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## House of Representatives

The House was not in session today. Its next meeting will be held on Friday, February 7, 2003, at 10:00 a.m.

## Senate

THURSDAY, FEBRUARY 6, 2003

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, who never sends tragedies or trouble but is with us in the midst of nerve-stretching times to give us courage, we fall on the knees of our hearts seeking the peace and hope only You can provide. When there is nowhere else to turn it's time to return to You. With the untimely death of the heroic astronauts, we are reminded of the shortness of our lives and the length of eternity.

Yesterday we listened to Secretary of State Colin Powell and realized again that we face a treacherous enemy with formidable, destructive power. For the sake of the safety of humankind and the world, grant the President, his advisors, and this Senate Your strategy and strength for the crucial decisions confronting them.

And now for the work of this day, keep the Senators and all of us who work with and for them mindful that You are Sovereign of this land, and that we are accountable to You for all that is said and done. May the bond of patriotism that binds us together always be stronger than any issue that threatens to divide us. You are our Lord and Saviour. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable TED STEVENS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Repub-

lic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RESERVATION OF LEADERSHIP TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

### SCHEDULE

Mr. ALLARD. Mr. President, on behalf of the majority leader, I have some information for Senators. The Senate will resume debate on the nomination of Miguel Estrada this morning. We had a productive debate on the Estrada nomination on yesterday afternoon, and it is the majority leader's objective to arrive at an agreement with the other side of the aisle regarding the consideration and vote on the nomination in the near future.

As previously announced, there will be no rollcall votes today. It is anticipated that the Senate will adjourn around noon. Therefore, Senators who wish to speak on the Estrada nomination are encouraged to make arrangements to do so earlier in the day.

### EXECUTIVE SESSION

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Under the previous order, the Senate will return to executive session to resume consideration of Executive Calendar No. 21, which the clerk will report.

The 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 Senator from Colorado.

Mr. ALLARD. Madam President, it is ironic that one of the arguments against Miguel Estrada, the President's nominee for the D.C. Circuit Court, center around prior judicial experience. This argument is nothing but hollow political rhetoric aimed at obstructing the Senate's constitutional duty to confirm judges. It is also a double standard of the highest order. To illustrate this point, I bring a Colorado legend to the attention of my colleagues. Byron "Whizzer" White may have passed away almost a year ago, but the Centennial State will forever feel his commanding presence. Mr. White was born in Fort Collins, CO, not far from where I live and where my family lives, and was raised in nearby Wellington. He went on to become his high school's valedictorian, All-American football star, college valedictorian, Rhodes

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



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scholar, professional football player, and a decorated World War II soldier. Noting his many significant achievements, President John F. Kennedy nominated him to the Supreme Court in 1962, saying, Byron White "excelled at everything he has ever attempted." White, at only 44 years of age, ascended to the bench of our Nation's highest court and went on to serve for three decades.

Why is this significant? It is significant because had President Kennedy adhered to such a rigid litmus test, Byron White would never have been seated on the bench of the United States Supreme Court. Adherence to the experience litmus test would mean that five of the eight judges currently serving on the D.C. Circuit would not have been confirmed because they had no previous judicial experience—including two of President Clinton's nominees, Merrick Garland and David Tatel, and one appointed by President Carter, Judge Harry Edwards, who was younger than Mr. Estrada currently is.

It is obvious that the opposition to Miguel Estrada is not concerned with merit or intellect. They are more concerned with partisan politics. Their work is concentrated on holding our Nation hostage to their rigid ideology, unprecedented in the consideration of judges. While caseloads in the Federal courts continue to increase dramatically and filings reach all-time highs, the opposition pursues an agenda of obstruction, aimed at disrupting the justice that is guaranteed by our Constitution, and creating a vacancy crisis in the Federal courts. Chief Justice William Rehnquist recently warned that the current number of vacancies, combined with the rising caseloads, threatens the proper functioning of the Federal courts.

This is a time in our Nation's history when our courts ought to be fully up and functioning. It is a time when there are lots of national security concerns centered around terrorist threats. These extraordinary delays must end. Miguel Estrada is a highly qualified and respected individual who deserves the Senate's consideration.

Mr. Estrada is a man of legal experience, a man of keen intellect and strong character. He has argued 15 cases before the Supreme Court and has served both as a Federal prosecutor and Assistant United States Solicitor General. If confirmed, he will be the first Hispanic to serve on the DC Circuit. I think that is significant. And he will be a principal asset to our system of justice.

Miguel Estrada has received the highest rating from the American Bar Association. He has received strong support from those who know him the best—the Hispanic legal community, including the Hispanic National Bar Association. I believe he has earned a vote in the Senate. He has earned my respect and my support, and I plan to vote for Miguel Estrada.

I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Madam President, I ask unanimous consent that I be able to proceed for 20 minutes as in morning business.

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

(The remarks of Mr. DORGAN are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Madam President, I am happy to be able to take the floor this morning to argue in favor of Miguel Estrada. Miguel is one of the finest lawyers in the country. He has arrived at this position and status, where he is approved by the American Bar Association as "unanimously well qualified," the highest rating that the American Bar Association can give. He has had his critics, but only in generalized terms. He has had his critics who I don't think have a leg to stand on in the criticism they are raising.

One of the more ridiculous assertions that I have heard about Miguel is that he was not especially or sufficiently responsive at his hearing and therefore we need to have a second hearing to evaluate him. Keep in mind, the Democrats were in control of the Judiciary Committee. They called the hearing, they controlled the hearing, they controlled the timing of the hearing, they controlled the time for questions by Senators. And at least one Democrat said the hearing was conducted in a fair and responsible manner, and I personally agree with that. Senator SCHUMER was the person who chaired that particular hearing. I give him a lot of credit because it was a fair hearing and they asked every question they wanted to ask.

