

private organization advising this Senator and the Senator from South Dakota, as well as the National Cattleman's Association, on grazing; became a private practice attorney; then went as attorney to the Secretary of Interior; has served most honorably and very credibly. He will not get a vote this session of the 108th Congress. Why? Because the other side has just flat said he serves their environmental agenda purposes and therefore we will not be allowed to vote on him.

That is a phenomenally frustrating reality to me as a Senator who believes that we do not have the right to arbitrarily pick and choose, we have the right to advise and consent and to vote them up or vote down, 51 votes or 50 votes, but not to arbitrarily pick and choose to serve the political agenda of a given political party for these purposes. There is no other explanation than the one I have just offered.

If one looks at the broad qualifications of the eight judges who have now arbitrarily been chosen for their political past involvement and therefore the accusation that they might be an activist on the court, that is a frustration of the first order.

So no one came to the floor yesterday to debate him except those of us on the Judiciary Committee advocating his nomination. The votes are so locked in, so fixed, so regimented, that this just is not going to happen. So we will have a 2:15 vote today. It is perfunctory. It is just the way it is going to be, unless we break out of this and say collectively to the Senate as a whole, no, this procedure of misusing the process is wrong. There is a time to debate, a time of reality, a time of broad understanding, but most importantly, under our Constitution, we have never filibustered nor intentionally blocked by demanding a 60-vote majority. They have always broken in the past when tried, and ultimately up until this Congress, Presidential nominations received the opportunity of the advise and consent of the Senate by a vote on the Senate floor, not of a cloture but of a majority.

The reason I highlight that is because that is the vote this afternoon. It is a false vote. It is an unnecessary vote for a highly qualified young man who would serve the Ninth Circuit well, a Ninth Circuit court that is now viewed as the most dysfunctional court in the land, where over 90 percent of its decisions are overturned by the Supreme Court. Bill Myers brings common sense to the court, not the radicalism of San Francisco lawyers but common sense spread across the western public land States of our country.

Is that why he is not getting the vote? Very possibly so. And that is a tragedy of the highest order. This is not the kind of day the Senate, this great Chamber, ought to have, but we are going to have it today at 2:15 this afternoon. So it is important that I speak briefly to that.

#### 9/11 COMMISSION REPORT

Mr. CRAIG. Mr. President, I know the minority leader is kindly waiting, but let me say one other thing. We are going to be presented—the press has already been presented—the 9/11 Commission report. I do not have one in my office. I have to go read about it in the New York Times. Thank you, Commission, for being so public that you will not even inform those of us who created you, but we understand they are going to recommend the creation of a czar-like or individual director of intelligence that coordinates all of the agencies.

I have one comment on that only because I have not seen the report, and I do not know that the minority leader has either—we have not had a full opportunity to read it—let us proceed with caution. We have done a great deal of work since 9/11 now to bring these institutions together to coordinate intelligence. We are better off than we were pre-9/11.

I am not sure that I want a Cabinet level, politicized director of intelligence for our country. I do not know that it is a good idea to politicize that. If we put them in a Cabinet level position, by the character of that position we have politicized intelligence. Intelligence should not be politicized. It ought to be factual. And we now know we have had a problem with the facts, but it wasn't just our intelligence community; it was intelligence communities around the world. Bad information makes bad information makes bad reports and can produce bad decisions.

Intelligence is critical and it needs to be of the highest order. I am not suggesting we don't have a top level coordinator/director, but let us think long about the idea of politicizing that person. We have seen the Directors of the FBI stay on through Republican and Democrat administrations throughout history—not always but many times. It brought quality and uniformity to that law enforcement community. It did not politicize it. It is every bit if not more important today, with the war on terrorism, that we build a quality structure, that the information be of the first order, and that it never ever could be suggested or run the test of, well, that person is a political person, that person was appointed because he was a political friend. That is my only caution today, in a preliminary thought, until we get the report and see the facts and the evidence. And I do wish the Commission would let us have the report before they give it to the New York Times. It probably would be a bit more appropriate and give us an opportunity to speak factually and knowledgeably about it.

