been sitting here for 12 years through three nominations by two different Presidents. He is considered one of the two greatest appellate lawyers in the country today by members of the Supreme Court, as well as others. I look forward to seeing him confirmed. It is about time that he was. Terrence Boyle has been sitting there for 12 years, nominated three times, by two separate Presidents.

President Bush has nominated not only Miguel Estrada for the Federal appellate bench, but these other two qualified nominees who have been sitting there for 12 years. He also nominated, contrary to what the distinguished Senator from Iowa said, two other Hispanic nominees for circuit courts of appeals, one for the Fifth Circuit and one for the Ninth Circuit, as well as Miguel Estrada.

The distinguished Senator from Iowa is trying to make a comparison between Bonnie Campbell and Miguel Estrada. Let me first say, I like Bonnie Campbell. I feel badly she did not make it to the floor. She was not on the floor. There was no filibuster. Her experience was nowhere near that of Miguel Estrada. In fact, to my knowledge, she never tried a case either before a trial court or on appeal. She never argued an appellate case. She never appeared before the U.S. Supreme Court. As a matter of fact, you could go into more and more. But compare her ABA rating with Miguel Estrada's. Her ABA rating was a "majority qualified," which is a step below Mr. Estrada's rating of "unanimously well qualified," the highest rating the American Bar Association gives. Hers was "qualified" by a majority of the standing committee and "not qualified" by a minority of the standing committee. There is quite a bit of difference between the two nominees, plus the fact that Miguel Estrada is on the floor and there is a filibuster, a totally partisan filibuster being conducted against him.

I hope my colleagues are not going to continue that filibuster, but I understand that is what they intend to do. I hope some of my colleagues on the other side who are thinking more clearly will admit this is a dangerous thing to do. It is a wrong thing to do. I think it is an unconstitutional thing to do. I think it diminishes both the executive and the judicial branches of Government while increasing the power of the Senate, the congressional branch, or legislative branch.

Since the topic has been raised of the committee's confirmation record during the Clinton administration, I want to take a moment to set the record straight. During President Clinton's 8

years in office, he had 377 Federal judges confirmed, just 5 less than President Reagan, who was the all-time champion. But President Reagan had 6 years of a Republican Senate to help him—of his own party. President Clinton only had 2 years of his own party, the Democrats, to help him. There were 6 years where I was chairman, and we still put his judges through as much as we could. If you compare the number confirmed to the number nominated, President Clinton enjoyed an 85-percent confirmation rate on individuals he nominated. That is one of the highest ratings. What is more, President Reagan, like I say, had 6 years of a Senate controlled by his own party, while President Clinton had only 2.

Here is what happened to the 56 Clinton nominees who did not get confirmed during those 8 years. Some of them were multiple nominees. Three were left at the end of the 103rd Congress when the Democrats were in control, so those three cannot count against the Republicans. That leaves 53. Nine were nominated too late in the Congress for the committee to feasibly act on them or they were lacking the appropriate paperwork. That leaves 44. Seventeen of those lacked home State support, which often resulted from the White House's failure to consult with home State Senators. There was no way to confirm those nominations without completely ignoring the senatorial courtesy that we afford to home State Senators in the nominations process. That leaves only 27. One nominee was defeated on the Senate floor, which leaves only 26 remaining Clinton nominees. Of those, some had reasons for not moving that I simply cannot comment on. So in all 6 years that I chaired the committee while President Clinton was in office, there were fewer than 26 nominations left in committee.

Let's compare this record to the first Bush administration when the Democrats controlled the committee. The Democrats failed to confirm 58 Bush 1 nominees over the course of only 4 years. Let's look at the number of nominees pending at the end of the Clinton and Bush 1 administrations. While there were 41 Clinton nominees left in the committee at the end of the 106th Congress when Clinton left office, the Democrats left 13 more, a total of 54 nominees hanging at the end of the first Bush administration. Moreover, of the 41 Clinton nominees left at the end of the 106th Congress, one was renominated and confirmed in the 107th Congress, 12 lacked home State support, and 9 were nominated too late for the committee to act or had incomplete paperwork. That really leaves only 20 nominees who did not go forward during the last year of the Clinton administration.

All this goes to show that any allegation that this committee was somehow unfair to President Clinton's nominees is simply untrue, and payback is not the right thing to do. In fact, I treated

the Clinton nominees better than the Democrats treated the Bush 1 nominees and I think better than the current Senate leadership is treating the current President Bush's nominees. I just wanted to set that record straight. You cannot compare the Bonnie Campbell matter with the Miguel Estrada matter. They are completely distinguishable. And with regard to ability, there is no comparison.

Miguel Estrada not only has graduated at the top of his respective college and law school classes, at Columbia and Harvard, but he also was an editor of the Law Review; worked as a clerk for Amalya Kearse, a Carter appointee in the Second Circuit Court of Appeals; worked as a clerk to Anthony Kennedy, currently a Justice in the U.S. Supreme Court; worked in the Solicitor General's Office; was highly respected; has four of the—worked for three, if not four, of the Clinton Solicitors General; worked 4 years for Clinton; 1 year for Bush; argued 15 cases before the U.S. Supreme Court, winning 10 of them even though he has a speech impediment, a disability. It is amazing what this man has been able to do, and it is amazing to me that he has gone through this. I do not see one justifiable reason in the world for this.

On the other hand, I don't understand, sometimes, my colleagues on the other side. I know they do not all agree. We have a total of 55 votes we know will vote for Miguel Estrada. It seems to me that is what we ought to be doing is voting up or down. We should not be setting this awful precedent of a filibuster against any judicial nominee or, for that matter, any person on the Executive Calendar because I believe it does fly in the face of the separation of powers doctrine, to require, from here on in, if this precedent is set, 60 votes to confirm any "controversial" nominee. If that happens, then the Presidency will have been diminished, the judiciary will have been diminished, and we will not be able to get the top people in the country to even take these seats.

Keep in mind, we pay the Chief Justice of the United States Supreme Court \$192,000 a year. Any one of these top nominees makes four or five times that or more. So these jobs are not plums as far as their salary. These jobs are taken because people want to give service to the Federal Government. They want to serve the public and they are willing to sacrifice the monetary remuneration they are making as attorneys in order to serve. We ought to keep that in mind.

I would hate to see the day we only get the lesser of the less to be nominated because nobody else of any qualifications would want to go through this type of an awful procedure. I don't want to see the day when the only ones who can make it are those who do not have any records, have written nothing, have never said anything, whom you don't know anything about, and who may be good judges but may very

well not be. It is going to be tough even for the American Bar Association to make their evaluations because they won't have anything to make them on, other than the local attorneys who may be practicing law in the same area.

I have said enough. I just wanted to set the record straight.

Also, I totally disagree with the distinguished Senator from Iowa in his comments about the Iraq situation. We do have evidence of al-Qaida people being in Iraq. We do have evidence of organization within Iraq. We do have evidence that I think would rebut almost everything the distinguished Senator from Iowa said. But since my colleagues are on the floor and desire to speak, I do not want to take their time. So I yield the floor.

The PRESIDING OFFICER (Mr. ROBERTS). Under the previous agreement, the Senator from North Dakota, Senator DORGAN, is recognized for 25 minutes, to be followed by Senator HOLLINGS of South Carolina for 30 minutes, to be followed by Senator SESSIONS.

The distinguished Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I have voted for over 100 judges nominated by President Bush. In North Dakota, we have had vacancies in both the west and east district judgeships. President Bush nominated two Republicans for those judgeships. I was happy to support them, and to work with President Bush to make sure that their confirmation went smoothly. One has been confirmed, the other I am convinced will be confirmed, and both will make us proud as Federal judges.

I make that point only to say that I expect to be supportive of most, if not all, of the President's nominees. And I wish that we could have a vote on Mr. Estrada.

Mr. Estrada's nomination is problematic, however, in that he has refused to answer some basic questions. My colleagues, the ranking member of the Judiciary Committee and the minority leader, have indicated by letter that Mr. Estrada needs to be forthcoming, and answer provide some basic information about his judicial philosophy and temperament. Considering that Mr. Estrada is seeking a lifetime appointment to the bench, one would expect that he would be eager to provide that information.

Judge Hovland, whom the President nominated to the Western District of North Dakota, answered the very questions that Mr. Estrada would not. I was happy to support Judge Hovland. I wish Mr. Estrada would be forthcoming.

When and if he does that, I hope we proceed to vote. And then we can move on to any number of pressing matters.

U.S. INTERNATIONAL TRADE DEFICIT

Mr. President, I want to take the floor to talk about one very pressing matter, which all of us should be concerned with: that is, our country's record trade deficit in 2002.

I spoke on Wednesday about it, and the very next day, the U.S. Trade Ambassador, Bob Zoellick, was on CNN's "Moneyline" with Lou Dobbs, to talk about the deficit.

Mr. Dobbs, whom I really admire, asked Mr. Zoellick the following question:

What would you say, [Mr.] Ambassador, is the most important [issue for] a country that has a \$430 billion trade deficit?

Ambassador Zoellick's answer: Let's negotiate new trade agreements.

He said:

That's what we've been doing over the last couple years, reversing some of the slowdown in the past. We just completed two new trade agreements with Singapore and Chile. We're trying to move ahead working with the global trade negotiations, working with the Europeans and others.

Then Lou Dobbs noted that manufacturing jobs are being exported abroad.

Again quoting Mr. Dobbs, he said:

Is there anything that can be done about that or is this a historical trend that is going to continue for years to come?

Ambassador Zoellick said:

Jobs [have] gone down, but that's because productivity has gone up. So where have those jobs gone? Well, you've got more people in the service industry. You have cable television and others.

OK, so now I understand it, I guess. The Trade Ambassador said we are shipping manufacturing jobs overseas but we have cable television. Hooray for us.

So Mr. Dobbs tried again, asking Ambassador Zoellick to identify the most important trade issue for the United States, and the Ambassador said:

Well, the most important issue I frankly think is keeping the United States in [a] leadership [role] in global trade. . . .

I just came back from China. I was in Latin America not long ago. And what they look to is U.S. leadership in terms of various negotiations, the global negotiations, the hemispheric negotiations, and individual ones.

That's the biggest trade issue for this country? We have the highest trade deficit in human history—and Mr. Zoellick thinks the answer is to negotiate even more trade deals?

Maybe Mr. Zoellick thinks that the deficit is really not that big of a problem. He would not be alone in that belief.

On February 24, the Wall Street Journal published an editorial entitled "Hooray for the Trade Deficit!" The Journal argued that the trade deficit was propping up the economies of Europe and Japan, and were a sign of our economic strength.

I have no idea what water they have been drinking. But let me quote from the editorial:

Pundits claim that "financing" the U.S. current account deficit requires that foreigners purchase some \$1.5 billion in U.S. assets a day, and warn darkly of the time when that need cannot be met.

And they say:

But the current account deficit is by definition the inverse of net capital inflow. So it can very easily be argued that U.S. assets

are in such demand, even with Treasury yields at historic lows and after three down years in the U.S. stock market, that Americans have to find \$1.5 billion a day worth of foreign goods just to spend all the money that's coming in.

I do not understand that at all. Have they not taken the first basic course in economics? I just do not understand that. Total nonsense.

We have been running record trade deficits through all kinds of economic conditions: through the economic boom of the 1990s, through the more recent recession, through a peacetime economy, through a wartime economy. The trade deficit keeps going one way: up, dangerously up.

If the economies of Europe and Japan need our trade deficits to stay healthy, then they ought to get busy revamping their economies, because there is no way this situation is sustainable.

Does anybody really believe our economy is so strong right now, as the Wall Street Journal suggests, that we have to find \$1.5 billion a day worth of foreign goods just to spend all the money that is coming in? The fact is, we are mortgaging our children's future with these trade deficits. It is irresponsible, and it ought to stop. If the Wall Street Journal were truly a conservative newspaper, it would be leading the charge to demand that we do something to rectify this trade imbalance.

I have been on the floor of the Senate critical of trade policies in the Clinton administration time after time after time, and I am critical of the trade policies of this administration. The fact is, you cannot tell the difference between Republican and Democratic administrations on trade policies. Year after year after year, we have Trade Ambassadors who talk about the advantage of doing another trade agreement; and every single time we do another trade agreement, our trade deficit ratchets up.

This chart show the merchandise trade deficit we face: \$470 billion in 2002, after exploding increases during the nineties.

The Washington Post reported that this trade deficit put "a significant damper on U.S. economic growth." In fact, the fact that the Post article talks about the deficit is very surprising, incidentally, because the Washington Post, of all newspapers, is the most ecstatic about this fast-track trade authority, global trade, and the trade deficits we have inherited. They excuse them away at every significant opportunity.

Yet the Washington Post story said:

. . . a combination of increasing imports and falling exports clipped more than half a percentage point off the 2.4 percent increase in U.S. gross domestic product last year. . . .

The Post further noted that:

. . . nearly one-fourth of the year's [trade] deficit in goods trade was with China, which sold \$103 billion more goods to the United States than it bought here.

What does this mean? It means jobs. That is what it means. These numbers

describe where the jobs are, who wins and who loses. With respect to the global economy, and with respect to trade agreements, we are losing, we are losing jobs.

That does not mean much to the economic thinkers and the newspaper editorialists and others whose jobs are not in jeopardy, but it means a lot to the millions of people who used to have good jobs that paid well, with good benefits, whose jobs are now gone. Because they cannot compete in global trade when a U.S. manufacturer moves its plant abroad, so they can produce where they can hire 14-year-old kids, work them 14 hours a day, pay them 14 cents an hour, and dump the chemicals into the streams and into the air, and then ship the product back to Toledo or Fargo or Los Angeles or Denver, and then say to the American producer: You cannot compete with this; tough luck; you cannot compete in the global economy.

That is not what we ought to allow in terms of global trade.

We have deficits as far as the eye can see. With China, we have trade deficits of \$103 billion; with Canada, deficits of \$50 billion.

This chart shows the deficits we have: \$50 billion with Canada, \$37 billion with Mexico. And, by the way, before we did the United States-Canada-Mexico trade agreement, so-called NAFTA, we had a very small trade deficit with Canada and a small trade surplus with Mexico. Now we have turned both of them into very large trade deficits.

On the chart, you can see virtually the only trading partner with which we have a surplus at this point is Australia. But this administration is going to remedy that because now they are engaged in trade talks with Australia, to set up a free trade agreement with Australia. So we may not have a trade surplus with Australia for long. If those same trade negotiators who negotiated all of our trade agreements are engaged in Australia, we will lose within a week or two and be back to red ink with respect to Australia.

Not only do we have trade deficits with virtually every major trading partner, we have deficits in almost every sector of goods trade. We have a \$110 billion deficit in vehicles, \$47 billion deficit in consumer electronics, \$58 billion deficit in clothing.

Some might say: Well, agriculture is a bright spot because we are a net exporter of agricultural goods. But the fact is, we are losing in agriculture as well. Our modest surplus in agricultural products was reduced 30 percent over just last year. And major areas of agricultural trade are now in deficit. Our surplus in meat declined by \$1 billion. We have a deficit in livestock trade which reached \$1.5 billion last year. We had a deficit in vegetables and fruits of \$2.5 billion last year.

Now, let me talk just a for moment about China.

We have a trade deficit with China.

We did a bilateral trade agreement with China. I don't have any idea who negotiated that either, but the fact is it is a trade agreement that doesn't work. It works for them, but not for us.

After we negotiated a bilateral agreement with China, our negotiators agreed that following a phase-in period, we will allow China to have a tariff on automobiles that is 10 times higher on U.S. automobiles going to China than any Chinese automobiles sold in this country. We agreed we would allow China, a country that has a \$100 billion trade surplus with us or we in deficit with them, to impose tariffs on automobiles 10 times higher than the tariffs on Chinese automobiles sent to this country. I don't know who does this kind of negotiating. On whose behalf do they think they are negotiating?

We have a deficit in toys with China, \$14 billion in toys. The following Post article describes why. The title is "Worked Until They Drop; Few Protections for China's New Laborers."

This is a story about Li Chunmei, a 19-year-old. She was literally worked to death at a factory in China. They made stuffed animals for the U.S. marketplace. Let me read a couple portions of the article. This is a picture of that young lady.