Secondly, after the hearing, on the Judiciary Committee we have a right to ask questions in writing. Only two Democrats asked questions in writing. Miguel Estrada had waited 631 days before he was given the privilege of having a hearing. Then the hearing was held.

Now we are hearing the same old wornout complaints that he wasn't sufficiently responsive and that, therefore, we need a second hearing to evaluate him.

Since Mr. Estrada didn't say anything at the hearing that could be used to besmirch him—that is the real problem; they could not find anything wrong with him; there is not one thing that anybody has said, other than generalizations, that has any merit at all—since they could not find anything at his hearing that could be used to criticize him, his opponents resorted to

the tactic of alleging that he did not say enough. That is ridiculous. They controlled everything. They could have asked him anything, and I think they did. Now, he didn't say enough.

The fact is that Mr. Estrada correctly refused to answer questions that called upon him to prejudge issues that may very well come before him as a judge. That is what every nominee with any brains has done from time immemorial. No nominee wants to have to recuse himself in a serious case later because of something he said before the Senate Judiciary Committee. Well, let me repeat that. The fact is that Mr. Estrada correctly refused to answer questions that called upon him to prejudge issues that may very well come before him as a judge. This includes his opinion on whether established precedent was correctly decided and how he would decide these cases if he were working from a clean slate.

Lloyd Cutler, who was the White House chief counsel in both the Carter and Clinton administrations, and one of the premier lawyers in the country—certainly in this town—and one of the great public servants of all time, in my opinion, put it best when he said:

[I]t would be a tragic development if ideology became an increasingly important consideration in the future. To make ideology an issue in the confirmation process is to suggest that the legal process is and should be a political one. This is not only wrong as a matter of political science; it also serves to weaken public confidence in the courts. Just as candidates should put aside their partisan political views when appointed to the bench, so too should they put aside ideology.

This is Lloyd Cutler, who was chief White House counsel for Presidents Carter and Clinton. He goes on to say:

To retain either is to betray dedication to the process of impartial judging. Men and women qualified by training to be judges generally do not wish to and do not indulge in partisan or ideological approaches to their work.

Mr. Cutler concluded:

Candidates should decline to reply when efforts are made to find out how they would decide a particular case.

I agree with him, and so did all the Democrats on the committee when President Clinton's nominees came before the committee. Now all of a sudden, they are applying a double standard or a different standard to Miguel Estrada and, I might add, other Republican nominees who are coming before the committee.

We should be commending Mr. Estrada for refusing to take the bait and answer these questions. Instead he is being criticized for it and, I think, in the view of any impartial observer, is being criticized unfairly for one reason: They just do not want a Republican conservative Hispanic to sit on the Circuit Court of Appeals in this country. That is wrong. We all know it is wrong, and yet that is what is behind much of the antagonism toward Mr. Estrada.

As a fundamental matter, I am perplexed by the charges that Mr. Estrada's record is blank. That is what

we call bullcorn out in Utah. The truth is, Mr. Estrada's record is replete with material we used to evaluate his qualifications for the bench and how he would go about deciding cases. He has written numerous complex and thorough briefs for the courts, and he has argued on a wide range of subjects.

His briefs, all of which are publicly available—and I know the Democrat staffers have pored over every one of them—provide tremendous insight into his legal reasoning and thinking on constitutional and statutory interpretation. His achievement of having argued 15 cases before the U.S. Supreme Court provides a record of how he has responded to focused interrogation on the most important matters to America's highest court. The transcripts from these oral arguments are also publicly available. Where is the legitimate complaint by the other side about this blank-slate business?

Still further, Mr. Estrada not only said at his hearing he would support established law, but he proved this when he wrote an amicus brief at the Solicitor General's office in support of the National Organization for Women. I do not hear any compliments from the other side on his work there. His support of a law that backed a reproductive choice side in that case indicates there is no reason to expect he would not follow *Roe* and *Casey* as a DC Circuit Court judge, and yet that has underlined many of the complaints by my friends on the other side. They are so afraid that somebody on these Circuit Courts of Appeals might possibly do something to overrule *Roe v. Wade* or *Planned Parenthood v. Casey*, two very important abortion cases.

I have not heard one President Bush nominee say he or she will not uphold the laws of this land, including *Roe v. Wade* and *Planned Parenthood v. Casey*. The truth is, many on the other side have not even liked *Planned Parenthood v. Casey* because it does take a more moderate position with regard to abortion. Now it is the law of the land and, of course, it is one of the cases they certainly do not want to have overruled.

Mr. Estrada's opponents are so eager to distort his record that they do not mention this case or any one of many other cases which reveal his legal reasoning and willingness to follow the law.

It needs to be explained to everybody that not only do they have access to all these briefs he has written, both in the Supreme Court and other courts of the land, but they could have asked any question they wanted of Mr. Estrada. Any member of the committee can do that. Some may be ill-advised and not very fair, but we allow them to ask any questions they want. Then they can ask any questions in writing. In almost every case, Mr. Estrada asked to meet with individual Senators beforehand so they could meet privately and ask any questions they had.

Mr. Estrada today is known all over the country by those who really under-

stand important lawyers and understand the success of lawyers—working with one of the most important law firms in the country as a full partner, and he has both Democrat and Republican partners. I might add, some of the leading people in support of Mr. Estrada today are Democratic attorneys—not just attorneys, but top attorneys—and we have mentioned them, from Ron Klain to Seth Waxman, Klain having been Vice President Gore's chief counsel, both as Vice President and in his campaigns. Ron Klain used to work on the Judiciary Committee as one of the top judiciary staff people. He is an excellent lawyer and a wonderful person. We all care for him. I personally care for him, and one reason I do is because he is honest, not just honest enough to say how good Miguel Estrada is and to back him, but honest in his dealings in legal matters as well. I have a lot of respect for him. Seth Waxman is one of the premier lawyers in the country, no question about it. He knows I have a lot of respect for him, and it is not just because of work on the Judiciary Committee. He is a fine lawyer, one of the best and former Solicitors General of the United States in the Clinton administration.