I thank you, Mr. President. The minority leader has been kind and patient, and I yield the floor.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

#### ORDER OR PROCEDURE

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Democratic half hour be allocated in the following manner: Senator SCHUMER, 15 minutes; Senator HARKIN, 10 minutes; and Senator REID, 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I will use my leader time so as not to take any of the Democratic time.

#### JUDICIAL NOMINATIONS

Mr. DASCHLE. Mr. President, let me respond briefly, if I may, to the Senator from Idaho. I have respect for him and for much of the work we have done together over the years on many issues, including forest health. But I must say I strongly disagree with his characterization of this particular judicial nominating debate.

Over the history of our 220 years, the Senate has seen fit on countless occasions to require either a threshold cloture vote or, before we had cloture, some resolution to controversial matters involving extended debate. Before we had cloture, there was no way to resolve it. A Senator could see fit to talk about an issue or a nominee for days, weeks, months, and there was no way to resolve it. There were many occasions during the 20th century when this was exactly the case. That evolved, of course, with the implementation of cloture and the use of cloture over the course of the last 100 years. So now we have a rule of the Senate that says on those issues that are controversial, a supermajority is required.

I think for the Senator from Idaho to make the point that there is no vote is just wrong. The vote occurs at 2:15. If the supermajority will move to proceed on this very controversial nominee, you go to the second phase of consideration. But that is what the Senate rules require. I must say that is a far better approach than what we faced during the Clinton administration, when more than 60 nominees never got a committee vote. We go back to the old days of the 20th century during the Clinton years when you didn't even have an opportunity for cloture because the Judiciary Committee refused to act on over 60 nominees. So this is an improvement, to say the least, over that.

As to the qualifications of Bill Myers, I will simply say the ABA does not share the view of the Senator from Idaho with regard to his qualifications. It is very rare for the ABA not to categorize a nominee as qualified—extremely rare. They have not done so in

the case of Bill Myers. "Partially qualified," but do we really want a "partially qualified" nominee to serve on the circuit court of our land?

It is rare—in fact, it is unprecedented—for the Native-American community in the United States to take a position on a judge. They have never done so. The Native-American community in South Dakota and North Dakota, in all Western States around the country, has come together with one voice to say this man ought not be a circuit court judge—unheard of. We have never seen that before.

We have never seen the National Wildlife Foundation take a position on a judge, but they, too, have said please do not confirm this nominee. Why? Because of what limited record he had with regard to judicial issues. He virtually has none as Solicitor. There is no real court experience, with a couple of exceptions. So you have somebody with at least, arguably, some ethical questions that have not been addressed; you have major communities such as the Native-American community in our country in an unprecedented statement in opposition; you have the ABA that has said they are reluctant to support this nominee because he is only "partially qualified."

So, Mr. President, clearly it is those and many other factors that led every single Democrat, in a rare demonstration of opposition in the committee, to oppose this nomination. We have now approved, I believe it is 196 nominations—198 nominations. That is a record that surpasses Bill Clinton, the first President Bush, and Ronald Reagan. This President's three predecessors have not had a record of confirmation equal to his.

I must say it is interesting, and I would note, that my colleague from Idaho, who just abhorred this current circumstance regarding cloture on a nominee, voted against cloture, voted to sustain the extended debate, ironically, in the circumstances involving another Ninth Circuit nominee, Richard Paez. They voted to continue the debate, not to vote for cloture, not to terminate the debate, not to move to that second phase. So I would certainly ask the distinguished Senator at some point for his explanation as to why it was appropriate to extend debate in that case but not in this case.

#### THE WORKING POOR

Mr. DASCHLE. Mr. President, 60 years ago Franklin Roosevelt gave one of the most memorable State of the Union speeches in our history.

As he spoke, Germany occupied all of Europe. Americans were dying in battle abroad and sacrificing for the war effort at home.

Total victory was uncertain. But that did not diminish President Roosevelt's optimism and vision.

In his address, he said the Nation had accepted a Second Bill of Rights that, he said, would create "a new basis of security" for all.