On the night she died, they said, she had been on her feet for 16 hours running back and forth inside the toy factory carrying toy parts from machine to machine. Long hours were mandatory, and at least 2 months had passed since Li and other workers had enjoyed even a Sunday off—2 months had passed since they were allowed even a Sunday off. Her roommates had already fallen asleep when Li started coughing up blood. They found her in the bathroom a few hours later, curled up on the floor, moaning softly in the dark, bleeding from her nose and mouth. They called an ambulance and she died before it arrived. The cause of her death was unknown, but what happened to her last November in this industrial town in southeast Guangdong province is described by family, friends, and coworkers as an example of what China's more daring newspapers call *guolaosi*. The phrase means overworked to death. They actually have a phrase for being worked to death in China.

This is the playing field for international competition. Children being worked to death. This is what we are competing with.

Aside from this, the tragedy of this, the fact is, our market is open to Chinese goods. Shoes, shirts, trousers, trinkets, toys, every day and every way we are flooded with Chinese goods. But Chinese markets all too often are still closed to ours.

The Farm Bureau, a conservative farm organization, says the Chinese market is really no more open today than it was when China entered the WTO. The Farm Bureau has supported fast track, has been largely supportive of the trade approaches, but the fact is

they are critical of the implementation of China's WTO accession, saying:

At the end of [WTO] negotiations, China was a \$2 billion market. We expected substantial growth, but we haven't seen [it] because China hasn't done what it's supposed to do.

That is from Teresa Howes, senior director of trade for the American Farm Bureau. Good for them.

The bottom line is, our agricultural products aren't getting into China. Yet Chinese goods move into our marketplace all the time.

You don't have to travel to China to figure out why we have this kind of trade deficit. Go to Canada. Take a look at our wheat trade with Canada.

The fact is, we have a massive quantity of Canadian grain coming into our country sold by a monopoly, the Canadian Wheat Board, that would be illegal in this country, undercutting farmers, taking money directly out of their pockets, and you can't do much to stop it. We now do have a couple of trade actions, but it has taken forever to get them. I have no idea what the result will be, but the fact is, this has gone on for 8 to 10 years, and our farmers have not gotten effective action to stop it.

Our trade deficit with Europe I mentioned last week. We can't get American beef into Europe. We take Europe to the WTO. We go there and we win. Europe says: So what; it doesn't matter to us. We don't intend to let your beef in.

So our country ratchets up its backbone, stiffens its resolve, and we say: OK, you do that, we will stick it to you. And what does our government do? It imposes import duties on Roquefort cheese, goose liver, and truffles. That will scare the dickens out of the EU, won't it? We will take action against Roquefort cheese, goose liver, and truffles.

I would like to meet those officials in the trade ambassador's office. That was under the previous administration. I don't understand that at all. When will our country decide it is going to stand up for our economic interests?

How about trade with Korea? We have a very large deficit with Korea. Last year Korea sent us 618,000 automobiles. Do you know how many U.S. cars got into Korea? Two thousand eight hundred. Is it because Koreans don't like U.S. automobiles? No. It is because Korea has the strategy to ship their cars to the American marketplace and keep American cars out of theirs. What does that mean? That means jobs. We lose them. Korea gains them. Is it fair trade? Absolutely not. Shame on us for allowing it.

If you don't want to talk about cars and Korea, talk about potato flakes. We raise a lot of potatoes in my part of the country, potato flakes for confection foods. There is a 300 percent tariff on potato flakes to Korea.

I just don't understand how we continue to allow this sort of thing. How does it make sense for our country to allow this to happen?

What about Japan? In Japan we have had a trade deficit of \$50 to \$60 billion every year forever since I have come to Congress. It keeps going up. Fourteen, 15 years ago we reached a beef agreement with Japan. You would have thought we won the Olympics. The negotiators had fiestas and jubilation, and the Washington Post had huge stories about our beef agreement with Japan. Good for us. Our negotiators were on the ball. But nearly 14 years after the beef agreement, there is still a 40 percent tariff on every pound of American beef going into Japan. They don't have enough T-bone steaks in Tokyo; their market is closed. We can't get more in. We have a 40 percent tariff on every pound. That doesn't make any sense to me.

What is our country doing? We just sit around and chant a mantra, like a religious group on a street corner with a mantra: Free trade, fast track, free trade, fast track, the global economy.

The fact is, the global economy has moved forward much faster than the rules for the global economy. The result is that the American workers and farmers and businesses have been injured because of it. It is just a plain fact. There isn't anyway you can explain it away. A \$470 billion trade deficit in the year 2002 in merchandise trade cannot be explained away by anyone.

This is either a priority and crisis or it is not. If you believe it is—and I do—then this country needs to do something about it.

It is not to build walls around our country, but it is to say to the Europeans, the Koreans, the Chinese, the Mexicans, the Canadians, and others, we are open for business. Our market is open to you, but on the basis of fair trade. If your markets are closed to us, don't come to us asking for admission to our marketplace.

If you are going to work 14-year-old kids and pay them 15 cents an hour and work them all day, don't come to our marketplace. We don't allow it. This country fought for 100 years for the basic principle of a safe place in which to work, minimum wages, child labor laws, preventing dumping of chemicals into the streams and the air, the ability and the right to collectively bargain. All of these things were developed through great strife over a century. Now we have people deciding, we can fly our jet around the world and look down and find a more friendly place in which to produce, move our factory there, and not have to worry at all about those issues. And so they moved their factory—and, incidentally, some of those companies decided to renounce their citizenship as well, to become citizens of the Bermuda. Why? Why would they want to become citizens of the Bermuda? To save on their tax bill and not pay taxes in this country.

Bermuda has a navy that has the strength of 26 people; there are 26 people in the Bermudan military. My feeling is if a company renounces their

American citizenship to become a citizen of the Bermuda, the next time their assets are threatened anywhere in the world through expropriation, have them call in the Bermudan Navy; see if there is a Bermudan destroyer to move into the region. I don't think so.

What I want is for this country to say, yes, we are the leader in expanded trade, and, yes, expanded trade helps all in the world—but only if it is done on a basis that is not a race to the bottom, and on the basis that it brings everybody up.

The White House doesn't want to talk about it. The President won't talk about it. Neither did President Clinton. The Congress doesn't want to deal with it. Why? Because the minute you do talk about this, they say, well, you are raising this trade issue, you are some sort of xenophobic isolationist stooge who doesn't get it, but we get it; we all see over the horizon. They say, you don't understand the global economy.

What I understand is that when last year we imported \$470 billion or more in goods than we sent out, this country is obligated to repay that at some point with a lower standard of living. You can argue that our budget deficit is money that we owe to ourselves. You cannot argue that with a trade deficit. A \$470 billion trade deficit means we owe that liability to those living outside this country, which gives them a claim on this country's assets and a claim on a lower standard of living in the future for American citizens.

We must get at the business of solving this problem. I am not saying we should put walls around our country. I want our marketplace to be reasonably open, but I want us to be a leader in developing the basic rules of trade that are fair to this country's interests.

That has not been the case, regrettably. I wish I didn't have to make this speech. I made it repeatedly during the Clinton administration, and I will probably make it during the Bush administration because trade deficits are consistently going one way, and that is up. Jobs are consistently going one way, and that is out.

We were told by the economists in support of those who wanted NAFTA passed—and I voted against it—that what we will get from Mexico under NAFTA is the product of low-skilled labor. Do you know what we get from Mexico now, with the big trade deficit we have with them? We get the product of high-skilled labor. The three largest imports from Mexico are the products of high-skilled, not low-skilled labor: automobiles, automobile parts, electronics. They are all products of high-skilled labor. This is exactly the opposite of what economists and politicians said who pushed this fast-track NAFTA onto this Congress.

What we are doing now, having passed fast track over my objection in recent months, is once again negotiating new trade agreements. When those agreements come back to Congress, nobody in Congress will have any

opportunity to offer even one amendment to change an obvious problem in the trade agreement. I think that shortchanges this country. I hope very much the trade ambassador, for whom I have a lot of respect, but a great deal of disagreement with—I hope he and others in this town will understand, including my colleagues, that this is a very serious abiding problem for this country. We cannot ignore it.

This country ignores this growing trade deficit of nearly \$1.5 billion a day, 7 days a week, at its own peril. We must solve this problem, and the sooner the better.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

AMERICA'S TRADE DEFICIT

Mr. HOLLINGS. Mr. President, I thank our colleague from North Dakota because his words are music to my ears. He is a student of competition. He knows there is no such thing as free trade. It is only competitive trade. Every nation necessarily tries to build up its manufacturing, its production, its economic strength not only in finished products, but in agriculture.

The significance of the words of our distinguished colleague, Senator DORGAN, is that he is an agricultural Senator. For years, I have been trying, with the textile industry in my home State, to get some awareness of the fair competition in our textile industry, which is the most productive in the entire world. But since NAFTA, we have lost 58,100 jobs. As we have passed textile bills through the Senate over the past almost 37 years that I have been here, it has been the airline/aircraft industry that has been so strong. Well, Boeing is finally joining me. They have 7½-percent unemployment up in Seattle, WA, and Boeing is manufacturing in China. And our \$435 billion trade deficit also includes a deficit in agriculture. No one has been a better protector of the interests of agriculture than the distinguished Presiding Officer.

It is only the second time in our history that we have a deficit in the balance of trade in farm products. That is not news to this Senator from South Carolina. I remembered when we finally, just in the last few years, got a deficit in the balance of trade in cotton with China. So I understand it is going to all agricultural products.

We have the facts and figures. I am ready to join in the debate for us to start treating foreign trade as foreign aid. It was good that the Marshall plan worked, but now we have to rebuild our economy, and that is a very important problem.

But there is one more important thing, and that is this war in Iraq. What we are saying—and I talk advisedly—to that GI is this: Look, we want you to go into Iraq and we hope you come back home safely. The reason we want him or her to come back safely is not for their welfare, but for our welfare. We want them to come back

because we are going to give them the bill. My generation is not going to pay for it. The fellow fighting the war is going to have to pay for the war.

For the first time in the history of wars in the United States of America, we said the Army is going to war, but the country is not. The President is not going. The Congress is not going. Oh, we are going to wear that flag on our lapels. Yes, we are patriotic and we will give you patriotic talk anytime you want it.

But as far as actual support, let's find out what the record shows because I had to listen to Bob Novak, the distinguished columnist on TV, the other night when he said: How are we going to pay for it? Just like we did in Vietnam. We borrowed the money.

No, sir, we paid for Vietnam. I was in the room with George Mahone, chairman of the Appropriations Committee. We called over to Marvin Watson and said: Ask the President if we can cut another \$5 billion. He said cut it. Why? Because the President of the United States was very sensitive about guns and butter. He wanted to pay for both, and President Lyndon Baines Johnson paid for both. That is the last time we had a balanced budget in the history of this particular Senator being up here—back in 1968. Yes, we paid for guns and butter in Vietnam under President Johnson.

Let's go back to the Civil War.

I was amazed that President Abraham Lincoln instituted not only the income tax to pay for the Civil War, he instituted a tax on dividends. They have the unmitigated gall to say what we need now is a cut of all taxes on dividends when they were giving TRENT LOTT the bum's rush. The party of Lincoln, the party of Lincoln; that is all I heard on my TV at home. Where is Abraham Lincoln when we need him? He taxed dividends and instituted the income tax in 1861. They had to repeal it—they said it was unconstitutional—by 1870, but they paid for that war. They sacrificed.

When you have a mutual sacrifice, then we are all committed. I believe the country is going to war in Iraq, not just the army. I want to pay for it. I put in a 1-percent value-added tax to pay for that war, and I can't get a hearing before the Finance Committee.

I had a hearing before the Finance Committee when Lloyd Bentsen was the chairman. I brought in Dr. Cnossen, the expert who not only instituted that plan in Japan, the United Kingdom, and Canada, but knew all the ins and outs. He was my expert. He testified. As we were leaving the Dirksen Building that day, former Senator John Chafee turned to Chairman Bentsen and said: If we had a secret ballot, we would vote that matter out of the Finance Committee unanimously because we were beginning to run into these astronomical deficits as a result of voodoo 1 under President Ronald Reagan.

In World War I, we raised taxes to pay for the war. During World War II,

we had a marginal tax rate of 94 percent to pay for it. In the Korean war, we had a marginal rate of 91 percent. In Vietnam, we had a 77 percent rate. So we paid for wars. But not this Congress; no, no, we are not going to go. That is their war. I do not know whether it is for oil, for democracy, whatever the arguments—get rid of Saddam—but one thing is positive, I say to the Senator from Alabama, this Congress is not going to go. We are going to give the bills to the poor GI who fights the war. I think it is a dirty shame. It is an embarrassment to me that I cannot even get a hearing and nobody to even talk about paying for the war.

This is a time of national sacrifice because it is a time of national commitment, but not a national commitment on the part of this particular war, I can tell you that now. I have a 1-percent tax proposed.

SOCIAL SECURITY

Let me talk about our friend, Alan Greenspan, the Chairman of the Federal Reserve. He came out last week and suggested Congress consider switching to an inflation measurement that would trim billions of dollars from all cost-of-living adjustments provided to the 46 million Social Security recipients.

He said:

Lawmakers should consider trimming the benefits, raising the retirement age, or other ideas before raising the payroll tax.

Chairman Greenspan also debunked the idea advanced by some conservatives that faster economic growth alone would be able to deal with the shortfalls in the Government's two biggest benefits.

He finally came out against this so-called voodoo or economic growth. The buzzword is growth. It is cut the taxes to grow the economy. We can only go back to what Mr. Greenspan said in 1983 in his annual report from the National Commission on Social Security Reform, section 21. I ask unanimous consent to print that section of the report in the RECORD.

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

REPORT OF THE NATIONAL COMMISSION ON SOCIAL SECURITY REFORM—JANUARY 1983 SOCIAL SECURITY AND THE UNIFIED BUDGET

(21) A majority of the members of the National Commission recommends that the operations of the OASI, DI, HI, and SMI Trust Funds should be removed from the unified budget. Some of those who do not support this recommendation believe that the situation would be adequately handled if the operations of the Social Security program were displayed within the present unified Federal budget as a separate budget function, apart from other income security programs.

Before fiscal year 1969, the operations of the Social Security trust funds were not included in the unified budget of the Federal Government, although they were made available publicly and were combined, for purposes of economic analysis, with the administrative budget in special summary tables included in the annual budget document. Beginning then, the operations of the Social Security trust funds were included in the

unified budget. In 1974, Congress implicitly approved the use of a unified budget by including Social Security trust fund operations in the annual budget process. Thus, in years when trust-fund income exceeded outgo, the result was a decrease in any general budget deficit that otherwise would have been shown—and vice versa.

The National Commission believes that changes in the Social Security program should be made only for programmatic reasons, and not for purposes of balancing the budget. Those who support the removal of the operations of the trust funds from the budget believe that this policy of making changes only for programmatic reasons would be more likely to be carried out if the Social Security program were not in the unified budget. Some members also believe that such a procedure will make clear the effect and presence of any payments from the General Fund of the Treasury to the Social Security program. (Under present procedures, such payments are a "wash" and do not affect the overall budget deficit or surplus.)

Those who oppose this recommendation believe that it is essential that the operations of the Social Security program should remain in the unified Federal budget because the program involves such a large proportion of all Federal outlays. Thus, to omit its operations would misrepresent the activities of the Federal Government and their economic impact. Furthermore, it is important to ensure that the financial condition of the Social Security program be constantly visible to the Congress and the public. Highlighting the operations of the Social Security program as a separate line function in the budget would allow its impact thereon to be seen more clearly.

Mr. HOLLINGS. Mr. President, section 21 said to put Social Security off budget in trust, not to be expended on anything other than Social Security. We spend Social Security trust funds on any and everything but Social Security. Has Mr. Greenspan thought of that solution: Just do not spend the Social Security taxes on every endeavor or that we could possibly imagine but Social Security?

I had a dickens of a time trying to get that written into law. It took me 7 years, and finally on November 5, 1990, George Walker Herbert Bush signed into law section 13301 of the Budget Act. It is the law of the land: You shall not report from the Congress or the President a budget including Social Security. But we do, and Alan Greenspan started that nonsense back in the eighties because he wanted to cover taking those moneys to go along with what Vice President Bush at that particular time called voodoo.