Some have advanced the preposterous argument that Miguel Estrada is not qualified to serve on the DC Circuit because he has no prior judicial experience. That is one of the most ridiculous arguments of all. Of all the ridiculous arguments his opponents have drummed up, to me this is the most ludicrous. There are literally hundreds of examples of judicial nominees who have gone on to serve as great Federal judges at both the Court of Appeals and Supreme Court levels despite having no prior judicial experience.

Chief Justice Rehnquist in his 2001 year-end report on the Federal judiciary noted:

The Federal judiciary has traditionally drawn from a wide diversity of professional backgrounds with many of our well-respected judges coming from private practice.

Such Justices included Louis Brandeis, who spent his whole career in private practice before he was named to the U.S. Supreme Court in 1916 and came to be known as “the people's attorney” for his pro bono work.

Supreme Court Justice Byron White—I knew Byron White very well. He was very friendly to me throughout my career. He spent 14 years in private practice and 2 years at the Justice Department before his appointment to the Court by President Kennedy in 1962. He is a wonderful man. Byron White served this country well and his memory will always be a good memory. Byron White moved from the left to the center to even a little bit to the right on the Court, and that did not please a lot of our friends on the other side.

Supreme Court Justice Thurgood Marshall had no judicial experience when President Kennedy recess-appointed him to his first judgeship in

the Second Circuit Court of Appeals in 1961. Justice Marshall had served in private practice and as special counsel and director of the NAACP prior to his appointment. I do not think anybody would doubt he made a very important contribution to the jurisprudence of this country.

Several well-respected members of the DC Circuit, including two of President Clinton's three appointments to that court, arrived with no prior judicial experience.

Merrick Garland: I have a lot of regard for Merrick Garland. I helped to see him get through when there was some opposition to him. He was a Clinton appointee. He served at the Department of Justice and was in private practice. He was never on the bench prior to his appointment.

David Tatel, also a Clinton appointee, had served in private practice for 15 years prior to his appointment. In fact, only three of 18 judges confirmed to the DC Circuit before President Carter's term began in 1977 previously served as judges.

For example, Abner Mikva, appointed by President Carter, was in private practice for 16 years in Chicago, served in the Illinois Legislature and in the U.S. Congress and had no judicial experience prior to his appointment in 1979 to the Circuit Court of Appeals for the District of Columbia.

Other Democrat-appointed DC Circuit judges with no prior judicial experience include Harry Edwards, Patricia Wald, and notably Ruth Bader Ginsburg, now sitting on the Supreme Court.

Several other Clinton appointees to the Courts of Appeals received their appointments despite having no prior judicial experience: Ninth Circuit appointees Richard Tallman, Marsha Berzon, Ronald Gould, Raymond Fisher, William Fletcher—who was a law professor at Boalt Hall at Berkeley—Margaret McKeown, Sidney Thomas, and Michael Hawkins all had no judicial experience prior to taking the bench.

Seven of these eight, all but Fletcher, were in private practice when they were nominated by President Clinton.

Second Circuit appointees Robert Katzmann, Robert David Sack, and Chester Straub had no judicial experience prior to their appointments. Third circuit nominee Thomas Ambro, Fourth Circuit nominees Robert King and Blane Michael, and Sixth Circuit nominee Eric Clay and Karen Moore also had no prior judicial experience.

What is the point? Is it that it is all right for Democrat Presidents to appoint people without prior judicial experience, who become very good judges on the bench, but it is not all right for Republican Presidents to do so? Is it all right to have more moderate-to-liberal appointees who have never had any judicial experience, but it is not all right to have moderate-to-conservative appointees appointed by a Republican President? It is all right to have liberal

Hispanics appointed to the courts—I agree with that—but it is not all right to have a Republican Hispanic who, perish the thought, Democrats think may be conservative?

Given this illustrious group of former practitioners like Mr. Estrada, who were not Federal judges, I find it hard to swallow that Mr. Estrada's lack of prior judicial service should somehow be counted as a strike against him.

I noticed this morning in the New York Times—now, I read the New York Times regularly. It is a very important paper in this country, and I have a great deal of respect for most of the people who work at the New York Times, but their editorial department has been almost amazingly inaccurate—not almost amazingly, it has been amazingly inaccurate.

Today, they have an editorial dated February 6, 2003, entitled “Steamrolling Judicial Nominees.” They say:

The new Senate Republican majority is ushering in an era of conveyor-belt confirmations of Bush administration judicial nominations. No matter which party holds the gavel, the Federal courts are too important for the Senate to give short shrift to its constitutional role of advice and consent.

I agree with that. I do not think we should give short shrift to any degree. These are important positions. They are lifetime appointments. We ought to do a thorough examination of them.

So everybody understands, and I want the New York Times editorial board to understand, before a person even comes up to the Senate, that person has been evaluated by the White House, by the White House Counsel's Office, by the Justice Department. There has been a complete FBI review of that person's life. The FBI interviews just about everybody who wants to be interviewed and some who do not want to be interviewed. The interviews range from people who love the candidate or the nominee to people who hate his or her guts.

There are people who make scurrilous comments, all kinds of anonymous things. These are raw reports that come into the FBI file. They report it all. Then it comes to the Judiciary Committee, and the chairman and ranking member and our staffs go through those FBI reports with a fine-tooth comb.

