

Committee in exchange for a date certain for an up-or-down vote on his nomination.

The second hearing is something we had not believed was appropriate, but I want to show both sides of the aisle that we are trying to reach out to do everything possible to go that extra mile and try to get an answer that works.

This is not a formal unanimous consent request at this time, but I do want to offer that opportunity. Again, it would be in exchange for a vote, up or down, at a time certain—to actually have another formal Judiciary Committee hearing with Miguel Estrada. It is my hope the other side of the aisle will decide it is time to conclude the debate and that we can focus on the challenges that lie ahead.

Mr. REID. Will the leader allow me to respond? Otherwise, I will use leader time.

Mr. FRIST. Yes.

Mr. REID. I appreciate that since being chosen majority leader the Senator from Tennessee has gone out of his way to make sure we have ample debate. He has used the cloture motion rarely, and we appreciate that very much. But I say, regarding the Estrada matter, we have been very consistent in our requests. No. 1 is that he answer questions. The Senator said he would try to satisfy that. But until he supplies the memoranda from the Solicitor's office, it is not going to change the position of the people on this side of the aisle. So if he makes the unanimous consent request, we will simply renew our unanimous consent request, as we have done on other occasions.

Mr. FRIST. Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, would the distinguished majority leader take a moment just to make a quick observation?

Mr. FRIST. Mr. President, I will yield for 1 minute, and then we will go to lunch.

Mr. LEAHY. Mr. President, I appreciate very much the distinguished majority leader trying to figure out a way to get through this impasse. It is in the tradition of majority leaders, and I have served with every majority leader since the time of Mike Mansfield. Majority leaders try to work these matters out, and I appreciate that.

I urge him, in doing so, to look at the fact that Miguel Estrada has said he is willing to discuss his papers and find a way that that could be done. I think his suggestion of a hearing where questions would be asked based on that would be very workable. But I commend the distinguished majority leader for doing what is the tradition of leaders—to try to find a way through this.

Mr. FRIST. Thank you, Mr. President.

#### RECESS

The PRESIDING OFFICER. The hour of 12:30 p.m. having arrived and passed, the Senate is adjourned.

Thereupon, the Senate, at 12:56 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

#### LEGISLATIVE SESSION

##### PARTIAL-BIRTH ABORTION BAN ACT OF 2003—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session and continue consideration of S. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

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

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

##### UNANIMOUS CONSENT REQUEST— EXECUTIVE CALENDAR NOS. 32, 34, 35, 36 AND 55

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 32, Jeffrey Sutton, to be a U.S. circuit judge for the Sixth Circuit, there be 4 hours for debate equally divided between the chairman and the ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, on the circuit court judges, we have a couple circuit court judges on which we believe we can work out an agreement. Jeffrey Sutton is not one of them. So I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 34, Deborah Cook, to be a U.S. circuit judge for the Sixth Circuit, there be 4 hours for debate equally divided between the chairman and ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, this woman, along with Mr. Roberts, is part of those nominations we believe were improperly reported out of the committee. So I object to her and

to Mr. Roberts at this time until there is another hearing in the Judiciary Committee.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 35, John Roberts, to be a U.S. circuit judge for the DC Circuit, there be 4 hours for debate equally divided between the chairman and ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

Mr. REID. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 36, Jay S. Bybee, to be a U.S. circuit judge for the Ninth Circuit, there be 4 hours for debate equally divided between the chairman and ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, Senator BIDEN had an objection to this proposed judge. We heard from his staff earlier today that probably has been resolved, but we will not know that until they check with Senator BIDEN who, as my colleague knows, is indisposed having had surgery. We will get back later, hopefully today. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, there are five individuals who are on the Executive Calendar. This is the last of the five. I will ask unanimous consent for him, as well, but clearly we want to move ahead as much as possible and want to continue to work with the other side. We do want to reach out once again. These unanimous consent requests are a part of our efforts to reach out and advance the process. I hope we can resolve this shortly.

Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 55, Timothy Tymkovich, to be a U.S. circuit judge for the Tenth Circuit, there be 4 hours for debate equally divided between the chairman and ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, I have spoken to the leader and to the ranking member of the Judiciary Committee on the other judges. I have not spoken to either of them about this man. For that reason, I object.