Let me get up to voodoo 2 because we ought to understand, when this recession in the economy started. I am not an economist, but I am a politician. I have been chairman of the Budget Committee. I have worked with Alan Greenspan. I went over in 1980, right after the elections, to brief President-elect Reagan on the budget. We walked in the snow over to the Blair House. I will never forget it. President Reagan said he was going to balance the budget in 1 year, and after the briefing he said: Oops, I never realized how bad it was. It is going to take me 3 years. That is when we went from 1-year budgets to 3

years, and then under Gramm-Rudman-Hollings we went to 5 years, and later under Vice President Bush we went to 10 years. I suggest for this irresponsible Congress, let's go to 20. You can project anything and just keep on spending because that is exactly what we are doing.

But let's jump back to September of the year 2000 when Governor Bush, now President Bush, was running. He said he was going to cut taxes. I knew how we had just gotten the best 8 years of economic growth in the history of the United States: with an increase in taxes. We were on the tail end of our recovery. We still had a deficit. We were trying to work toward a balanced budget, and I will give my colleagues the facts and figures.

The point is, when he talked about cutting taxes, I thought, oh, heavens, we can't start that again; we are just getting back into the black. We had not gotten into the black in September 2000 nor in November, the Friday after the Tuesday election, when Vice President nominee CHENEY, our good friend, said: Yes, that is exactly what we are going to do—cut taxes. When Vice President CHENEY made that statement, go back and look at the market in October, November, December, and into January.

The Republicans are trying to say the recession started in March 2000. No, it started in the fall of 2000 because of this tax cut idea and running up these enormous deficits and running up the interest costs and the borrowing.

So what happened was, on January 25, Alan Greenspan appeared before the Budget Committee. What did the gentleman say? We were paying off too much debt. When he said we were paying off too much debt, that was right, title, and interest to this young new President, George W. Bush, coming into office for him to spend up to the ceiling. On February 27, I'll be darned if he didn't do just that. The new President came before the Senate in a joint session on February 27 and said: Here is my budget. I have \$2.6 trillion to protect Social Security. I have \$2 trillion for domestic and defense programs, and that leaves another \$1 trillion for unforeseen circumstances.

We had an unforeseen circumstances on September 11, later that year, but let's go down now and find out when this recession started and when we were really in the black and in the red. I have here the public debt to the penny as reported by the Secretary of the Treasury. The latest we have—February 27, 2003—is \$218 billion. That is this fiscal year—including September, October, November, December, January, and February, we got this country another \$218 billion in debt.

I ask unanimous consent to have this printed in the RECORD.

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

The debt to the penny

	Amount
Current:	
2/27/2003	\$6,446,165,774,125.26
Current month:	
2/26/2003	6,445,970,533,267.53
2/25/2003	6,446,004,668,324.03
2/24/2003	6,446,038,803,864.15
2/21/2003	6,446,140,296,660.54
2/20/2003	6,446,175,354,465.78
2/19/2003	6,442,718,474,145.91
2/18/2003	6,437,926,287,364.49
2/14/2003	6,414,086,191,317.72

The debt to the penny—Continued

	Amount
2/13/2003	6,414,860,990,193.10
2/12/2003	6,400,775,460,992.07
2/11/2003	6,403,775,445,922.86
2/10/2003	6,400,363,175,585.80
2/7/2003	6,398,607,223,793.01
2/6/2003	6,401,330,573,005.21
2/5/2003	6,387,332,567,273.92
2/4/2003	6,388,239,504,295.45
2/3/2003	6,379,432,578,400.38
Prior months:	
1/31/2003	6,401,376,662,047.32
12/31/2002	6,405,707,456,847.53
11/29/2002	6,343,460,146,781.79
10/31/2002	6,282,527,974,378.50
Prior fiscal years:	
9/30/2002	6,228,235,965,597.16

The debt to the penny—Continued

	Amount
9/28/2001	5,807,463,412,200.06
9/29/2000	5,674,178,209,886.86
9/30/1999	5,656,270,901,615.43
9/30/1998	5,526,193,008,897.62
9/30/1997	5,413,146,011,397.34
9/30/1996	5,224,810,939,135.73
9/29/1995	4,973,982,900,709.39
9/30/1994	4,692,749,910,013.32
9/30/1993	4,411,488,883,139.38
9/30/1992	4,064,620,655,521.66
9/30/1991	3,665,303,351,697.03
9/28/1990	3,233,313,451,777.25
9/29/1989	2,857,430,960,187.32
9/30/1988	2,602,337,712,041.16
9/30/1987	2,350,276,890,953.00

THE DEBT TO THE PENNY AND WHO HOLDS IT

(Debt held by the public vs. intragovernmental holdings)

	Debt held by the public	Intragovernmental holdings	Total
Current:			
02/27/2003	\$3,683,531,753,393.98	\$2,762,634,020,731.28	\$6,446,165,774,125.26
Current month:			
02/26/2003	3,681,995,211,660.54	2,763,975,321,606.99	6,445,970,533,267.53
02/25/2003	3,680,546,956,577.64	2,765,457,711,746.39	6,446,004,668,324.03
02/24/2003	3,683,950,348,867.13	2,762,088,454,997.02	6,446,038,803,864.15
02/21/2003	3,684,518,370,236.10	2,761,621,926,424.44	6,446,140,296,660.54
02/20/2003	3,684,115,204,633.82	2,762,060,149,831.96	6,446,175,354,465.78
02/19/2003	3,681,097,230,200.83	2,761,621,243,945.08	6,442,718,474,145.91
02/18/2003	3,680,397,155,161.57	2,757,529,132,202.92	6,437,926,287,364.49
02/14/2003	3,662,059,553,599.40	2,752,026,637,718.32	6,414,086,191,317.72
02/13/2003	3,661,984,456,977.19	2,752,876,533,215.91	6,414,860,990,193.10
02/12/2003	3,648,984,143,809.81	2,751,791,317,182.26	6,400,775,460,992.07
02/11/2003	3,649,088,081,850.16	2,754,687,364,072.70	6,403,775,445,922.86
02/10/2003	3,648,737,478,114.74	2,751,625,697,471.06	6,400,363,175,585.80
02/07/2003	3,648,857,135,353.53	2,749,750,088,439.48	6,398,607,223,793.01
02/06/2003	3,648,874,717,654.07	2,752,455,855,351.14	6,401,330,573,005.21
02/05/2003	3,636,289,414,701.92	2,751,043,152,572.00	6,387,332,567,273.92
02/04/2003	3,635,972,465,674.76	2,752,267,038,620.69	6,388,239,504,295.45
02/03/2003	3,635,739,981,303.79	2,743,692,597,096.59	6,379,432,578,400.38
Prior months:			
01/31/2003	3,636,978,106,813.83	2,764,398,555,233.49	6,401,376,662,047.32
12/31/2002	3,647,939,770,383.73	2,757,767,686,463.80	6,405,707,456,847.53
11/29/2002	3,649,352,539,575.36	2,694,107,607,206.43	6,343,460,146,781.79
10/31/2002	3,586,523,556,148.57	2,696,004,418,229.93	6,282,527,974,378.50
Prior fiscal years:			
09/30/2002	3,553,180,247,874.74	2,675,055,717,722.42	6,228,235,965,597.16
09/28/2001	3,339,310,176,094.74	2,468,153,236,105.32	5,807,463,412,200.06
09/29/2000	3,405,303,490,221.20	2,268,874,719,665.66	5,674,178,209,886.86
09/30/1999	3,636,104,594,501.81	2,020,166,307,131.62	5,656,270,901,633.43
09/30/1998	3,733,864,472,163.53	1,792,328,536,734.09	5,526,193,008,897.62
09/30/1997	3,789,667,546,849.60	1,623,478,464,547.74	5,413,146,011,397.34

Mr. HOLLINGS. Mr. President, on January 25, 2001, when Chairman Greenspan spoke, we were \$65 billion in the red according to the Secretary of the Treasury. On February 27, 2001, when the distinguished new President gave his speech before the Senate—we were \$53 billion in the red.

On April 15, 2001, taxpaying day, we were \$94 billion in the red. We had collected all that income tax on April 15 and on April 30, 2001, according to the Secretary of the Treasury, we had a surplus. And remember, they had been babbling all during the Christmas holidays and January and February of \$5.6 trillion in surplus money, that we are paying off too much debt. There was all kinds of surplus talk.

Let's go to May 1, 2001. We were \$23 billion in the black. On June 1, we were \$4 billion in the black. But on June 7, the President signed the \$1.5 trillion tax cut, voodoo 2—we had voodoo 1, so he gave us voodoo 2. And what happened? What happened after June 7? By June 28, we were \$52 billion in the red, and on September 10, one day before the tragic September 11, we were \$99 billion in the red. We only had 20 more days of that fiscal year. If you go into their lingo, their little song and dance routine, they are trying to say they inherited a recession—they did not cause it, but they inherited a recession. They

tell you we had corporate corruption, and we had 9/11, and on and on, and everybody is beginning to believe it. They have said it again and again.

The truth is, as I've illustrated with these numbers, George Bush caused this economic downturn, and it is going to stay in a downturn with his newest tax cutting scheme, voodoo 3. Whoever heard of cutting taxes on the dividends, the marriage penalty, and all of these other things they have been coming up with and saying it is going to stimulate the economy? They know there is enough stimulus. They are under subterfuge, hiding, camouflaging tax reform under the auspices of a stimulus. The truth is, on September 30 last year, we ended up \$428 billion in the red. President Bush, by his own budget, without the costs in Iraq, has already projected a \$554 billion deficit this year, and his budget proposal for next year is \$569 billion in the red. That is \$1.5 trillion that we have not paid for, that we are infusing as a stimulus to the economy. We know we have to get ourselves on track as quickly as we possibly can.

I ask unanimous consent that section 13301 be printed in the RECORD.

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

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

- (1) the budget of the United States government as submitted by the President,
- (2) the congressional budget, or
- (3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in

* * * *

We said it is the law now we are not supposed to use Social Security, and they continue to do so. What we really have, in essence, is Enron accounting.

Why do I call it Enron accounting? Well, turn to page 1 of the budget. We will find on page 1 the Bush Administration saying they firmly believe in controlling the deficit and reducing it as the economy strengthens and our national security interests are met. They go on to say that compared to the overall Federal budget and the \$10.5 trillion national economy, the budget gap is small by historical standards.

What did Kenny boy Lay do? The same thing. On page 1, he made his stockholders feel good, by saying the company and the corporation are doing fine.

What is the Bush Administration doing? Trying to make all the taxpayers feel good by saying this deficit is small on page one.

But if we turn to page 332 in the Historical Tables, we will see the overall deficit is \$554 billion—not what they had, \$159 billion on page 1. It is actually \$554 billion. So rather than a deficit of 2.7 percent of the GDP, it is 5 percent. In fact, it is 5.2 percent to be accurate.

If they are trying to talk in historical terms, let's talk—we are complaining about everybody in Europe, and we are saying in Europe the trouble with those folks is they are not being responsible. I say to the Senator from Vermont, on page 117 of the same budget tables, we find out that the debt is 64.8 percent of the GDP.

Under the Maastricht Treaty, one cannot be a member of the European Community unless their annual deficit is less than 3 percent. Ours is up to 5 percent. They can be subject to fines if their debt exceeds 60 percent of the GDP. But by the Bush Administration's own facts and figures ours is 64.8 percent. We could not even become members of the European Community, but we are running around criticizing them about not doing this and not doing that.

Let me say about the French—I fought under the French, and they were brave in World War II. Do not give me this stuff. They had a heyday with the PR thing on the weekend shows about the French, that we do not care, we will go in any way. But the main thing is to realize that we have worked ourselves into a situation, as Senator DORGAN says, where it does not make sense to produce in the United States of America.

As politicians, Republican and Democrat, we say: Before you open up a manufacturing company you have to have a minimum wage, clean air, clean water, Social Security, Medicare, Medicaid, safe working place, safe machinery, plant closing notice, parental leave. Or you can go to China and open your plant their for wages of 58 cents an hour, and there is none of that.

I asked a high-tech friend of mine on the west coast, when he was expanding, to give us a chance and come back to South Carolina. He said he does not produce anywhere in the United States. He said he produces in China for 10 per-

cent of what it would cost in California.

That is the whole situation. The Secretary of Commerce has the duty of listing 500 critical items to our national security. Senator, we have a \$5 billion deficit in the balance of trade in those critical items. We will not be able to go to war the next time because we are not producing. We will have to call other nations up and ask them to please send the goods to us so we can gear up and get ready to go to war.

If my friends want to stimulate the economy, let's give \$30 billion back to the States. We passed Leave No Child Behind, but we left the money behind. The States are really strained paying educational budgets. We passed the Disabilities Act, but we have never funded it. Now we have homeland security, the first responders. I fought like the dickens to get the seaport security bill funded for a whole year. I got the authorization, but I could not get the money.

The States need it back at the ports, they need it back at the public schools. They need the money. While we think we will stimulate the economy to create jobs, they are doing everything to downsize, fire, let the teachers go, and creating unemployment as fast as we are trying to create employment.

The best stimulus, money that will have to be spent one way or the other, is \$30 billion back to the Governors. That is not partisan because the majority of the Governors are Republican. I am trying to help reelect those Republican Governors.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Alabama is recognized under the previous order.

Mr. SESSIONS. I appreciate the comments of Senator HOLLINGS, and I understand clearly, and I am glad he speaks with no accent, which I appreciate.

He has always been very rigorous on this issue. I appreciate that. We need to watch spending around here and need to watch it in all areas. Of course, the amount of money we are spending on this war—it is estimated from \$40 to \$95 billion—compared to the economic loss and the internal expenditures we have had to put out as a result of the attack of September 11, is very small. So we have to do something and I don't think the Senator suggests otherwise there.

We are here talking about one of the finest nominees to come before the Senate, Miguel Estrada, for the Circuit Court of Appeals for the DC Circuit. Miguel Estrada is a stunningly qualified person. He came here at age 17 from Honduras, top of his class at Columbia, magna cum laude, Phi Beta Kappa, on to Harvard Law, editor of the Harvard Law Review, clerk for a Second Circuit Court of Appeals, the sister court to the DC court he would be sitting on. He served in the Solicitor General's Office of the Justice Department where he wrote appellate briefs

and argued cases before the United States Supreme Court. He has been at one of America's greatest law firms since.

He received the highest possible ratings of his supervisors in the Department of Justice almost his entire time. In the Department of Justice he was being supervised by President Clinton's supervisors. They gave him the highest rating they could give. They even noted how he was disciplined and followed all the policies and procedures of the Department of Justice.

The American Bar Association checked him out. They interviewed lawyers on the other side of his cases; they interviewed judges before whom he practiced; they talked to friends. They came up with a rating, unanimously "well qualified," the highest possible rating the American Bar Association gives. They did not give it by a split vote but unanimously. That is very rare. They do not do that very often. He is exceptionally well qualified.

I heard his testimony before the Senate Judiciary Committee. I thought he was responsive and intelligent and courteous and kept his composure on the tough questioning. Having argued 15 cases before the Supreme Court of the United States places him in a very select group of lawyers. I am sure there are not more than 20 practicing lawyers in America today who have argued 15 cases before the Supreme Court of the United States. You are not selected for that unless people believe you are very good at your business. The average guy cannot walk in and argue a case before the Supreme Court under normal circumstances. We have an exceptionally qualified nominee.

What is this brouhaha all about? What is causing us to be subjected to the first filibuster in the history of the United States involving a nominee for a circuit court of appeals judge, or a district court judge for that matter, in the history of this country? We are not able to identify a single active filibuster, as we have seen today, on a nominee for circuit court of appeals or for the district court. It is stunning this is so in light of the fact we have an individual who lived the American dream, who has been a success in every category of life, whose integrity has never been questioned, and whose professionalism and skill is doubted by no one.

I ask, what is it all about, Alfie? What is this about? The real deal here is the question of the role of judges: To what extent are they empowered to be activists? Should they be able to utilize and employ their own best judgment about matters and read that into the statutes and the Constitution they interpret, or should they be bound by the plain meaning of those statutes? This is a fundamental question.

There is in the law schools of America, in many of the outspoken professors and proponents of law in America, a belief that judges have a duty to act

and to make decisions and even so act politically. In fact, they say it is a myth and a falsehood to suggest and even to believe that judges are above politics. They say it is all politics. Why do they say that? This is part of a dangerous trend in America. Is politics in everything?