To the credit of both the Republicans and Democrats—or Democrats and Republicans, I should say—both sides have worked very well to get rid of the chaff and to do what is in the best interest of this country and to be fair to these nominees. That is a very arduous process. The minute they decide to pick one of these people, or even maybe before sometimes, they then tell the American Bar Association—not because they have a formal role in the process but because we want to have the leading bar association in the country involved. At least the Democrats have always wanted to have them involved. I have to admit I did not want to have them involved when they were

not being very fair, when there was bias and bigotry, but there is none of that now. I think they are doing a terrific job now, and as long as they do it fairly and down the middle, without bias and without being political, they are going to have my support, and I support them right now. But we then have the American Bar Association look into these people and they go right into the person's hometown. They talk to the attorneys who know him. They talk to their top attorneys whom they know are people of integrity and ability and leaders in the bar in their community. They talk to just about everybody who has any interest in the nominee, and this has all been done for Mr. Estrada. Then they sit down and they have their standing committee make an evaluation of these nominees.

These evaluations are tough evaluations, especially on those who do not come out of them very well. In this case, Mr. Estrada has a “unanimously well-qualified” rating from the Standing Committee of the American Bar Association—I should say from the American Bar Association because they represent the whole bar. That is something that does not always happen. In fact, it does not happen very often, to have “unanimously well-qualified.”

All of that is unbelievably difficult for the nominee. The nominee has to sign a disclosure form that just about lays bare everything in that nominee's life. One can see why some people do not even want to become judges anymore. Some of the greatest lawyers in the country, who would serve on the bench, do not want to go through this process. The investigation of the nominee includes Finances and everything, it is all laid out; cases are laid out. They are asked questions that are very intrusive into their lives. I think the questionnaire is too strong, but it has been very difficult to change over the years. That is what they go through. Then they are nominated. The Judiciary Committee then starts its work, and we go through every one of these documents.

We go through that FBI report with a fine-tooth comb. If there is anything left undone, we then ask the FBI to follow up. We do not leave anything undone to the extent that we can. If there are some particular problems, we bring both sides of the Judiciary Committee together and tell them these are problems. We disclose it to the members of the Judiciary Committee. The ranking member will disclose it to his side. The Chairman discloses it to his or her side.

Once that is done, then we set it for a hearing. The hearings usually do not last days at a time for circuit court nominees or district court nominees. They are generally a 1-day affair, as they should be, because we have all this information. Anybody can cull through all that information, and their staffs really do. Sometimes they are looking for dirt, looking for things

they can raise that might make the process better in some cases or that might scuttle a President's nominee in other cases. There is a lot of partisanship sometimes. That is not all bad because we want the best people we can get to serve on the Federal bench in this country.

This editorial indicates this is just a steamrolling of nominees. Now, that is crazy. In the case of Estrada, his nomination has been pending for 631 days, having had every aspect of his life combed over and because they cannot find anything to smear him with or find fault with—it depends on who the person is—or to criticize, all of a sudden he is being steamrolled.

Well, 631 days is almost 2 years. It is way too long. I have to admit, there were some mistakes when I was chairman during the Clinton years, but nobody should doubt for a minute that President Clinton was treated fairly. President Reagan was the all-time confirmation champion with 382 judges confirmed in his 8 years, and he had a Republican Senate to help him do it. President Clinton had virtually the same number, 377, as the all-time champion, and he had 6 years of an opposition party to help him do it. I know. I was the chairman during that time, and I did everything I could personally to help the President because he was our President. There was only one person voted down in that whole time, and I have to admit I do not feel good about that. And there were less people left holding at the end than there were when Democrats had control of the committee.

Going back to this editorial, because I want to help my friends at the New York Times to be a little more accurate—frankly, I think they can use some help because their editorials, especially in this area, have been awful. And this is a perfect illustration.

Going to the second paragraph:

Republicans on the Judiciary Committee held a single hearing last week for three controversial appeals court nominees.

Just for information, that was Jeffrey Sutton. That was John Roberts, and a wonderful woman named Cook—Sutton and Cook and Bill Roberts from DC Court of Appeals.

By the way, all three are well known. Sutton is one of the top appellate lawyers in the country; Roberts, who was considered if not the top, one of the two top appellate lawyers before the Supreme Court of the United States; and Cook is a Supreme Court justice in Ohio.

Republicans on the Judiciary Committee held a single hearing last week for three controversial appeals court nominees. There was no way, given the format, for Senators to consider each nominee with care.

We held one of the longest hearings ever on record, from 9:30 in the morning until 9:30 that night. I was willing to stay longer. I told the Committee we would finish that hearing that day and I would stay as long as it took.

There was no way, given the format, for senators to consider each nominee with care.

A fourth nominee had a hearing yesterday, and a fifth is likely to have one next week.

What is wrong with that? They have been sitting there for months and months and they are high-quality people. They have gone through this horrendous process to get to where they have a hearing.

During the Clinton years, the committee took six months or more to consider the number of appeals court nominees this committee is hearing from in two weeks.

I would add that many nominees have been waiting longer, not 6 months or more, 2 years, in the ones we have called up.

By the way, Mr. ROBERTS had been sitting there since 1990 or 1991 or 1992. I know he has been sitting there for at least 11 years. He has been nominated three times. This is too much of a rush? Give me a break. They took a lot longer than 6 months to consider the Bush nominees.

The nominees being whisked through all have records that cry out for greater scrutiny.

I have covered how scrutinizing we are in the committee. We do not miss anything. My friends on the other side do not miss anything. We don't either.

One, Jeffrey Sutton, is a leading states' rights advocate who in 2001 persuaded the Supreme Court to rule against a nurse with breast cancer on the ground that the Americans With Disabilities Act does not apply to state employers.