In this Second Bill of Rights, President Roosevelt cited the right to a decent home, a good education, and dependable health care; the right to fair prices for farmers and free competition for business; and the right to be free of the fears of hardship caused by old age. But first, and most fundamental, he called for the right to work for a fair wage.

Our country should be proud of the extraordinary progress we have made in many of these areas. Together we have made our country better, stronger, and more secure. There is, though, more work to be done, and today I want to focus on President Roosevelt's call for a fair wage.

No value is more fundamental to the American character than the value of work. No ideal is shared so widely or cherished so deeply.

No principle binds us more closely to the generations of Americans who built up our country, and the millions of new Americans who came to our shores to join in the effort. And no conviction so unites the conservative and liberal traditions of our Nation.

Ronald Reagan once said that:

People in America value family, work, and neighborhood. These are the things we have in common socially and politically. When it comes to the bottom line, all of us are striving for the same thing—a strong and healthy America and a fair shake for working people.

There is a fundamental American truth in those words—working people deserve a fair shake. It has always been the promise of our country, and as we debate legislation here in the Senate, we should do all we can to give life to that promise.

We should make certain that no American who works full-time lives in poverty. Unfortunately, the gap between promise and reality is widening. Among full-time, year-round workers, poverty has doubled since the late 1970's to 2.6 million workers. All told, the working poor are raising 9 million American children.

Moreover, as recent work by the Family Economic Self-Sufficiency project shows, the level of income it now takes just to pay the basic bills is far above what we consider to be the poverty line. No working American wants a handout. These families are playing by the rules. But as hard as they work, they cannot escape the grip of poverty.

A few weeks ago a Sioux Falls family sent me a letter. The father works 56 hours a week as a skilled welder. His wife is a substitute teacher who only works part-time so she can care for her son, who suffers from autism and diabetes. They live in a 20-year-old mobile home that has sinking floors and a leaking ceiling. They wrote:

We are facing possible foreclosure. Lights, heat, phone, etc. are all 60 plus days past due and on the verge of disconnection. . . . Medical bills have been turned over to a collection agency.

Their final question was: "Now what?"

They feel trapped. Since they can't afford insurance, their son's medical bills have erased their savings and destroyed their credit. Without good credit, interest payments eat up much of their income. And without affordable child care, the family's mom can't shift to full-time work, which could help lift them out of poverty.

They are working as hard as they can and want to work even harder. But that doesn't seem to be enough. They are farther away from President Roosevelt's vision today than when they first wrote to me. It's in our national interest not to look away from this difficult problem, but to face it squarely and honestly.

If the people who work hard don't get a fair shake, then our Nation risks losing an essential value that has contributed to America's excellence and ongoing success. We cannot let that happen. We should not kid ourselves and pretend this is an easy problem. It is not. It is enormously complicated. But there are things we can and must do.

First, it is important that American business leaders live up to their responsibility as good corporate citizens and share the benefits of increased productivity with their workers, not just their shareholders. The Chief Economist at Merrill Lynch recently noted that there's been a notable "redistribution of income to the corporate sector." While salaries have remained flat over the past 4 years, corporate profits now occupy a greater share of our GDP than at any point since tracking began nearly 60 years ago. We are moving in the wrong direction, and leaders in the private sector have a responsibility to help us move back in the right direction.

Here in Congress, we also have a responsibility to address the problems confronting the working poor, and we should start by requiring a long overdue increase in the minimum wage. Today, the minimum wage of \$5.15 per hour is worth \$3 less than it was in 1968. Americans who work at the minimum wage for 40 hours a week, 52 weeks a year, still fall \$5,000 short of the poverty line. That means, as the Sioux Falls family knows, that adequate housing, enough food to eat, health insurance, and college funds are the stuff of fantasy, not reality. In the time we have left this year, we should increase the minimum wage to \$7. That won't solve all our problems, but it is a beginning.

We should also revisit the Earned Income Tax Credit. It was created 20 years ago as an incentive to help working families lift themselves out of poverty through hard work. President Reagan called it the "best anti-poverty, the best pro-family, the best job creation measure to come out of Congress." I agree. Now we need to expand it, so that every American child grows up seeing that work is rewarded and respected.

We should also make sure all families receive their fair share of the child tax