The Critical Legal Studies Group that has been afoot in law schools over a number of years believes you cannot tell anything about law; that you can take words and statutes and they can mean anything you want them to mean, and they believe those laws were just written by those in power to oppress those not in power. They do not believe there are rules of the game all of us must live by that are critical to our economic development. They believe it is all politics, it is all power, and there is no truth and there is no order fundamentally. Some call it deconstructionism, and others call it the trends in America as opposed to modernism, the idea that there is no truth; one person's opinion is just as good as another; We can say what we want; I'm OK, you're OK. That kind of idea is really at the heart of some of the problems we are having.

I often tell the story of Hodding Carter, who used to work for President Carter. He was on Meet The Press, where he used to be a regular member. He made a comment the other day where he said we liberals have to admit it, we are asking the courts to do for us that which we can no longer win at the ballot box. That is basically what President Bush has been unhappy with. That has been the concern he has expressed with the legal system. He simply wants judges who will follow, first, the Constitution, and then the statutes and lawful acts that are enacted pursuant to the Constitution. If the lawful acts that are adopted violate the Constitution, the Constitution trumps and the court should say so. The Constitution controls much of what goes on in this country, and it ought to be the No. 1 thing. So we follow that.

It is academic when we talk about those words, but there are various cases that come along that point out the matter to us very clearly, none more significant than the ruling in California over the Pledge of Allegiance, striking down the pledge as being unconstitutional because it had the words in it "under God." They said that was an establishment of a religion that is prohibited by the Constitution; that these two words established a religion.

That is beyond my comprehension. It appears to be clearly contrary to the view of the U.S. Supreme Court, although the U.S. Supreme Court, I will admit, tends to be inconsistent on this issue.

I remember when that happened it caused quite a stir, particularly on both sides of the aisle here. But I noticed my friends across the aisle were particularly concerned about it and were vocal. So after the panel in Cali-

fornia struck down the Pledge of Allegiance, we met that day. People came down on the floor and spoke out. The majority leader at that time, Senator TOM DASCHLE, said:

But this decision is nuts. This decision is just nuts.

He talked about it a little bit there. He gave up the floor, and my good friend Senator REID from Nevada, the assistant Democratic leader, spoke and this is what he said:

I have the good fortune that two of my sons have been law clerks for the chief judge of the Ninth Circuit.

That is where these panel members were, they were a part of the ninth circuit.

In fact, one of my sons was his administrative assistant. He was a judge from Nevada, served on the very prestigious Ninth Circuit. I have had calls from my sons today. They are embarrassed about what has taken place in that Ninth Circuit. They said: Dad, don't worry about it because the court will meet en banc [the whole court will] and reverse it. These are two of the most liberal members on the Court. They come up at random. It was by chance Goodwin and Reinhardt were thrown together [on this panel] . . .

But it wasn't Goodwin and Reinhardt on the panel. Mr. REID was in error about that. But Mr. REID said:

I have great faith the court will reverse itself when they sit en banc.

Well, I had hoped so, too. But I spoke on that day. I made clear I was not at all sure the full Ninth Circuit Court would reverse that opinion because I have been studying the Ninth Circuit. I have observed its irrational and activist behavior for some time. I have noted its problems. I was not at all certain it would be reversed. In fact, I said as much. I said:

I hope on full rehearing en banc the court will reverse the opinion. I am not absolutely sure it will because there are others on the court I have no doubt will join in this opinion.

I made other references to that. So the Ninth Circuit was—it was a test here. Everybody says don't worry about this random opinion.

I have been reminded that Goodwin and Reinhardt were on that panel, along with another judge. It was a three-judge panel.

So I wondered, will they reverse it? The way it works is if a panel of a larger court, the 24 judges on the Ninth Circuit, if a three-judge court rules and that opinion is significant and may implicate the rest of the law, and the full court, 24 judges, might disagree, they have an en banc hearing, they review the panel's decision, and they render an opinion, either affirming it or not affirming it.

What happened here just Friday was that the Ninth Circuit decided not to rehear the ruling made by three-judge panel—in effect, affirming the opinion striking down the constitutionality of the Pledge of Allegiance of the United States, not a totally surprising thing to me.

It is surprising that we are this far along. It is surprising we have gone

this far in distorting the original intent of our Constitution concerning the separation of church and State and what that actually means.

People say it says we must have a wall of separation between the church and State. The Constitution never said that. Thomas Jefferson said that late in his life, long after he had left public office. He wrote the Baptist Association and used that phrase—there should be a wall of separation between church and State. No one knew precisely what he meant. It was never ratified by the people. He was not even at the Constitutional Convention, Jefferson wasn't, when the Constitution was written.

What we must do to determine what the Founding Fathers thought is look at that document, look at the Constitution itself. They debated the issue. They were concerned about it. Virginia had an established church. It was the Episcopal Church, the Anglican Church, the Church of England. The Americans didn't like that. They said, We are going to put in our Constitution; no one religion is going to be given a predominance over the other. So they wrote the first amendment and they said Congress—that's us, the U.S. Congress—shall make no law respecting an establishment of a religion nor prohibiting the free exercise thereof.

They forget all about the free exercise clause. They simply say everything that even mentions God in public life is an establishment of a religion. That is a misreading of the Constitution.

Why they have it in their heads that these things should be so closely scrutinized and should be so scrutinized by the courts and struck down by the courts is beyond me. We have been on a trend for a little over 50 years. It was not a function or a problem for the first 150 years of this country's existence, but in recent years it has developed in that way.

As a result of the history of the Supreme Court rulings over the last 50 years, there is a real ambiguity concerning the meaning of the separation of church and State.

I am going to show how I think activism plays a role in these decisions. People make out it does not make any difference here what kind of judges we have on courts, unless they happen to be judges who show restraint, who believe in following the law. They get attacked by our friends over here. But judges who advocate utilizing law and judicial opinions as a method to carry on a political agenda, they are quite all right. Then, when they strike down the Pledge of Allegiance, they run down here and say how awful it is. "We are just shocked." And it is the judges and the philosophy of law that supports them that has led us to this point.

Let me just read what Judge Paez said one time in a written article. Judge Paez has been referred to as a judge who was not fairly treated here. He was confirmed. Thirty-nine Senators voted against him. He does sit on

the Ninth Circuit Court of Appeals today. And from what I can tell from this opinion, he joined in the opinion affirming the striking down of the Pledge of Allegiance.

So this is what he wrote about his philosophy as a judge. He said it includes: "an appreciation of the courts to act when they must, when the issue has been generated as a result of the failure of the political process to resolve a certain political question. Because in such instance," he says, "there is no choice but for the courts to resolve the question that perhaps ideally and preferably should be resolved through the legislative process."

Do you see what Judge Paez said there? And I opposed his nomination for several reasons. But this was a core reason. What he said was, if the legislature does not act on something we enlightened ones think they should act on, then the courts are empowered to act.

You show me where that is in the Constitution. Let's put it really simply: When a legislature does not act on a matter, that represents a decision of a legislature. It decided not to act. That is a decision of that legislative branch just as certainly as if they had voted to make a change.

Legislatures are not required to act. If they do not do something that judges think ought to be done, where does it become the idea that judges can impose that by reinterpreting the meaning of the statutes and words of the Constitution to impose their agenda? That is a big deal for me.

Now, Judge Reinhardt wrote a part of this recent opinion on the Pledge of Allegiance. Let me tell you what he said. I just picked this up. It jumped right out at me because I am sensitive to this issue. I have to run for election. I have to go back to Alabama and defend what I did and what I voted on, just as the Presiding Officer did in his State. We have to defend what we do. We are accountable.

But judges are given lifetime appointments. Their position is for as long as they live, with good behavior. They would have to virtually be convicted of a felony before they could be removed from office. They can hold their position for as long as they want to hold it. And sometimes they hold it for longer than their health and ability.

But I want to make clear one thing: That most of our Federal judges do an excellent job, and most of them do show restraint. But there has been a continual battle over this philosophy, that you can make statutes say whatever you want them to say, and "good" judges should deliberately use their power to effect the public good as some group of people, whoever they are, think they should.

So there was some political uproar over the striking down of the Pledge of Allegiance, and Judge Reinhardt, on the Ninth Circuit, said we ought not to pay attention to that. But then he said:

This is not to say that Federal judges should be completely sequestered from the attitudes of the Nation we serve. Even though our service is accomplished not through channeling popular sentiment but through strict adherence to constitutional principles, the Constitution contemplates occasions when we must be responsive to long-term societal trends when determining, for example, that which is cruel and unusual.

So the court says they have been empowered now to determine "long-term societal trends," and that they can use those societal trends now to go back and take words such as "cruel" and "unusual," and give them a new meaning.

Let's talk about that very one. That is the first one he mentioned. I think it is a good one for us to talk about because cruel and unusual punishment is prohibited by our Constitution. You cannot impose cruel and unusual punishment.

A number of years ago, we had two members of the Supreme Court—they are no longer there; both are deceased now—Justice Brennan and Justice Marshall, who concluded that due to evolving social trends, cruel and unusual punishment meant we should not have the death penalty. And they dissented on every single case that came before them imposing death because they believed it violated the constitutional provision concerning cruel and unusual punishment—a breathtaking position to take. I call it the high water mark of judicial activism.

Where did they get this idea there had been evolved standards? It was not from polling data, because the American people overwhelmingly favored the death penalty. It was not from the legislative actions of legislatures around the country, because very few had eliminated any death penalty statutes over the years. In fact, it was a law in a majority of the States in the country. It was a law in the United States of America. So I do not know where they came up with this idea.

They did not like it. Justice Brennan and Justice Marshall decided in their heart that America ought no longer to have a death penalty, so they set about combing the Constitution, and they came up with the idea that it was cruel and unusual.

The Constitution has to be fairly interpreted. It said: cruel and unusual. Even if you considered it cruel, was it unusual? Every State and every Colony in America and the British Empire had the death penalty at the time the Constitution was written.

Within the very corners of the Constitution itself are multiple references—six or more, as I recall—to the death penalty. It talks about capital crimes. It talks about that you cannot deprive one of life, liberty, or property. How do you deprive them of life except by the death penalty without due process of law?

So this was thunderous. So we have this judge voting to strike down the Pledge of Allegiance, saying that he is empowered to utilize "long-term societal trends."

I guess that is the way the EU votes. Maybe we ought to take a vote in the UN. Is that what we want to do? Let's take the EU, and we will let the Europeans decide what our societal trends are.

I will tell you one thing: The murder rate in Great Britain is going through the roof. And since the death penalty has come back into fashion in America, the murder rate has been plummeting. Thousands of people, on a percentage basis, today are alive, not murdered, because of the crackdown on violent crime in this country. I do not think anyone can dispute that. He talks about also, "this broader long-term social conscience" should guide us in deciding how to interpret statutes. Well, of course, that is bogus. Who empowered this lifetime-appointed person to do that?

See, that is an antidemocratic act. Judges, by being given lifetime appointments, are unaccountable. They serve a great function in that they can enforce the law, even though it might be, in the short term, unpopular. But we depend on them very deeply. We depend on them to show restraint, to not impose their views, but to honestly and fairly interpret the law.

We have some real problems here with the Supreme Court, too. The Supreme Court is very confused about the opinions on separation of church and state. But they never went this far.

In fact, according to Judge O'Scannlain, who wrote a dissenting opinion from the refusal of the court to even consider the matter en banc, Justice O'Scannlain details at least four references in previous Supreme Court opinions in the line of cases on which they relied to strike down the school Pledge of Allegiance recitation as affirmatively blessing or okaying the Pledge of Allegiance.

He quotes a number of those cases. Justice O'Connor and others have made that quite clear. So the question is, Does this phrase, "under God," in the Pledge of Allegiance establish a religion or is it a religious act?

Justice O'Scannlain says: Common sense would seem to dictate otherwise, as the public and political reaction should show and make clear. If reciting the pledge is truly a religious act in violation of the establishment clause, then so is the recitation of the Constitution itself or the Declaration of Independence.

We hold these truths to be self-evident, that all people are created equal. They are endowed by their Creator with certain inalienable rights.

That is not something we earned here on Earth, but part of the philosophy of the founding of our country is in the heart of the most famous words in the Declaration of Independence. "Without our aid He did us make." That is how we got here.

That is what a majority of the American people believe. Some 93 percent believe in God. They are not trying to impose their will on everybody. But

they do not believe, and I do not believe, the Constitution prohibits any reference in the public sphere to a higher being.

He goes on and says: Are we going to eliminate the Constitution, which makes references to God, the Declaration of Independence, the Gettysburg Address, which uses the phrase "under God"? Are we going to prohibit that? The national motto, "In God We Trust"? How about those words right up there, "In God We Trust," in letters 6 inches high? Are they going to come down here with a chisel? I guess we will bring our friends from the Ninth Circuit over here with a chisel and let's see them chop away at that.

That doesn't make sense, does it? But that is what we have in this opinion. How about the national anthem? Justice O'Scannlain continues:

Such an assertion would make hypocrites out of our founders and would have the effect of driving any and all references to our religious heritage out of our schools and eventually out of our public life.

I don't think that is an exaggeration at all.

How are we going to stop this?

In this Senate, we have the odd event that we have a paid Chaplain, as we have in the military. Our Chaplain comes in before we start the day, and we have a prayer. I am surprised they haven't sent the 82nd Airborne over here from across the street to stop that. They begin every session of the Supreme Court of the United States with the words: "God save these United States and this honorable court." Every court I have been in uses those words. "God save these United States and save this honorable court" is what the clerk says when he calls the court to order all over America today. But children in the Ninth Circuit, the largest circuit in America, including some 9 million schoolkids, are prohibited now from saying the Pledge of Allegiance.

This opinion was written, although I am not sure legally how much it meant, but after this Congress voted on the matter a few months ago. If Justice Reinhardt believes his evolving social consciousness has gotten to the point that America no longer wants to say "under God," he ought to listen to his elected representatives because right after it happened, we voted by 99 votes last June on the floor of this Senate to reaffirm the Pledge of Allegiance and the words "under God." Every Senator in here voting that day voted for it. Maybe one didn't or one was absent. It is impossible for me to believe that they think this is a result of any societal evolution that causes this.

Justice O'Scannlain goes on and talks about the *Engel v. Vitale* case which eliminated prayer in schools, the first such case. They said they could not say a prayer written by the State. They said that was inconsistent with the establishment clause. The State wrote a prayer, and the kids were supposed to say it. They could refuse to,

but they said it, and they said that was too much. That was the establishment of a religion effect. That could be something we could debate, but certainly there is some basis for that reasoning.

Then he goes on to note, in a footnote, the court said this in *Vitale*:

There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York had sponsored [by mandating a State prayer.]

Then the next case in this line of cases came, *Abbington School District v. Schempp*. They required in Pennsylvania that at least 10 verses from the Holy Bible shall be read without comment at the opening of every public school each day. I guess they would probably put them in jail today for even expressing that. So they read the bible verses every day in the school. This was followed by a recitation of the Lord's Prayer, and finally the class would recite the Pledge of Allegiance. The court struck down the Bible reading and the practice of reciting the school prayer as a State-proscribed religious ceremony but said nothing at all about the Pledge of Allegiance. Why didn't they strike that down?

Here we have the Ninth Circuit going off on a tangent, clearly by implication contrary to the views even of the U.S. Supreme Court, which have gone too far in their hostility to religious expression. Even Justice Brennan, who I noted earlier was the leader of the activist group at the high water mark of activism, said this in that case:

For Justice Brennan, "religious exercises in the public schools present a unique problem" but "not every involvement of religion in public life violates the Establishment Clause." He warned that "[a]ny attempt to impose rigid limits upon the mention of God . . . in the classroom would be fraught with dangers." Specifically, he wrote that "[t]he reference to divinity in the revised pledge of allegiance . . . may merely recognize the historical fact that our Nation was believed to have been founded 'under God.' Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains allusions to this historical fact."

Historically, it is a fact that we believe in this country, or most Americans believe, this country was founded under God.

Then we had one of the more bizarre cases that came out of Alabama. Apparently out of pique, the Supreme Court became angered that the State of Alabama passed a law that prescribed a moment of silence or meditation before each day as school commenced. Can you imagine that? How horrible this is. It took the attention of the U.S. Su-

preme Court in *Wallace v. Jaffree*, 1985. It dealt with the constitutionality of an Alabama statute authorizing a 1-minute period of silence in public schools for "meditation or voluntary prayer."