I was one of the authors of the Americans with Disabilities Act. I was not enthused about that case. But the fact is, it was a legitimate legal matter and he had every right to represent the States in that matter. The attitude around here is, if he represented the States, it must have been wrong. Or, if he represents big corporations, he must be wrong.

Sometimes the States are right. Sometimes the corporations are right.

Mr. SESSIONS. Will the Senator yield?

There is some statement in there that sounds odd to me. They criticize Mr. Sutton for persuading the Supreme Court, like it is something bad. And I make a note that the Supreme Court ruled with him and agreed with his position.

I know the Senator is so knowledgeable about these issues. I just ask, is there something wrong, is it disqualifying for an attorney to prevail on the Supreme Court?

Mr. HATCH. Apparently to the New York Times. The fact is, that case was written by the Supreme Court. He advocated, as any advocate, and he was representing, as I recall, one of the States.

Another, Deborah Cook, regularly sides, as a state judge, with corporations.

Oh, my goodness. You mean we have somebody who will be on the Federal bench who occasionally finds corporations might be right? What a terrible thing that must be, that corporations are right? Let's be honest about it. A lot of employment cases, almost every

one that is good, is settled before it gets to court. It is only the hard cases that basically have to be tried. And in many instances, those cases are not good cases. Some on the other side seem to think, well, she sides with corporations. My gosh, she sides with who is right. And that is what we should do.

Admittedly, sometimes it was a dissent, and she was known for the dissent. That is not bad. Dissenting judges play a noble role. You can disagree with cases but you cannot disagree with her integrity. No one would attack her integrity.

In one case she maintained that a worker whose employer lied to him about his exposure to dangerous chemicals should not be able to sue for his injuries.

That is the most oversimplification I have ever seen. It is wrong.

Jay Bybee, who was heard from yesterday, has argued that United States senators should be elected by state legislators, not the voters.

That is purely wrong; it is bunk. The fact is, this system we have is a good system. But we know one time Senators were elected by State legislatures. He has expounded on that.

Questions have also been raised about whether, as a White House aide, Mr. Bybee attempted to suppress a criminal investigation of financing of Iraqi weapons purchases.

Come on. That is totally bunk. They have not talked to Mr. Bybee and given him any consideration. That, first, should never have been disclosed. But it was. And not one person asked a question about it. I am sure they will say they were watching Colin Powell's speech. I was not. I was sitting there in committee, making sure they had a chance to ask any questions they wanted. We delayed the committee until after Colin Powell finished to enable any Democrat to come, and at least two said they would come, to come back and question. They did not come back.

The committee's new leadership showed similar recklessness when it waved Miguel Estrada through on a straight party-line vote.

What are we suppose to do if the other side plays politics with the judges? They did not have one good argument through the whole process, and we have had a horrendous process to begin with that took 631 days before he came to the committee. The only reason he came then was because the Republicans took control of the Senate. Thank goodness for that or he would never have come up. He would never have had a chance. We all know it around here.

"Mr. Estrada, a conservative lawyer"—who knows if he is. I don't know his ideology. I know he is a great lawyer. And I presume, as I am sure the President does, that he is probably moderate to conservative.

"Mr. Estrada, a conservative lawyer with almost no paper trail."—I just made the case there is a paper trail on him—"refused to answer senators' questions on crucial issues like abor-

tion." Give me a break. He did answer. He said that he would apply the law regardless of his personal viewpoints.

This is a man who argued the case for NOW. Who knows where he stands—I don't know. All I can say is that is a ridiculous statement. I guess editorials can be ridiculous, but this one is particularly.

Meanwhile, the White House refused to hand over memos Mr. Estrada wrote as a government lawyer that could have shed light on his beliefs.

They wanted memos on that side because they could not find anything else to give him a rough time about. They wanted memos on that side from the Solicitor General's office and seven former Solicitors General, four of whom are Democrats, came in and said that would be a very inadvisable thing to do because it would chill the work of the Solicitor General's office. People would not give their honest opinions if they knew that later they would be pilloried with those in the Senate of the United States.

Meanwhile, the White House refused to hand over memos Mr. Estrada wrote as a government lawyer that could shed light on his beliefs.

Mr. Estrada said it would have been all right with him. He is proud of his work.

I have to say that the greater approach would be to recognize that there are some things that have to be privileged. As I say, all seven living former Solicitors General have said that.

"The Bush administration is naturally going to nominate candidates for the bench who are more conservative than some Democrats would like,"—that is fair—"and the Republican majority in the Senate is going to approve them." That is fair. "That does not mean, however, that the administration should be allowed to act without scrutiny,"—that is not fair, because it is tremendously scrutinized—"and pack the courts with new judges who hold views that are out of whack with those of the vast majority of Americans."

Now, come on.

We fear that that is what the hasty hearing process is trying to—

Come on. Hasty—631 days before he even gets a hearing with all of that scrutinization that has gone on? It is not fair. This editorial is not fair.

I call on my friends at the New York Times: be fair about the judges. I know the paper is more liberal than I, and I expect you to be more liberal. But I expect you to be fair. This business about three judges being called at one time—they have been sitting there for 631 days or more; actually more. They have been sitting there since May 9, 2001. They have been scrutinized to death. We gave every opportunity to question and every opportunity to file additional questions.

By the way, I remember during the Carter years, when Senator KENNEDY was chairman of the committee, if I recall correctly we had seven circuit

nominees on one hearing. Is it wrong for Republicans to try to move these judges after all of these delays when they have the opportunity to do so, but not wrong for the Democrats to move the judges they want moved when they have control of the White House and the Judiciary Committee? I don't think there should be a double standard. I wanted to move as many of those May 9 judges as we could. If you will take note, the next week we had only one and that was Jay Bybee. That was this week. And next week we will probably only have one more.

We are doing the best we can to try help solve judicial problems in this country. Just for the information of the New York Times, there are around 25 judicial emergencies in this country—emergencies. The Circuit Court of Appeals for the District of Columbia is one. The Sixth Circuit Court of Appeals in Ohio is another. We need to do something about that if we want justice in this country, if we want to have cases heard and tried and resolved—and that is what we want. That is what good lawyers want, fair judges who will fairly listen to their case and give them a fair trial. And these judges will. That is why they are so highly rated by the American Bar Association and that is why Miguel Estrada has the highest rating possible.

I think it is time for the New York Times to be more fair in its reporting on these judges. I noticed the day before they were reporting as though Paul Bender's opinion really amounted to something. It may in some areas, but certainly I think the opinions he gave at the Solicitor's office are more important than politically motivated opinions that he gives later as a liberal Democrat—and, I might add, a very liberal Democrat.

I have taken enough time. I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Madam President, I ask unanimous consent to speak as in morning business for 25 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. Madam President, reserving the right to object, I assume the Senator will be speaking on a subject other than the Estrada nomination?

Mrs. MURRAY. That is correct.

Mr. SESSIONS. I will say, I was down here to speak on the Estrada nomination. I think the individuals who oppose him say they want to talk about it. I would like to hear what they have to say. This morning there is nobody down from the other side, the opposition, to speak against him. I don't know what they could say if they came. So it is frustrating to me.

I know the Senator has some issues she cares about deeply and wants to talk. I suppose that is appropriate at this time, although in reality I think we ought to be engaged in a debate about this nomination and why it

should be held up, why he does not qualify for the bench, and why there is something wrong with an individual who was given the highest possible rating, unanimously, by the American Bar Association.

Having said that, I withdraw my objection to the unanimous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Washington.

(The remarks of Mrs. MURRAY are printed in today's RECORD under "Morning Business.")

Mrs. MURRAY. I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I assume we are on the business of the Estrada nomination.

The PRESIDING OFFICER. The Senator is correct.

Mr. SESSIONS. Mr. President, that is the pending business before the Senate today. It is a matter of importance. The Court of Appeals of the United States are important judicial offices. We need good people for those offices.

There is no doubt in my mind that Miguel Estrada is one of the finest nominees we have seen in years. He has an impeccable record, with extreme capability, and wonderful integrity. He had a great demeanor in the committee when he testified. So I am very impressed with him.

It is very disturbing to me that we would have a blockage, an obstruction being carried on here by the members of the Democratic Party. They stalled him in committee. They failed to give him and several other superb President Bush nominees to the court of appeals a hearing at all—over 600 days. It would have been 2 years in May since they were nominated, and there was not a hearing even held.

So when the majority switched, Senator HATCH had hearings on Mr. Estrada. I thought he testified just superbly, with such a winning manner. He is a low-key person, but he has a brilliant mind. He analyzed the questions carefully, and gave responsible answers time and again in a way that few could disagree with, in my view.

If we are going to slow down the work of the Senate, if we are going to stop what we are doing to talk about a nominee for the court of appeals, I would like to hear people step up to the plate and talk about that nominee. Let's see what the problems are. I haven't seen them. We have had two speakers today from the other side who talked about asbestos and hydrogen automobiles, not the subject at hand. We have agreed to that. I don't know how long we ought to agree to that. Maybe we should just say, if you want to slow down the Senate, then so be it. We will just talk about that day after day. I am concerned about that.

I did misspeak in saying that Estrada didn't have a nomination hearing under the Democratic majority. He did get a hearing late in the process. Three

of the nominees we had last week who were nominated with him in May 2 years ago got their first hearing just last week. He was not part of that group.

Mr. Estrada came to this country at 17. He went to Columbia College where he graduated with honors magna cum laude. Then he went on to Harvard Law School. He grew up in Honduras. His mother came here. She could not speak English. He has done exceedingly well. He is a tremendous American success story. He is a great American, the kind of person we all respect because of his merit, his humility, his strength of character, his hard work, and his intellect.

After going to the Harvard Law School, which many consider the most prestigious law school in the world, he not only finished at the top of his class, he was chosen to be editor of the Harvard Law Review. The editor of the Harvard Law Review or any law review at a good law school is considered to be one of the most outstanding honors a graduate can have. It is probably more significant in the minds of many people than who had the highest grade point average, who finished No. 1 in the class. Being editor of the law review is something you are chosen for by your classmates and the faculty. It is a great honor. It requires exceptional academic excellence. He finished magna cum laude at Harvard. It also requires leadership skills and analysis, the kind of skills that most people think make a good lawyer. He was successful in that.

After doing that, he was an assistant U.S. attorney in the Southern District of New York. I was an assistant U.S. attorney in my prior life, and a U.S. attorney. But those in the Southern District of New York, rightly or wrongly, considers themselves to be the premier U.S. attorney's office in the country. They hire only the highest achieving assistant U.S. attorneys. They are very proud of that. Just being chosen at that office is a great honor. I would suspect there are more than 100 applicants for every vacancy they have. It is an office that handles complex matters. Some of the biggest financial and international matters often get handled in the Southern District of New York.

While he was there, he became active in and chairman of the appellate litigation section. That means he wrote briefs that would be presented to the Second Circuit Court of Appeals in New York. The Second Circuit is considered one of the great circuits in America. So he was chosen to represent the United States in the attorney's office, to write their appellate briefs before one of the great circuit courts.

One reason he was chosen for that is that Miguel Estrada, after graduating from Harvard, clerked for a U.S. Court of Appeals judge for the Second Circuit there in New York and had a good record. After having clerked for the Second Circuit, he was chosen to be a



clerk for the U.S. Supreme Court, Justice Anthony Kennedy.