The Supreme Court said that was unjustified and struck that down. What a ridiculous opinion that was. When I was a lawyer practicing before courts, I never said those kinds of words about courts. I took my lumps if I didn't agree with opinions, and I accepted the rulings of the court. I think we ought to be respectful. Here I am in a coequal branch, and I am an elected politician now and, I am telling you, there is no basis for that opinion.

So the Supreme Court is all confused about this. Some of the problems in the Ninth Circuit are due to their confusion. It is time for them to straighten up and figure this thing out and give us decent principles that will guide us. It is clear under Supreme Court law today that conducting a formal religious observance conflicts with the subtle rules pertaining to prayer and the religious exercise of students. Prayer was considered an overt religious exercise and that "prayer exercises in public schools carry a particular risk of indirect coercion."

But the Court, in a third case, *Lee v. Weisman*, discussed this very issue again. It took pains in the *Lee* case, which is the last of the cases I am citing here. The Court took pains to stress the confines of its holding; that is, how the holding was limited, concluding that "we do not hold that every State action implicating religion is invalid if one or a few citizens find it offensive," and that "a relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution."

Now, that is strong and important language. "A relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution." I certainly agree with that. Now, I will point out that the Ninth Circuit, oddly, failed to accept even rehearing by the full Court. Why did they do that? The Senator has expressed some ideas about why. They were not very complimentary and did not suggest it was because of high ideals that they refused to even have the full Court review this panel. But I point out that the Seventh Circuit Court of Appeals, a coequal circuit with the Ninth Circuit, already considered the pledge case, and it has found it did not establish a religion.

So, normally, when a circuit is wrestling with whether or not a case is important and whether or not there is a dispute in the law, they would much more normally ask for and allow a rehearing to occur en banc.

The Seventh Circuit, when they considered it, framed the question precisely this way: "Does 'under God' make the Pledge a prayer whose recitation violates the establishment clause

of the first amendment?" They answered that question in the negative. The Supreme Court, according to Justice O'Scannlain, has insisted that interpretations of the establishment clause must comport "with what history reveals was the contemporaneous understanding of its guarantees." "The line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers."

So we are going to interpret the first amendment to prohibit the establishment of a religion and also prohibit Congress from passing any law that would restrict the free exercise of religion. We have to ask ourselves what did it mean when they wrote it? As Judge Fernandez, who dissented on the original opinion, so eloquently points out in his dissent: Only the purist exercise in sophistry could save multiple references to our religious heritage in our national life from *Newdow II*'s—that is the case in California—axe. Of course, the Constitution explicitly mentions God—this is Justice O'Scannlain's opinion quoting Judge Fernandez—as does the Declaration of Independence, the document which marked us as a separate people, declared us independent. The Gettysburg Address, inconveniently for the majority, contains the same precise phrase—"under God"—found to constitute an Establishment Clause violation in the pledge.

After *Newdow II*, are we to suppose that, were a school to permit—not require—the recitation of the Constitution, the Declaration of Independence, or the Gettysburg Address in public schools, that, too, would violate the Constitution? Were the "Founders of the United States . . . unable to understand their own handiwork?" Were the Founders themselves unable to understand? When they put in the Constitution that we would not establish a religion, did they have any idea we were going to be striking down any references in their own Declaration of Independence to God, or in their own Constitution of which this was just a part? Of course, they didn't.

What that says is, of course, that was not what they intended. They never intended, when they passed the first amendment to the Constitution of the United States of America, that we would eliminate all references to a higher being in America.

Well, as Justice O'Scannlain notes, somewhat ingeniously indeed, that the recitation of the Declaration of Independence would seem to be a better candidate for the chopping block than the pledge, since the pledge does not require anyone to acknowledge the personal relationship with God to which the declaration speaks. So, too, with the National Anthem or our national motto, "In God We Trust."

What about our national celebration of Thanksgiving Day? It goes back to President George Washington's time

when Congress stated that there was "to be observed by acknowledgement with grateful hearts the many and signal favours of Almighty God." Congress made Thanksgiving a permanent holiday in 1941, and Christmas has been a national holiday since 1894. Are *Newdow*'s constitutional rights violated when his daughter is told not to attend school on Thanksgiving? On Christmas Day? Must school outings to Federal courts be prohibited, lest the children be unduly influenced by the dreaded intonation "God save these United States and this honorable Court."? Are the schoolchildren not to go to the Supreme Court to hear arguments because it invokes God before Court starts every day?

Justice O'Scannlain says:

A theory of the Establishment Clause that would have the effect of driving out of our public life the multiple references to the Divine that run through our laws, our rituals, and our ceremonies is no theory at all.

Of course, the Supreme Court, as I mentioned earlier, in several different cases, has directly, and by implication, affirmed the Pledge of Allegiance.

A full hearing of this case, which I am sure the Supreme Court will hear, will make clear this pledge will stand. I hope also they will take it upon themselves to deal with the confusion they have created in this inconsistent body of law.

Even Justice Brennan, that most stalwart supporter of separation of church and State, acknowledges that some official recognition of God is appropriate "if the Government is not to adopt a stilted indifference to the religious life of the people."

The decision reached in this case, I submit, does precisely that: Justice O'Scannlain says it adopts a stilted indifference to our past and present realities as a predominantly religious people.

Justice O'Scannlain goes a little further. He raises another point. Really, when it is all said and done, this opinion does not stand for neutrality in religion; this decision stands for and, in fact, favors atheism over religion. The absolute prohibition of any mention of God in our schools creates a bias against religion. The majority simply cannot credibly advance the notion that it is neutral with respect to belief versus nonbelief. It affirmatively favors nonbelief over belief. One wonders, then, does atheism become the default religion protected by the establishment clause?

We have people who object to putting in one clause in textbooks. I am not one who thinks church people ought to write the creation story or the evolution story in our textbooks. I think it would be appropriate, however, that our textbooks say that many believe the creating of life on this planet was conducted by a higher being. I do not see any problem with that. But some oppose even such a statement as that.

We have a lot of weird actions going on out there today by our courts. We

have, as I mentioned—hopefully, we do not have any left—those who believe the Constitution itself, which prescribed how the death penalty should be conducted, prohibited death penalties. We have a problem in America in our legal system. It is the greatest legal system in the world. It is a system that has protected us in extraordinary ways, but we have to have judges who show restraint and who follow the law.

I notice two judges about whom people expressed concern, both nominated by President Clinton and confirmed, both of whom I opposed, although I voted for 95 percent of President Clinton's nominees—they have on separate panels, for example, authored opinions to overturn California's three-strikes-and-you're-out law. That has been on the books for years. As soon as they get on the Federal bench, they say the U.S. Constitution says your three-strikes-and-you're-out law passed by the people of California that has helped precipitate a rapid decline in crime in California and save thousands and thousands of lives is unconstitutional.

I think these are activist opinions. I think they will be reversed. In *Andrade v. the Attorney General of California*, Judge Paez ruled a lifetime sentence for a seven-time repeat offender was cruel and unusual. Seven times, Mr. President, and that number includes only his Federal offenses. *Andrade* also had more than a few convictions in State court. While he was on probation for a 1982 conviction, he burglarized three separate residences. Still, a lifetime sentence under the three-strikes-and-you're-out rule was too much for Judge Paez. He found the statute that provided for it unconstitutional.

In *Brown v. the Attorney General of the State of California*, Judge Berzon held that a 25-year term of imprisonment for two defendants convicted of petty thefts, Ernest Bray and Richard Brown, constituted cruel and unusual punishment. The reality is each defendant deserved their 25-year term of imprisonment. Each had a laundry list of offenses on their record. Defendants Bray and Brown are the type of career criminals that California's three-strikes law attempted to keep off the streets. Bray had four separate robbery convictions. Robbery is the taking of property through force and violence. One of those robberies was a situation in which shots were fired at the victim, and one where the victim was hit and kicked, not even considered by the jury. The jury did not get to consider his other offenses—obstructing and resisting a public officer, and trespass in 1979, possession of a dangerous weapon in 1985, being under the influence of a controlled substance in 1991, and petty theft with a prior conviction while out on bail for the three-strikes offense.

Brown's prior convictions included two counts of second-degree burglary, two counts of assault with a deadly weapon, and a robbery conviction—two counts of assault with a deadly weapon

and a robbery conviction. Additionally, he had eight other convictions on his record. Judge Berzon said it was cruel and unusual to put these offenders away for this period of time.

I am glad to see my distinguished colleague from Vermont in the Chamber. I supported a judge from Vermont. He had a good name, William Sessions. He has been on the bench only a few years and he has declared that the way the Federal death penalty is conducted to be unconstitutional. I can tell you how it is conducted.

Mr. LEAHY. Mr. President, I would hope that the distinguished Senator, my good friend from Alabama, would state Judge Sessions' ruling accurately. Judge Sessions has stated he feels the death penalty is constitutional. He has a matter that has been very thoroughly ruled on in a particular case and the way it was handled in that particular case and did it in a way so that the courts of appeals can rule on it, not the least of which has been done by a number of other judges. In fact, among those judges who would rule on it, several were appointed by President Reagan and by former President Bush and the current President Bush.

I am sure if the Senator suggests there might be something political in this, it is being set up in such a way that still the ultimate decision would be decided by a majority of judges appointed by Republican Presidents.

Mr. SESSIONS. I think we should be correct. As I understand his ruling, it was not that the act was unconstitutional, Senator LEAHY is correct, and I do not think I said that, but the way it was carried out raised constitutional implications.

I will note, having been a Federal prosecutor myself for 15 years, I know Janet Reno personally set up a committee to approve any death penalty case in Federal court, and that committee was charged with the responsibility of making sure it was fairly and objectively administered.

She made the final decision on it. I know she opposed the death penalty herself personally. So I do not believe the Federal justice system of handling the death penalty is unfair.

Going further than that, in July of last year, Judge Jed Rakoff of the Federal District Court in Manhattan ruled more broadly that the Federal Death Penalty Act was unconstitutional, saying the death penalty is:

Tantamount to a foreseeable state-sponsored murder of innocent human beings.

Mr. LEAHY. Mr. President, will the Senator yield briefly for a question?

Mr. SESSIONS. I will be pleased to yield.

Mr. LEAHY. In that case, when that went on appeal to the same court that will be hearing the Sessions case, they overruled the judge the Senator referred to; is that not correct?

Mr. SESSIONS. They absolutely did. That was my next point I was going to make.

Mr. LEAHY. My point being, there are checks and balances in here.

Mr. SESSIONS. Well, the checks and balances did not work in the Ninth Circuit, as Senator REID guaranteed virtually it would when he made remarks suggesting that panel was going to override the three-judge panel.

The problem is, and the reason it is important, is these are rulings that reflect a person's personal views. A judge should not overcome the law. If he wants to go out and write letters and argue that the death penalty is unfair and should be repealed, I guess if he can do that consistent with his ethical standards, that is all right. He certainly can make reasoned remarks on it. I do not think he should use the power of his bench to strike it down.

There are many more examples of recent rulings with which most Americans would not agree. Take for example a recent ruling concerning the Ohio State motto, "With God all things are possible." The Sixth Circuit recently told Ohio its motto was unconstitutional. What about ours, "In God We Trust"?

It would take a Philadelphia lawyer to distinguish why "In God We Trust" is OK and the Ohio motto "With God all things are possible," is not. The Sixth Circuit told Ohio its motto was unconstitutional because it established a religion, and that is really weird.

There are many cases around the country where you cannot have Christmas decorations put up. We have death penalty laws being struck down. We have three-strikes-and-you're-out laws being struck down. If they violate the Constitution, that is all right; they should be stricken. If someone passes a death penalty law in a fashion that is violative of the U.S. Constitution, a Federal court—or a State court, for that matter—should strike it down on the spot. If a three-strikes-and-you're-out law is unconstitutional, it ought to be stricken. But so far as I have been able to ascertain, States are empowered to set penalties for crimes in their States. They can enhance penalties for multiple offenses, and judges can give enhanced penalties for multiple offenses.

In my view, there is no law, no basis, for us declaring that these acts are unconstitutional.

The point of all of that is to say: This is what activism is. This is what President Bush has said in his campaign he does not want. He is not asking the judges he nominates to carry out his agenda politically. He is prepared to fight it out in this Congress and with the American people. He does not want those judges conducting and carrying out their political agendas through the interpretation, misinterpretation, or the reinterpretation of the meanings of words and statutes in our Constitution. It is a very big deal.

I hope the Supreme Court will take seriously its responsibility to guide us out of this thicket it has gotten us in with regard to its confused and incon-

sistent rulings on the separation of church and state, on the observance of an issue of any kind of reference to God in public life.

I did have a church group that came and visited me. They said they were in the Supreme Court. They were very sincere, wonderful young people. They took their faith seriously and they took a moment over to the side and all huddled around and had a prayer for these United States of America and the legal system of America. The guard in the Supreme Court came along and shoed them out and said they could not be praying in the Supreme Court.

So this is the kind of example of overreaching that we hear about in our schools, in our public affairs, on our courthouse squares, and even in the opinions of Federal judges. We can do better.

We need to appoint judges who are committed to following the law. Miguel Estrada is that kind of person. That is the only thing he stands for. That is the only thing in his record he is known for; that he believes we ought not to abuse the system; that judges ought to show restraint. That is what he will do if confirmed. That is why the American Bar Association unanimously gave him the highest rating they give, which is received by only a very few nominees. That is why President Bush has asked the American people to allow him to do what he ran for office to do. He said this is what we are going to do. This is how I look at the courts and that is what we are going to try to do.

I do not see why anybody should be afraid of a judge who follows the law. What we should be afraid of is judges who believe they have a right to reinterpret the law and impose their own views on all the rest of us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The pending question is the nomination of Miguel Estrada.

Mr. LEAHY. I am sorry. I thought when I came we were having a debate on the Ninth Circuit, which I understand has now put the Pledge of Allegiance case on the fast track to the U.S. Supreme Court, which has a majority of conservative Republicans. I am sure the distinguished Senator from Alabama will be very happy with whatever way they rule on that.

In the meantime, I say to those in my State of Vermont who ask, there has been no challenge to the law in Vermont. We are not within the Ninth Circuit, and I expect children in Vermont will continue to say the pledge as we have been saying it since sometime in the 1950s, I believe, when the words "under God" were added to it.

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. LEAHY. 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. LEAHY. Mr. President, we have spent a lot of time talking about the Pledge of Allegiance, which is important to the American people, and about the Estrada nomination, something that could be settled very quickly if the White House wanted to settle the matter. They have made it very clear that they do not. In fact, they have even gone so far as to publicly reject calls from a distinguished Republican, a Senator in this body, to do so. That has been in keeping with the attitude we have seen more and more on such judicial matters by the White House. They take the attitude that the Senate is irrelevant, that we should simply do whatever they say—and sometimes do.

The Senate majority replaced their majority leader at the request of the White House, something unprecedented. And now they seem willing to also take the attitude that if they confirm someone, just do it without even asking questions about the person.

The fact is, we would probably have this debate over now if they brought forward the writings of Mr. Estrada, which he said under oath he was perfectly willing to bring forward. If it weren't for that, we would have had the hearings and be finished by now.

As I go around the country, my own State or other parts of the country, I have not had an awful lot of people come to me and say: Thank God the Senate is debating one judge.

Since President Bush took office we have confirmed 105 or 106 or 107 of his judges anyway. We are going to spend weeks debating that.

What I hear from people is: Why is there not any discussion about a possible war against Iraq? The British Parliament has had a major debate on it. The Turkish Parliament had a major debate on it. The Canadian Parliament had a major debate on it. Country after country is debating this issue.

What is the Senate, the most deliberative body in the world, the body that considers itself the leading parliamentary body in the world, what have we done?

The impression of the American people is, both Republicans and Democrats, is that the Senate does not want to discuss a war with Iraq. I guarantee that if any one of 100 Senators go home—go into any restaurant, any diner, any gas station, any grocery store in their own State, they will find that most people are asking each other if we are going to war or we are not going to war. They are not discussing whether instead of 105 judges having been confirmed so far for President Bush, it will be 106 judges. That is not what they are concerned about.