For lawyers graduating from Harvard, or from any law school in America, being chosen to be a law clerk for a Justice on the Supreme Court is an exceedingly great honor. It is sought by thousands and thousands, and very few are selected. He was selected because of his excellent record, his background, and expertise. It is a great compliment to him that he was chosen to clerk for Justice Anthony Kennedy, who is considered to be a swing Justice on the Court.

After that, he went to the U.S. attorney's office, where they prosecute criminal cases and work on the appeals that arise from those kind of cases and other matters relating to U.S. litigation in court. That is what they do there. He did a good job there.

Then he was chosen to come to the Solicitor General's Office of the U.S. Department of Justice. Inside the Department of Justice, one of the oldest Cabinet positions in our Government, one of the founding Cabinet positions, there is the Litigation Division. Inside the appellate litigation section is the Solicitor General's Office. The Solicitor General has often been referred to as the Government's lawyer. The position of Solicitor General has been called one of the finest lawyer jobs in the world, because the Solicitor General and his team get to appear before the Supreme Court and represent the United States.

I used to be thrilled when I could stand in a courtroom in the Southern District of Alabama and say: I represent the United States of America. The United States is ready, Your Honor.

That was a great honor for me. To be able to do that in the highest court in the land and represent the United States before the Supreme Court is a premier honor for any lawyer.

Miguel Estrada was chosen for that. He served over 5 years in that capacity. During that time, overwhelmingly, he served in the Clinton Department of Justice. During that time, every single year while he served in the Department of Justice, he got the highest possible evaluation that the Department of Justice evaluators give—year after year. They said he was cooperative, a leader; he inspired other lawyers to do their best. They said he followed the policies of the Department of Justice, not someone running off doing independent things and nutty things.

He was a solid, committed attorney to the Solicitor General's Office, to the ideals of the Solicitor General's Office. He was commended in his evaluations for following the policies of that office.

That is quite an achievement. He left there and joined the prestigious law firm of Gibson, Dunn & Crutcher, one of the great law firms in the world, no doubt. He has been highly successful there, and the President has now nominated him for the court of appeals.

He has, in the course of his career, argued 15 cases before the U.S. Su-

preme Court. You could count on both hands probably the number of practicing lawyers today who have ever argued 15 cases before the Supreme Court.

That is a reflection of the confidence that clients and his law firm had in him. This isn't politics. When you have a big case before the Supreme Court of the United States and you have to have somebody there arguing that case, you don't want second rate, you want the best person you can get. The Supreme Court hears less than 100 cases per year. They select only a very few. Whenever your case is chosen for the Supreme Court, there is no doubt about it, the clients start looking around for superior appellate lawyers to represent their interests in a case that may set national policy for generations to come. We still cite many of those Supreme Court cases time and again to indicate the importance of them and how much they impact our daily lives. So he was chosen 15 times to appear before the Supreme Court. I think that is a tremendous testament to his merit, his capability.

I will tell you something else. You don't hotdog before the Supreme Court of the United States. You have to know what you are talking about. You have to be disciplined and you must understand the rulings of the Supreme Court, how they impact the case at hand, and you have to argue to the Justices within the realm of their existing philosophy and the existing status of the case law as to why you think your client should prevail or why the opponent should not prevail. That is a great compliment to him.

Now, for some time, our Democratic colleagues have complained we did not give enough prominence to the opinions of the American Bar Association. They evaluate judges. They are not any official body. The American Bar Association is just an institution out there that does legal matters and represents lawyers as a group. They evaluate these judges. So they want to do it and they do it. They have every right to do it. I, frankly, value their opinions. I have always thought they were good. Some have felt they were biased a bit to the left. The positions the ABA takes at conferences consistently are liberal positions, which irritates a lot of lawyers and conservatives in the country. They have felt the ABA could not be trusted to evaluate judges objectively. In fact, I have noted some tendency to be less favorable to conservative judges than to liberal judges, but I feel their contributions are valuable—I always have—and I continue to believe they are valuable. So that was a complaint from our friends on the other side of the aisle, that we ought to listen to them more.

The ABA has reviewed Miguel Estrada's nomination. They have conducted a thorough review of it. They give several different kinds of ratings. They give ratings of nonqualified, unqualified, qualified, and a well-quali-

fied rating. Very few people get the well-qualified rating. This is what it requires to get it, according to the ABA manual:

To merit a rating of well qualified, the nominee must be at the top of the legal profession in his or her legal community . . .

The "top" of the profession . . . . . have outstanding legal ability, breadth of experience, the highest reputation for integrity, and either have demonstrated or exhibited the capacity for judicial temperament.

That is what is required for a person to get the well-qualified rating. They have 15 of so lawyers study and talk to judges and to the lawyers in the firm with the person, and they talk to lawyers on the other side of cases from the nominee; they make the nominee list the top 10 or so cases they have handled, and they talk to the lawyers and judges to see how well they performed in handling those cases, and so forth. When all of that was done, Miguel Estrada was unanimously voted well qualified, which is the highest possible rating for the court of appeals. In fact, he is one of the finest young lawyers in America today, a man of extraordinary capabilities, and I think a man who would be perfect for the court of appeals. He will be handling cases in a number of different aspects. These will be the kinds of matters he has spent his life handling, because the kinds of cases they have here in DC are cases he has worked with both as an Assistant U.S. Attorney when he represented the United States of America, and at the Solicitor General's office, and also the kind of appellate cases he has had in private practice before the Supreme Court. I am proud of him. I have observed no complaint that in any way damages his qualities and capabilities.