On February 26, we listened to the distinguished senior Senator from West

Virginia, Mr. BYRD, who pointed out with characteristic clarity and eloquence the President's failure to request a single dime in his fiscal year 2004 budget, which he sent to Congress recently, to finance a war with Iraq. It is almost as if the White House believes we can fight a war and somehow sprinkle fairy dust and the money will just miraculously appear to pay for it.

As I listened to the Senator's remarks, I could not help but be struck again about the cavalier and dismissive way the administration has dealt not only with our allies and friends on the issue of disarming Iraq but also with the Congress and the American people. Essentially their attitude has been: We do not need you. We do not have to tell you, but you better support us.

We have seen administration officials globe trotting, in some cases offering billions of dollars and even trade concessions to the disadvantage of American workers, to other governments, in support of a war against Iraq. They will not ask Congress for a dime to pay for the war, but they are running around the world offering billions of dollars to other countries so they will support us.

When I see the billions of dollars being promised to Turkey and everywhere else, I ask: What about the first responders at home on the front line, protecting our security? They have been promised money. The President gave a good speech in New York City about how the first responders will be prepared to respond to terrorism, and that U.S. Government will be there to support them. But it is the old "the check is in the mail."

I look at my own State of Vermont. Like the State of the distinguished Presiding Officer, it borders Canada. We have unique problems because there we have an international border. We need to do a lot more to protect our borders and to respond, but we do not have the money to do it.

I say to the distinguished Presiding Officer, if there is a terrorist attack, God forbid, against a nuclear power plant on the border between Vermont and New Hampshire, the first calls, the first 9-1-1 calls will not go to the Office of Homeland Security. They will go to the local sheriffs and the local fire departments and the local hospitals. But we are not giving them the money that was promised.

The President acknowledged when he signed the huge omnibus appropriations bill—a bill, incidentally, that was scrubbed carefully all its way through by the White House, that it did not include sufficient funds for local and State governments to protect their citizens against terrorism. That is something Senator BYRD and I and others had been saying for months. There is not enough money in there. I guess the White House thought no one would read it.

Secretary Rumsfeld was asked what is the cost of a war against Iraq? His response was that it is "unknowable."

Senator BYRD mentioned this last week, and then Deputy Secretary Wolfowitz told Congress the same thing.

No one can predict with certainty how long a war will last or precisely what it will cost, not to mention the potentially immense cost of caring for an estimated 2 million refugees and of rebuilding Iraq.

But to say we do not have any idea, that is maybe convenient, but it is totally unacceptable.

The American people should not be asked to send their sons and daughters into battle without an even rudimentary understanding of what the potential costs are, both in dollars and American lives. None of us expect the Pentagon to calculate these costs with precision, but there is no doubt that a war, and its aftermath, would cost tens if not hundreds of billions of dollars, as the President's former economic adviser predicted.

If we are going to commit American taxpayers to a war costing hundreds of billions of dollars, let us say so. If we are going to promise American taxpayers that there will be first responders to protect them in their local communities, let us also be honest and say that we provided the money.

In fact, the cost of a war, at least one in which Saddam Hussein's army is quickly defeated as the administration optimistically predicts, has been estimated by the administration. So what was to prevent the President from at least requesting the best-case scenario, somewhere between \$60 billion and \$95 billion at last count, in his fiscal year 2004 budget?

I think there is only one explanation. The President does not want to ask the American people whether—in the midst of a recession with no end in sight, with millions of jobs already lost, more jobs lost during this President's term than that of any other President in my lifetime, and more Americans becoming unemployed every week—he did not want to ask the American people whether we can afford to spend tens or hundreds of billions of dollars on a war that fully half the American people do not support.

We did this during Vietnam. Nobody wanted to say what it cost because they knew what the reaction would be.

I want to see Saddam Hussein disarmed as much as anyone. His despotic reign and his obsession with acquiring weapons of mass destruction while his people suffer has been disastrous for his country and for Iraq's neighbors.

But, if we look back over the past several months, this administration's handling of the Iraq issue has been notable for its secrecy, its doublespeak, and its arrogance. One day they are dismissing the United Nations as irrelevant. The next day they are making either threats or billion-dollar deals with allies or members of the Security Council to win their support for a resolution authorizing the use of force.

Depending upon who the messenger is, or whether they are speaking publicly or behind closed doors, the President first said the goal was regime change, then disarmament, and now both, but that one cannot occur without the other.

The President has told the American people he has not yet made a decision to attack Iraq, but his advisers are telling the rest of the world that the decision has been made, and the Security Council of the United Nations doesn't matter because we are going ahead, no matter what. This is the administration's attitude, even while some of our closest allies work to explore alternative options that could avoid war.

The administration's rhetoric and actions have damaged key alliances and weakened our ability to work with allies and friends, not only to disarm Iraq but to solve many other global problems. They have recklessly squandered the reservoir of good will our Nation had around the world in the aftermath of September 11. Never in generations has the world been as united behind the United States as it was after September 11. In only one year, we have squandered that support.

How are we going to pay for this war? Apparently not by requesting the funds in the budget. They have not done that. Again, as Senator BYRD pointed out, the amount of money requested in the budget, to plan and carry out a war, and for its aftermath, is zero.

It is reminiscent of Afghanistan, the country the President said he is committed to for as long as it takes to keep it from again becoming a haven for terrorists. The amount of money requested by the administration last year was zero. It is like promising the money for first responders in Texas or Vermont or New Hampshire or anywhere else, and then leaving it out of the budget.

So how will they do? By paying for it with red ink, cranking up the printing presses and adding to the deficit. This President inherited the largest surplus of any President in history. He is now building up the largest deficit of any President in history: Another hundred billion, what is the difference? That is the way they talk.

Yet these are the same people who were giving great speeches just a few years ago about why we need a constitutional amendment to balance the budget. They ought to be darned glad they didn't get what they wished for.

So, a balanced budget doesn't make any difference, the deficit doesn't make any difference, and don't look behind the curtain because we are not going to tell you how much it is going to. Let us hope the President's advisers are right and the war is over in a matter of weeks. Sometimes wars do end quickly.

I remember my son, a young marine, was called up in Desert Storm. Like his fellow marines, this young lance corporal answered, "Aye, aye," and set off

with his fellow marines. The war ended very quickly. He was not in harm's way, unlike others who were.

I am proud of him for volunteering to go. I am proud of all America's men and women who will answer the Commander in Chief's call to go. But I believe we ought at least know what we are asking them to do and why.

Let us hope the war is over in a matter of weeks. Let us hope the Iraqi Army does crumble like a house of cards. Let us hope Saddam Hussein does not blow up his oil wells and refineries. Let us hope he does not use his chemical or biological weapons. Let us hope our troops do not become bogged down in hand-to-hand urban combat, and that there will be few Iraqi civilians killed. Let us hope that predictions of massive unrest throughout the Muslim world in protest at the U.S. invasion of Iraq, and increases in the number of terrorist attacks against Americans, will be proven groundless. Let us hope the ethnic and religious factions within Iraq, some of which hate each other, will put aside their differences and join together to build the representative, democratic government the President has promised. And let us hope the President's grand vision, about which we have been given no details, to make the entire Middle East democratic, will be off to a successful start. Let us hope so.

But let us also understand it is possible that any one of these dire predictions could come true and any one of them could be disastrous for our soldiers, for innocent civilians, for the U.S. economy, for our national interests abroad, for the Middle East, for the world, and for the fight against terrorism.

Wars are unpredictable. The real costs of a war against Iraq may not be known until long after this President's term is over.

Who knew, back in 1991, that thousands of gulf war veterans would suffer from unexplained, debilitating medical problems years after the war ended and that many would never be able to work again? Who can say this war will not be the spark that ignites more terrorism against the United States—perhaps not this year or even next year, but in 3 years or 4 years? By that time, it will be too late.

We have to think about these things even if the President would rather not talk about them. We have a duty to ask what are the administration's real motivations for this war. Is it to get rid of weapons of mass destruction from Iraq? If so, why not give the U.N. inspectors the time they need and a plan for enforcing disarmament? Is it to promote democracy in Iraq? If so, then why not begin with Kuwait, which we liberated a decade ago but which even today remains a monarchy, where women still are not allowed to vote?

We have a duty to ask these questions, and to warn the American people of the risks, even if the President will not. And we must do everything we can

to be sure that if war comes, it is supported by the broadest possible coalition.

So I commend the senior Senator from West Virginia for his remarks last week, and for the other statements he has made on this issue. He has asked the questions that need to be asked. I hope the administration, finally, will give the answers before the country goes to war, and not after.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

TEXAS INDEPENDENCE DAY

Mrs. HUTCHISON. Mr. President, March 2 is Texas Independence Day. Every year I have been in the Senate, I have carried on the tradition, started by Senator John Tower, of reading on or about March 2—Texas Independence Day—William Barret Travis's letter from the Alamo.

I just want to give a little background because, of course, Texas is the only State that came into our Nation as a nation. Texas was a republic for 10 years, having fought very hard for its independence from Mexico.

In fact, William Barret Travis's letter was dated February 24, 1836. His letter was an appeal for support because he only had 184 men in the Alamo, in the garrison, and, of course, he was vastly outnumbered by the Mexican Army. So he was asking for help. He was pleading for help.

All of this was happening around the time that the duly elected members of the Declaration of Independence Congress were coming to Washington-on-the-Brazos to sign the Texas Declaration of Independence from Mexico.

It was a trying time between February and April of 1836 for these Texans who were trying to gain their independence and who eventually became a part of America.

It was at the Alamo, in San Antonio, TX—Tejas at the time—that 184 Texas rebels, led by William Barret Travis, made their stand against Santa Anna's vastly superior Mexican Army.

These Texas patriots did not even have uniforms. They barely had arms. In fact, they only had about \$1,000 to fund this entire army. So they did not waste any money on uniforms. They needed arms, and that is where they spent their money.

On the second day of the siege, February 24, 1836, Travis called for reinforcements with this heroic message:

Fellow citizens and compatriots: I am besieged by a thousand or more of the Mexicans under Santa Anna—I have sustained a continual bombardment and cannonade for 24 hours and have not lost a man—the enemy has demanded a surrender at discretion, otherwise, the garrison are to be put to the sword, if the fort is taken—I have answered the demands with a cannon shot, and our flag still waves proudly from the wall—I shall never surrender or retreat.

Then, I call on you in the name of liberty, of patriotism and of everything dear to the American character, to come to our aid, with all dispatch. The enemy is receiving reinforcements daily and will no doubt increase

to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due to his own honor and that of his country—Victory or Death.

WILLIAM BARRET TRAVIS,
Lt. Col., Commander.

This went out on February 24, 1836. Those 184 brave men held the Alamo, with no reinforcements, until March the 6th of 1836. They held all that time against exactly what William Barret Travis thought would happen. Thousands of Mexicans in the army were gathering steam to attack the Alamo. He never got reinforcements.

The Alamo fell on March 6. Just four days earlier, the men who were elected to the convention signed the Texas Declaration of Independence. My great-great-grandfather was one of those, elected from Nacogdoches County. He was alcalde of Nacogdoches County at the time. He went, along with Thomas Rusk, the first man to hold the seat that I now hold in the Senate, to Washington-on-the-Brazos, and they both signed the Texas Declaration of Independence.

It was during that time that women and children in the Nacogdoches area were being besieged by Indians, and they were concerned that the Mexican Army might also be coming there. So they fled in what is called the Runaway Scrape toward Louisiana. All four of my great-great-grandfather's children died in the Runaway Scrape. All four of his living children died. And yet those brave settlers went back to Nacogdoches and raised nine more children. So they were the kind of stock that settled our State and our country.

It was April 21 that Santa Anna finally was defeated at the battle of San Jacinto, led by Gen. Sam Houston, who was the commander there. So the time period between February and April 21 was key in the Texas independence and the beginning of the new republic. Texas was a republic, an independent nation, for 10 years before they joined the United States as a State in the United States.

So I always try to remember the brave people. Obviously, in my family we have a lot of stories and a lot of lore about that time because my mother grew up in Nacogdoches, and it is the oldest town in Texas, and it is one that is rich in our Texas history and is very much a part of my family and so many of the generations who came before us to settle our great State.

So I am going to continue the tradition as long as I am in the Senate because I think it is worthy of note that we had our own fight for independence and that we have such a unique character in our State.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator from Texas for her remarks. I think, indeed, they were very interesting. I had no idea about her family lineage and her

interest in the particular day. I salute her for her comments on the floor.

FRAUD AND MANIPULATION IN THE WESTERN
ENERGY MARKET

Mr. President, I want to take a few minutes, if I may, to make some informal comments on something that has happened today. Today was the deadline for California to submit to the Federal Energy Regulatory Commission the evidence of fraud and manipulation in the western energy market after a 100-day discovery period.

In fact, about 1,000 pages of evidence were submitted to the Commission. The problem is that evidence is not released to the public. This is a real problem.

I serve on the Energy Committee, and have served there since the crisis in 2000 and 2001 in California. The Energy Committee provides oversight to the Federal Energy Regulatory Commission. The Federal Power Act mandates that the FERC must ensure that rates for power are just and reasonable throughout the United States.

It is very difficult to know whether the Federal Energy Regulatory Commission is in fact ensuring that rates are just and reasonable if one can never view the evidence.

I happen to believe that the FERC has greatly improved. Patrick Wood, Bill Massey, Nora Brownell have been very strong in making change. That change is welcomed. It was on May 6 of last year that the major change began. It was then that the FERC ran on its Web site internal memos detailing some of the schemes Enron used in defrauding the marketplace. Get Shorty, Ricochet, Death Star, all became known to the general public directly following the posting of these memos. Since that time, several people have been indicted and pled guilty to fraud.

Additionally, more recently, one company, Reliant, was before the Commission. The Commission put on their Web site the transcript of tape recordings between Reliant managers. Those transcripts indicated instances where Reliant's plant manager and operations manager talked about holding power offline in California to drive prices up.

The operations manager—and this is not a direct quote, it is a paraphrase—said, in so many words: We are going to be manipulating the market tomorrow. So we are going to close down one plant at least for a day and perhaps more.

And the plant manager said: Oh, yes.

Well, that was sort of a dead bang admission of market manipulation. FERC, much to their credit, at the very least, fined Reliant \$13.8 million. But they could have sent a much stronger message to the entire energy sector by withdrawing Reliant's ability to sell power at market-based rates. That would have sent a clear and definitive message, yet instead FERC gave Reliant a slap on the wrist.

In California, we have a real problem. One year, the entire cost of energy for the entire State was \$7 billion. The

next year, it was \$28 billion; in other words, a 400-percent increase in 1 year's time of the cost of energy. The following year, it was \$27 billion.

I remember when John Bryson, the CEO of Southern California Edison, told me that when they were forced to divest themselves of their plants, the energy generator that came in and bought one of their plants, to which they were one day selling energy at \$30 a megawatt-hour, once it went to the other generator, the other generator charged \$300 a megawatt-hour. When I heard that, I knew it was a real danger signal that something had really gone wrong. Well, we are a long way down the pike since then.

I ask unanimous consent to print in the RECORD a letter I wrote this morning to the chairman of FERC, Pat Wood, in which I followed up on an earlier letter of February 6, to which I have not had a response, asking the FERC to lift the protective order that currently prevents the public from learning about evidence of fraud and manipulation in the western energy marketplace. I point out that now that the 100-day discovery period has ended, "I write to reiterate this request and ask the commission to make all evidence public."

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

U.S. SENATE,

Washington, DC, March 3, 2003.

Hon. PAT WOOD,

Chairman, Federal Energy Regulatory Commission, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to follow up on my letter of February 6, 2003 to ask the Federal Energy Regulatory Commission (FERC) to immediately lift the "Protective Order" that currently prevents the public from learning about evidence of fraud and manipulation in the Western Energy Market. Now that this 100-day discovery period has ended, I am writing to reiterate my request and to ask the Commission to make all evidence public—even information FERC has obtained itself.

I would also appreciate the opportunity to review the filing submitted today by California parties detailing new evidence of fraud and manipulation in the Western Energy Market. As a member of the Senate Energy Committee and the senior Senator from California, I believe I have a duty and responsibility to have a full working knowledge of the evidence submitted to FERC.

I also believe that the evidence collected by FERC should not remain confidential. Since most of the information is over two years old, it no longer has any proprietary value. The widespread nature of abuse of the Western Energy Markets and its resulting economic damage on families and businesses require the Commission to allow the public to immediately review all evidence obtained by FERC.

As I stated in my letter last month, I also believe FERC must carefully review all the evidence presented by the California parties and hold hearings if necessary. How can the Commission attempt to remedy the harm done to families and businesses during the energy crisis if FERC cannot determine the extent of abuse in the Western market and its effect on energy prices and supplies?

Thank you for your consideration of this request and your continued attention to energy problems on the West Coast.

Sincerely yours,

DIANNE FEINSTEIN.

Mrs. FEINSTEIN. I also indicate that as the senior Senator from California and as a member of the Energy Committee, I have a specific obligation to render oversight to see that FERC is doing its job. How can anyone possibly render due diligence and oversight if they don't know what is being presented nor have access to what is being presented to the Commission on which they make their judgments?

I have spoken four times now about Miguel Estrada and the general state of the nominations process. I regret where these weeks have taken us, frankly. I hope we can come together to overcome what is increasingly separating the two sides of this great body, marring judgments and actions relating to the Judiciary Committee's hearing process and that process through which we advise and consent on nominees by the President to Federal judgeships.

In order to understand this filibuster over Miguel Estrada, we also have to understand what has led us to this point.

I would like to speak specifically to the nominations debate because this is a key area where the administration has, with few exceptions, acted in many ways as if the Senate simply doesn't matter. If this debate were only about whether or not we should vote on Miguel Estrada, that would be enough. Make no mistake about it.

There are serious questions about this nominee that we can't answer without more information, information that this nominee and the administration have essentially refused to provide.

My colleagues and I have outlined these concerns over and over again over the past few weeks. I have pointed out that the District of Columbia Circuit is a very critical circuit. Every Member of this body knows that and accepts it. It is a circuit that presides over many of the areas of appeal that are of extraordinary concern because they involve laws we have passed in areas such as worker rights, OSHA, Superfund, wetlands, all environmental concerns, and so on and so forth. It has assumed a particular role, if you will, because of the fact that two of President Clinton's nominees to this circuit never had a committee vote—one did not even have a hearing—this is a different kind of filibuster. So there are a number of vacancies on this circuit. And the circuit as it stands is equally divided, Republicans and Democrats equally divided. Therefore, who breaks this equal division is really important because it will swing the court one way or another.

Into this mix comes a very young man, 41 years old. When his nomination came over, it came over with substantial concerns. The Hispanic delega-

tion of the House had sat down and met with Mr. Estrada for an hour and a half. They sent out alerts that they did not believe this was a nominee who really represented the concerns of Hispanic citizens. That in itself is not dispositive. I am the first one to admit that.

This is a young man. He spent a lot of time on his education. It is not necessarily a requirement that someone serve on a number of civic groups. But it was a point.

Immediately, the Hispanic-American community indicated that there was a great and serious split over this nominee. That in itself is not, again, dispositive.

Then we note that he had never been a professor. He had never been a judge. He has no writings and no speeches. So when one turned to look for the due diligence, there was very little to see. We have none of his work product or other memos that would give us an idea of what kind of thinker he is or what kind of judge he would be. And he refused to answer in the public hearing a number of simple, basic questions that go to the heart of whether he could be a truly impartial judge and set aside his advocacy. I mentioned on the floor of the Senate that my office had spoken with Professor Paul Bender, who had been his direct supervisor in the Solicitor General's Office. Mr. Bender told my staff, "Well, I could not give him certain assignments because I could not be assured that he was impartial."

This, again, in itself is not dispositive, but it is a danger signal.

I talked to individuals who had been interviewed by him in a screening capacity when he was a clerk for Justice Kennedy, and each I talked to indicated that in fact there was a kind of litmus test and that they were told they were too liberal.

Again, that is not dispositive. But what all this points out is that we needed—some of us—to find out whether this was a man who could put aside his advocacy, his strong feelings about certain issues, and follow the law with impartial and wise judgments.

I came to the conclusion—and some have faulted me for it—after listening to Jeffrey Sutton, that here was a man who had strong views and beliefs, but who was willing to be very fulsome in his answers to the committee, very forthright in his views, and sent a very clear signal—at least to me—that he would, in fact, separate his personal views and the law that he would be charged and constitutionally pledged to uphold. So I voted for him.

There has been substantial dismay expressed by many of my constituents in California, and I heard them loud and clear when they picketed virtually every one of my offices. Nonetheless, I made that judgment after listening in a public hearing to questions and answers and, at least for myself, came to a conclusion. Only history will tell whether I am right or wrong.

Then, several weeks ago, in a markup in committee, I think another aspect of this situation that perhaps was caused by the strain and the raw nerve endings in the Senate came upon the scene.

The Judiciary Committee rules contain a clause providing "on the request of any member, a nomination or a bill on the agenda of a committee will be held over until the next meeting of the committee, or for one week, whichever occurs later." That appears in the rules of the committee.

I ask unanimous consent that those rules be printed in the RECORD, and I particularly call attention to the rule I have just quoted.

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

RULES OF THE COMMITTEE ON THE JUDICIARY

I. MEETINGS OF THE COMMITTEE

1. Meetings may be called by the Chairman as he may deem necessary on 3 days' notice or in the alternative with the consent of the Ranking Minority Member or pursuant to the provision of Sec. 133(a) of the Legislative Reorganization Act of 1946, as amended.

2. Each witness who is to appear before the Committee or any Subcommittee shall file with the Committee, at least 48 hours in advance of the hearing, a written statement of his testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

3. On the request of any member, a nomination or bill on the agenda of the Committee will be held over until the next meeting of the Committee or for one week, whichever occurs later.

II. QUORUMS

1. Nine members shall constitute a quorum of the Committee when reporting a bill or nomination; provided that proxies shall not be counted in making a quorum.

2. For the purpose of taking sworn testimony, a quorum of the Committee and each Subcommittee thereof, now or hereafter appointed, shall consist of one Senator.

III. PROXIES

When a record vote is taken in the Committee or any bill, resolution, amendment, or any other question, a quorum being present, a member who is unable to attend the meeting may submit his vote by proxy, in writing or by telephone, or through personal instructions. A proxy must be specific with respect to the matters it addresses.

IV. BRINGING A MATTER TO A VOTE

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.

V. SUBCOMMITTEES

1. Any member of the Committee may sit with any Subcommittee during its hearings or any other meeting, but shall not have the authority to vote on any matter before the Subcommittee unless he is a member of such Subcommittee.

2. Subcommittees shall be considered *de novo* whenever there is a change in the Subcommittee chairmanship, and seniority on the particular Subcommittee shall not necessarily apply.

3. Except for matters retained at the full Committee, matters shall be referred to the

appropriate Subcommittee or Subcommittees by the Chairman, except as agreed by a majority vote of the Committee or by the agreement of the Chairman and the Ranking Minority Member.

Mrs. FEINSTEIN. Mr. President, this rule is designed to protect Members who need more time to examine an issue, to discuss it with their colleagues, or to prepare amendments. A very relevant factor.

My own office was alerted to the presence of Mr. Roberts and of Mrs. Cook on their hearing agenda the day before the actual hearing. In other words, we learned at 4:46 p.m., Tuesday, January 28, that the next day they would be up for hearing along with Mr. Sutton. I ask unanimous consent that that e-mail be printed in the RECORD.

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

TENTATIVE NOMINATIONS WITNESS LIST

TENTATIVE AGENDA—SENATE JUDICIARY COMMITTEE HEARING ON JUDICIAL NOMINATIONS, WEDNESDAY, JANUARY 29, 2003 AT 9:30 A.M., DIRKSEN 226

Panel I

The Honorable Dianne Feinstein, United States Senator (D-CA).

The Honorable Mike DeWine, United States Senator (R-OH).

The Honorable John Cornyn, United States Senator (R-TX).

The Honorable John Warner, United States Senator (R-VA).

The Honorable Kay Bailey Hutchison, United States Senator (R-TX).

The Honorable George Voinovich, United States Senator (R-OH).

Panel II

Deborah Cook to be U.S. Court of Appeals Judge for the Sixth Circuit.

John Roberts to be U.S. Court of Appeals Judge for the D.C. Circuit.

Jeffrey Sutton to be U.S. Court of Appeals Judge for the Sixth Circuit.

Panel III

John Adams to be U.S. District Court Judge for the Northern District of Ohio.

Robert Junell to be U.S. District Court Judge for the Western District of Texas.

S. James Otero to be U.S. District Court Judge for the Central District of California.

Mrs. FEINSTEIN. Now, for those of us on this side, that notice—or lack of it—presents a very real problem. Now we knew that Mr. Sutton, Mrs. Cook, and Mr. Roberts had been pending for some time. But the way things actually work is that the real due diligence is done in preparation for the hearing—it is done when the notice comes out. So we truly need time. And I believe the time to study and do our individual due diligence on each nominee would ease a lot of the raw nerve endings and scar tissue, which is now very evident on this committee.

Because it is the chairman who schedules matters for a vote, it is inevitably members of the minority party who most often need this extra time. As a result, this holdover rule is a rule that is viewed as a protection of minority rights in the Judiciary Committee.

After all, a chairman does not need to hold over a bill. If he doesn't want

the committee to consider an issue, he can simply refuse to add the issue to the agenda, or he can pull it off the agenda, if necessary. Many Clinton nominees suffered this fate, and Members have made that clear, I think, time after time in the past couple of weeks.

In any event, this rule has always been interpreted to mean that if a Senator asked for a matter to be held over, the earliest it would come up again was in 1 week. That week comprises 7 days from the meeting at which the rule is invoked.

Now, we have an exchange from 24 years ago between Senators Thurmond and KENNEDY about this rule. I want to read from the transcript of that Judiciary Committee meeting that occurred on January 24, 1979. Let me quote from Senator Thurmond:

There is one other matter. We have a custom, I guess since the committee was founded, that any Senator can carry over any matter for 1 week, any nomination for 1 week. I assume there is no objection to continuing that.

Chairman Kennedy: I think that is a reasonable request. I think that if it is on a Tuesday to a Tuesday—why don't we just have it on a Tuesday to a Tuesday, so it is 7 days?

Seven days, Mr. President. Now, in my 10 years on the Judiciary Committee, this rule has always been interpreted to mean 7 days. Any matter held over must be held over for 7 days, or until the next markup, whichever occurs later. Obviously, there have been many occasions where a chairman of a committee would have preferred to schedule another markup immediately to move a nominee or a bill forward. After all, a chairman does not schedule a matter for consideration unless he or she is ready to move forward. But regardless of the will of the chairman to move more quickly, there has always been a recognition that rules are rules, and this one has always been followed—until this year.

At the Judiciary Committee markup on Miguel Estrada several weeks ago, the chairman of the committee attempted to interpret the 1-week rule as allowing an issue to be held over for just 6 days rather than 7. Essentially, he decided to interpret 1 week as being 6 days.

Now, before I go into this further, let me say that Senator HATCH is one of my dearest friends in the Senate. He is a fair chairman. I have watched him for a long time. We have worked together on many important issues for the past 10 years. I hold him in the very highest regard. Even on the issue of judicial nominations, I know he did his very best in a very difficult position over the years, when President Clinton was President, to balance the strong will of many of his own caucus against his desire to be fair to President Clinton's judicial nominees, and I believe that very strongly.

If anything, this is an indication of how raw nerve endings really are. That is all at this point in time.

I certainly understand how any chairman might be frustrated by some of us and by perhaps all of us who might attempt to thwart his timetable. But this frustration, again, should not be allowed to manifest itself in circumvention of a clear, defined, and decades-old committee rule. If we allow 1 week to become 6 days, it becomes an hour tomorrow, maybe cloture only requires 20 rather than 60 votes or 40 percent constitute a majority. This is a bit of an exaggeration.

As a matter of fact, it is a major exaggeration, but the Senate and its committees have rules for a reason, and we really cannot function if we do not follow them.

When this 6-day week concept was verbalized, our ranking member, Senator LEAHY, made it clear that 6 days is not a week. The minority would allow the rule to be waived and a markup to occur in 6 days as a matter of cooperation. And so we waived the rule, partially to avoid a confrontation over this interpretation of the longstanding 7-day rule. But although we avoided a crisis that week, the 6-day concept was sort of a foreshadowing of what now seems to be increasingly a plan to ignore committee rules and move forward over the objections of the minority, and people feel very strongly about that.

Last week, we saw this plan come to fruition as two nominees were moved out of the Judiciary Committee over the strong objections of members who wished to continue debate, and despite the clear invocation of a decades-old rule, protecting the right of the minority to continue to debate until at least one of their own agrees it is time to vote.

Senator DASCHLE spoke on this issue last week, and I want to expand briefly on his comments. The judiciary rule in question contains the following language:

The chairman shall entertain a nondebatable motion to bring a matter before the committee to a vote. If there is objection to bringing 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 10 votes in the affirmative, one of which must be cast by the minority.

What does this rule mean? Over the last few decades, it has clearly meant that unless at least one member of the minority agrees to cut off debate and move straight to a vote, no vote can occur. This is what happened and what came up last Thursday.

This is one of the only protections the minority has in our committee. Without it, there could conceivably never be a debate at all. A chairman could convene a markup, demand a vote, and the entire process would take 2 minutes. That is one of the reasons we feel so strongly about this particular rule. We believe this is not how the Judiciary Committee should function, and it is contrary to the rules of the committee.

As I understand it, this rule was first instituted in 1979, again, and it has been followed ever since by all of our chairmen.

I believe only two committees have something like it—Finance and Judiciary. The reason for it, as I understand it, goes back to Senator KENNEDY's days as chair, when it was determined they didn't want to be like other committees, where with Appropriations you will often have a committee in the majority just go off on its own, mark up something, and everybody is forced to accept it.

Let me give you an instance.

During the markup of Bill Lann Lee to be Assistant Attorney General for the Civil Rights Division, there was some fear on our side that Republicans who had the votes to defeat the nomination would move directly to a vote and prevent any debate on the issue at the markup. Democrats, on the other hand, wanted the chance to explain their position and maybe even change some minds on the other side.

During that markup, there was significant discussion about what rule IV, the rule about cutting off debate, really means. At one point, it is interesting to note, Chairman Hatch himself commented that:

At the appropriate time, I will move to proceed to a vote on the Lee nomination. I assume there will be no objection. It seems to me that he deserves a vote. People deserve to know where we stand on this issue. Then we will, pursuant to rule IV, vote on whether to bring the Lee nomination to a vote. In order to vote on the nomination, we need at least one Democrat to vote to do so.

This is precisely what we are discussing, Mr. President. In order to vote on the nomination, we need at least one Democrat to do so.

Last week, we did not have such a vote. No Democrat was prepared to cut off debate. I know this because it was discussed ahead of time. Even though Senator KENNEDY, who has substantial seniority and was chairman at the time the rule was put forward in 1979, objected and informed the chairman that no Democrat was ready to stop debating, the chairman moved ahead anyway.

I had an opportunity to speak to the chairman after this hearing, as a matter of fact, in the garage of the Hart Office Building. I think he has a very good understanding of the sensitivities and the nerve endings that are scratched raw right at this present time. It is my hope the chairman will take steps so we can restore to the committee the consideration that has always been extended.

Let me say something about Chairman HATCH. I understand how things can get to one in this committee, and I understand on both sides how—and the Chair is smiling—how we can be extraordinarily difficult to preside over. I would never make an adverse personal comment about this chairman because I respect him, I like him, he is a friend, we work together. I just want to see the two sides come together, and I

want to see this stop. I want to give the assurance, at least from this Senator, that what I want is ample time to do my due diligence on a given nominee.

Very often letters do not come in until almost the date of hearing. As the hearing date grows close, it seems people begin to know that something is happening. But if you get the official notice for a hearing the day before—and in this case at 4:46 p.m. the day before—for three appellate court nominees, it is extraordinarily difficult.

Mr. LEAHY. Mr. President, will the Senator yield for a question?

Mrs. FEINSTEIN. Yes, I will.

(Mr. SMITH assumed the chair.)

Mr. LEAHY. Mr. President, I have listened to the comments of the distinguished Senator from California. I strongly compliment her for what she has been saying. Is it not a fact, Mr. President, I ask my friend from California, that simply because a Senator wishes more time to debate a particular nominee that does not mean that Senator is going to vote against the nominee; is that not correct?

Mrs. FEINSTEIN. Well, the Senator is correct.

Mr. LEAHY. I mean, that might be.

Mrs. FEINSTEIN. That is correct.

Mr. LEAHY. If the Senator would yield further for another question, was it not made clear during the markup that she was speaking about, the executive meeting she was speaking about, that it was stated at that meeting there was very clearly an objection to going forward by at least a couple of Senators, and because of that objection rule IV would fall into place, which says debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 10 votes in the affirmative, one of which must be cast by the minority? So rule IV would apply such an objection being made, unless there were 10 votes to cut off the debate, with one of those votes coming from the minority; is that not correct?

Mrs. FEINSTEIN. I say through the Chair to the distinguished ranking member, yes, that is correct. I have the rule before me, and that is what it says. The Senator is correct that someone objected, yes.

Mr. LEAHY. I ask my friend from California, and I say this because she has laid out this debate so well and the history of it so well, in this case was it not a fact there were not 10 votes, with one of those 10 votes being the minority, to cut off debate?

Mrs. FEINSTEIN. Through the Chair to the ranking member, yes, that is correct.

Mr. LEAHY. Mr. President, I ask again, through the Chair, to my friend from California, is it not a fact that the chairman then, notwithstanding the fact that there has not been a proper vote to cut off debate, went ahead and held the vote just the same?

Mrs. FEINSTEIN. Through the Chair to the ranking member, that is correct.

Mr. LEAHY. I thank the Chair.

Mrs. FEINSTEIN. I do not take any pleasure in this. When I became a Member of this body, I ran as an independent voice, and I want to be that way. I want to work with both sides, and I have tried to do that. I think we are at a point, though, where some action has to be taken to restore the consideration that has usually been offered to members of this committee, that when they have a problem, a little more time is provided.

I believe very strongly—I have never used my blue slip. I have said I would never use my blue slip prior to a hearing; that I believe everybody is entitled to a hearing, and then we should vote the individual up or down, and that is my view. I do not push my view on anybody else, but that is how I decided I was going to handle my spot on this committee. But if the minority gets rolled, we go into a defensive posture and everybody is compelled then to unify and hold together. I think my colleagues see a lot of this in this filibuster.

I am hopeful in the future there can be a precise time when an official notice is sent out prior to the hearing being scheduled, so that every member of this committee has an opportunity to do their due diligence.

It is interesting to note that the votes in the committee—and I have them. On Mrs. Cook, there were 12 yes, two nays and five present. The present, or pass, votes submitted by the ranking member, myself, Senators FEINGOLD, DURBIN and SCHUMER, were really, I think, on this point, that we did not have an ample opportunity to do our due diligence and to ask the questions we needed to ask.

On Mr. Roberts, there were 13 yes, two nays and two present, Senator LEAHY and Senator FEINGOLD, which probably came from the same venue. In other words, they did not feel they had sufficient information to vote.

So I am hopeful that in the future we would be able to settle some of these issues in the committee and just bend over backwards. I remember the day when if a Member had a problem with a judge who had been recommended to the President by a specific Senator, that Member picked up the phone and called that Senator and said: I just want you to know, I have these concerns, and there was this kind of convivial relationship. That is all but gone now.

So the process is extraordinarily formal now, and the formality is carried out, for the most part, in the public hearing. So having notice to that public hearing becomes really all important.

I have pretty much summed up my position and my hope on this. I see the distinguished Senator from Alabama on his feet so I yield the floor.

Mr. SESSIONS. Mr. President, I wanted the Senator to finish, so I thank the Chair. Graceful in her remarks, I think nerves are frayed, and

perhaps the senior Senator from California can play a role in bringing some things back.

The Senator talked about collegiality, and some of us were very disappointed that Strom Thurmond's chief judiciary counsel was virtually blocked last year. We finally got it through at the very last minute. So a lot of things have happened. There clearly was a change in the ground rules after Members on the other side asserted that Senator HATCH did not move nominees fast enough for President Clinton and that, of course, we should not filibuster and those sort of things. Then after the election, the ground rules changed and the obstruction of nominees President Bush has sent forward has reached a much higher level. I think no one can doubt that.

So we are frustrated also. I do believe we should have more collegiality in the committee, and I believe we can do better.

One thing I would ask the Senator, without yielding the floor, I would suggest that on the Cook and Roberts matters, the Senator did indicate they had been pending virtually 2 years, well over a year and a half. No hearings had been held on them, but there had been 2 weeks before this markup, or the hearing—2 weeks before they had been noticed, so we put it off another 2 weeks. Perhaps the exact time of the hearing or the exact nature of what the hearing was going to be may not have been given to the Senator, but I believe after the first request the Senator made for a delay, 2 weeks did transpire. I think that would have given people time to be prepared.

Mrs. FEINSTEIN. May I respond to that?

Mr. SESSIONS. I yield for a question or a comment.

Mrs. FEINSTEIN. Through the Chair, to answer the distinguished Senator from Alabama, I asked my counsels when did they first know, and they said, well, informally there was discussion, but the notice—and I said, well, get me a copy of the notice then. I want to see the notice. And it was 4:58 the day before.

That is the problem. I do not know exactly how all the counsels work, but I can tell the Senator that on our side time is important. Giving a little bit of time, I think, could go a very long way to solving the problem we are in, officially, so there are no excuses then. The official notice goes out. Who is on the calendar occurs a substantial period before the hearing so we have time to do what we need to do, particularly when I think there were seven judges on this particular calendar, three of them appellate judges, meaning it is a very big and heavy calendar on which to do your work.

Mr. SESSIONS. I appreciate the comments of the Senator from California. Hopefully, we can do something better.

This side does not intend to be victimized by a ratcheting up, substantially, of the process of confirmation

that did not occur when President Clinton was President. This is what has caused the problem.

I note these nominees. An absolutely superb nominee, Justice Cook, served on the Supreme Court of Ohio. As Senator HATCH has noted so often, Roberts is considered one of the top two appellate lawyers in America, an absolute superb candidate, with 39 arguments before the Supreme Court.

They were denied for over a year, almost 2 years, even a hearing when the Democrats controlled the committee. That is galling. Miguel Estrada was given a hearing a year and a half afterwards, the only one actually given a hearing. But he was not moved forward out of committee.

This is an odd thing to have a concern about frayed nerves when the ground rules were changed. After President Bush was elected, three professors went to the Democratic senatorial conference: Lawrence Tribe, Cas Sunstein, and Marsha Greenburger. They were quoted in the New York Times as saying: We want to change the ground rules. Obviously, one of them is that they did not conduct hearings. Some superb nominees never even had hearings.

Also not mentioned at the time because the Democrats had the majority, was the filibuster. This is the first time, insofar as I know, in the history of this country we have had a filibuster for a district judge or circuit judge. It is not as if Mr. Estrada had any serious problems. There is no ethical problem with this wonderful nominee. He was rated unanimously well qualified by the American Bar Association. He was at the top of his class.

Regarding his experience, he clerked for a Second Circuit judge. The position he would hold, if confirmed, is a sister circuit, the DC Circuit Court of Appeals. DC does handle some national issues and issues with which the Justice Department deals. He served in the Justice Department's Solicitor General's Office. In that position he prepared briefs and made arguments before the courts—often, I am sure, before the DC Circuit Court of Appeals. So he has an intimate connection with that.

Under Rudy Guiliani, he worked in the U.S. Attorney's Office of New York, considered one of the most prestigious offices—at least those in the Southern District of New York think it is the finest. It is competitive. He handled appellate work for them. To the extent to which this nominee has experience with appellate work, it is extraordinary.

I believe there is no justifiable basis for blocking his nomination. I know a Senator earlier expressed concern that we were somehow blocking an ability to take up other matters before the Senate. I would love to move forward. The way we move forward is to give Estrada a vote. We are not asking that people vote for him. We are just asking he be given a vote.

We have an unprecedented filibuster. Senator HATCH concluded that we were facing a filibuster in committee. Now we have a filibuster of Estrada on the floor. The ground rules have changed. We are going to put the burden of proof on the nominee. It was one of the views that Senator SCHUMER has put forward. We consider whatever the politics are, which was never done before, ratcheting up the pressure on the nominee and then we cannot get a vote in committee. Then we cannot get the vote because every Democrat has to sign off.

Senator HATCH examined the rules, met with the Parliamentarian. I have not studied the rules. He met with the Parliamentarian and he concluded he had the authority to make the ruling that he made. I don't think he wanted to do that. I think he would like to have proceeded as he had before with collegiality and allowing everyone to have their say as long as they wanted. But when you are faced with a systematic alteration of the ground rules, a systematic plan to obstruct a movement of nominees of extraordinary ability for years, who ought to be confirmed, and the courts need them, we are at a point where nerves are frayed.

If the rules are going to be used on one side, rules are going to be used on the other side. The President of the United States is not going to believe he can give up his right to nominate judges and expect them to have a confirmation. It was indicated President Bush maybe was not solicitous enough. But in California I have heard complaints because he has agreed to go along with a commission in California of some sort that gives unprecedented input from Senators from California and others on the nominees. I don't know how that works, but it is pretty unusual. He also reappointed two Democratic nominees, Barrington Parker and Gregory, who had been pending and were not confirmed.

I am not sure President Clinton ever nominated any Republican judges when he took over.

I believe we are in an unfortunate period, that there is a lot of frustration. It is pretty deep on our side. I don't think the Senator would doubt one moment that the tactics utilized by the Democratic minority are different than the tactics utilized when the Republicans were in that position.

Where do we go from here? I don't know. But it is a big deal.

The PRESIDING OFFICER. The Senator from California.

Mr. SESSIONS. I yield for a question. Mrs. FEINSTEIN. I wanted to make one point, so I will defer.

Mr. SESSIONS. Let me mention a couple of items.

It was suggested one of the Department of Justice members, Paul Bender, raised some question about Miguel Estrada's nomination, but Bender and the other supervisors in the Clinton Department of Justice—remember, he went into the Solicitor General's Office in 1992; surely within a year or so he

should have been under the supervision of the Democrats at that time. It probably takes some time to make the change over. Almost his entire career in the Justice Department was under the leadership of Janet Reno and a Democratic Solicitor General. The Democrats gave him the highest possible performance rating.

Mr. Bender, when he was evaluating him, gave him the highest evaluations. I think it odd now that he would come forward and suggest there was a problem. In fact, one of the evaluations given to him specifically noted his loyalty to the policies of the Department of Justice.

It was also said there was some deal about law clerks and screening law clerks for Supreme Court Justice Kennedy. Let me point out I think it is a great honor that Justice Kennedy was so impressed with Miguel Estrada that he asked him to do screening of possible law clerks for him. Justice Kennedy is considered a middle of the road swing Justice who votes with various sides, on various sides, and is not perceived as any kind of right-wing ideologue. He liked Estrada so much that he asked him to help him screen his law clerks. I think that is a matter that is a positive thing.

The PRESIDING OFFICER. There is a standing order for a vote on another nominee at 5:30.

NOMINATION OF MARIAN BLANK HORN, OF MARYLAND, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS

The PRESIDING OFFICER. Under the previous order, the hour of 5:30 p.m. having arrived, the Senate will now proceed to the consideration of Executive Calendar No. 43, which the clerk will report.

The legislative clerk read the nomination of Marian Blank Horn, of Maryland, to be a Judge of the United States Court of Federal Claims.

Mr. HATCH. Mr. President, it is my pleasure today to speak in support of Marian Blank Horn, who has been nominated for a second term on the U.S. Federal Court of Claims. Judge Horn is a distinguished United States Court of Federal Claims Judge whose legal career has been nothing short of stellar.

Judge Horn graduated from Fordham University Law School in 1969, and began her career as an assistant district attorney in Bronx County, NY, before joining Arent, Fox, Kintner, Plotkin and Kahn, where she worked in the litigation division.

From 1973 to 1975, Judge Horn was a project manager for a Study of Alternatives to Conventional Criminal Adjudication which was financed by the U.S. Department of Justice's Law Assistance Enforcement Administration. She also served as an adjunct professor at American University's Washington College of Law, where she taught the Introductory Legal Methods course.

In 1975, Judge Horn joined the Office of General Counsel for the Department

of Energy/Federal Energy Administration. From 1979 to 1981, Judge Horn served as the deputy assistant general counsel for Financial Incentives, Office of General Counsel, where she supervised all legal work related to financial incentives at the United States Department of Energy. In addition, she served as legal advisor to the assistant secretaries for Fossil Energy and Resource Applications, as well as the Office of Energy Research.

From 1981 to 1986, she worked in the United States Department of Interior, where she assisted the Associate Solicitor and helped administer the Surface Mining Control and Reclamation Act of 1977. In 1985, Judge Horn was promoted to principal deputy solicitor, where she supervised all the Regional and Field Offices of the Solicitor's Office in the Department and acted as the chief lawyer to the Secretary and Under Secretary of Department of Interior. So you see that Judge Horn already had a very impressive resume in 1986, when she was first confirmed.

Since that time, she has built an excellent reputation as a judge, and I am confident that Judge Horn will continue being a fine member of the Federal Bench.

Mr. LEAHY. Mr. President, today we consider the nomination of Judge Marion Blank Horn to the U.S. Court of Federal Claims. Although this is not a so-called "Article III" court with lifetime appointments, it is an important court with 15-year terms for its members. Judge Horn has been serving on the court for almost 15 years and I do not oppose her re-appointment. What I do take issue with, however, is the Administration's unilateral actions, in spite of the bipartisan cooperation and appointments of other Presidents to this and other courts.

The process for nominating judges to the Court of Federal Claims has traditionally included accommodation and compromise. For more than 2 years Senate Republicans blocked President Clinton's appointment of Larry Baskir to the court until a compromise could be reached. They refused to give him a hearing and refused to allow any of the other vacancies to be filled unless the administration promised to keep conservative Judge Loren Smith as the Chief Judge. Republicans also insisted on the reappointment of another Republican appointee, Judge Christine Miller. Finally, Senator HATCH agreed to allow five Clinton nominees to have hearings and votes if the administration also named his staffer Edward Damich to the court and promised to retain Judge Smith as Chief until his retirement into lifetime senior status at the end of his term appointment. Upon Chief Judge Smith's "retirement," President Clinton named Judge Baskir the Chief Judge. Shortly after his inauguration, President George W. Bush summarily removed Judge Baskir as chief judge and installed Judge Damich as the Chief Judge.

Last fall when the Democrats were in the majority, we took the exceptional

action of quickly moving the nomination of Larry Block to the Court of Federal Claims at the request of the ranking Republican, Senator HATCH. At that time, I noted that we would expect fairness and consideration in return, including true bipartisan consultation with respect to Federal Court of Claims nominations. Despite our accommodation on Mr. Block's nomination, the White House refused to act on the nomination of Judge Sarah Wilson who, up until a few months ago, was already serving with distinction on the Court of Federal Claims. Judge Wilson is a well-respected and talented lawyer who graduated from Columbia Law School, clerked for a Federal judge, was a fellow with the Administrative Office of the Courts, and served in the Department of Justice and in a prior White House. Yet, the administration and the Senate Republicans refused to accommodate our request to consider her nomination for a continued position on the court.

It troubles me that despite a long history of compromise and accommodation regarding appointments to this court, there has been no consultation with the Democratic leadership regarding the remaining nominations to the Court of Federal Claims. Instead, the White House proceeded as it does with most things—unilaterally. The same is true with respect to the Parole Commission, the Federal Election Commission and many other bipartisan boards and commissions.

I can count on one hand the number of States that have any sort of bipartisan selection commission for their district court judges. The importance of such organizations is paramount. They ensure that nominees for judicial office are selected based upon professional merit and experience. The recommendations of such commissions have the support of members from their community on both sides of aisle. Accordingly, these bipartisan commissions preserve the independence and integrity of the judicial branch of government and ensure the fair and equal administration and enforcement of justice.

Unfortunately, this President has thwarted the development of bipartisan boards and commissions for judicial appointments. The White House Counsel has indicated publicly that he does not favor bipartisan committees because they "usurp the president's constitutional authority to choose judges." This unilateral and uncompromising view disregards the constitutional role of the Senate. It also fails to acknowledge that these commissions simply make recommendations to the President. They do not make nominations in lieu of the President. The administration's disdain for bipartisan commissions ignores past precedent and tradition.

It is one thing for a President to appoint members of his Cabinet to carry out his political agenda but it should be different with respect to judicial appointments. When a President makes