Miguel Estrada has support across the aisle from Democrats and Republicans. He is the kind of person who ought to move forward. I remain utterly baffled about why such a fine nominee would be given the kind of grief he has gotten so far, and to be held up the way he has been held up, and how people say they are going to fight it for weeks, perhaps. I hope that is not so. I hope we don't have a filibuster. At the time the Republicans had the majority in the Senate, and when President Clinton was nominating judges, we never had a filibuster. During that time, we confirmed 377 of President Clinton's nominees and voted only one down. Not one nominee was ever blocked in committee, and in less than 2 years we have had two nominees blocked in the committee already, when the Democrats had the majority.

Regardless of that, this nominee ought to move forward. He is the kind of person we need on the bench. We should celebrate the fact that an individual of his quality, with his potential to create high income in one of the finest law firms in the country, right here in one of the most prestigious practices in the country, is willing to give that

up for public service because he loves his country and the principles of our country.

I think he is the kind of person we need on the bench, and I think it is time for us to give him a vote. I am sure we will and, when we do, I believe he will be confirmed.

I thank the Chair and yield the floor. The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I have been an observer of all of these debates about judges because I am not a lawyer and I don't sit on the Judiciary Committee, but I have been interested to note that when President Bush became the President, he announced he would not allow the American Bar Association to, in effect, veto Presidential nominees. He said the Constitution doesn't give the American Bar Association any right to determine who should be on the Federal bench and who should not, and that he would not bow to the American Bar Association for their recommendations.

Our friends on the Democratic side of the aisle, in the popular phrase of the teenagers, went ballistic. They said the American Bar Association was the gold standard by which everybody should be judged. And Senator LEAHY, when he was chairman of the Judiciary Committee, made it very clear that even though a recommendation from the American Bar Association is extraconstitutional, he would apply that extraconstitutional test to everyone who came up; and if they did not pass that test—extraconstitutional though it is—they could not be confirmed. He made that very clear. I am grateful to him for his candor. I appreciate the fact he was open with this body and the American public that that particular test was being added to the constitutional test that a nominee should pass.

Now we have someone before us who passes not only the constitutional test but the extraconstitutional test laid down by the Democrats. He is not only qualified—according to the American Bar Association, “well qualified”—he was found unanimously well qualified by the American Bar Association. Yet Senator LEAHY is leading a form of filibuster against this nominee that gives rise to this question, which I have asked on the floor before and, undoubtedly, in this extended debate I will ask again. I would ask Senator LEAHY, Senator KENNEDY, and the others: What additional, extraconstitutional test have you devised that you are applying to nominees for the judiciary? You have told us the first one. You have been very up front about it and tell us what additional, extraconstitutional test you have determined must be passed by a nominee because there is no obvious reason this nominee should be objected to; there is no obvious reason every single Democrat on the Judiciary Committee should have voted against him and we should see the coming of a filibuster against his nomination.

The Senators are exercising their rights. I do not object to them exercising their rights, but I do ask them very respectfully to tell us the nature of the test they are applying to these nominees so that we can know in advance in future circumstances which nominees will not pass their test, which nominees will fail that test. In order to do that, we need to know what that test is.

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. BUNNING. Mr. President, I ask unanimous consent that further materials be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. BUNNING. I thank the Chair.

Mr. President, today I rise in support of the nomination of Miguel Estrada to sit on the DC Circuit Court of Appeals. As has been said many times in this Chamber, Mr. Estrada is highly qualified to sit on this court and deserves a fair hearing and a vote in the Senate.

There are four vacancies on the DC Circuit's 12 seats. Most lawyers consider the DC Circuit to be the second most important court in the United States. That means the court is missing one-third of its judges.

That is alarming. The seat for which Mr. Estrada has been nominated has been designated as a judicial emergency by the Judicial Conference of the United States. To leave the seat empty for any longer is unacceptable and dangerous.

In Kentucky, we know a little bit about vacancies. We are part of the Sixth Circuit Court of Appeals, and that panel has 6 vacancies right now out of 16 total seats. That is a little better from not too long ago when we had 8 openings, but it is not much better. In all, the U.S. Courts of Appeals have 25 vacancies, totaling 15 percent of the entire system.

The situation is so bad the American Bar Association has described it as an emergency. Fortunately, the Judiciary Committee held hearings on four appellate court nominees recently, and one of those nominees is now before the Senate. At least we are starting to see some progress.

Recently, Chief Justice Rehnquist delivered his annual report on the state of the Federal judiciary. One of the key points he emphasized was promptly filling vacancies. With this nomination, we have the opportunity to begin filling empty seats on the bench.

Case filings in the Federal court system hit a new record high last year, and I believe that trend will continue this year also. The record number of cases in the court system, combined with judicial vacancies, led the Chief Justice to warn Congress that proper functioning of the court system is in jeopardy. The Senate cannot and must not allow that to happen.

In concluding his remarks on judicial vacancies, the Chief Justice said:

We simply ask that the President nominate qualified candidates with reasonable promptness and that the Senate act within a reasonable time to confirm or reject them.

I cannot imagine a clearer signal to the Senate to fulfill its responsibility to confirm judges.

President Bush has done his part in nominating candidates of the highest moral integrity and legal expertise. Each of his nominees has been carefully selected, and each deserves a hearing and a vote, which leads us to the nomination before us today.

Mr. Estrada was nominated by President Bush in early 2001. Although he did get a hearing in the Judiciary Committee after well over a year, he was not granted a vote. It took almost 2 years for him just to get his day in court. In fact, when the 107th Congress ended last year, 31 nominees were still waiting in committee for a vote. We had not even had hearings in the Judiciary Committee.

Twelve of the 14 pending nominees for the court of appeals were nominated in 2001, and six of them, including Miguel Estrada, were among the first group of nominees submitted to the Senate nearly 2 years ago.

The judicial nomination situation in the Senate is totally unacceptable. Fifteen of President Bush's appellate nominees have had to wait more than a year for a hearing—not even a vote, just a hearing. According to the Justice Department, 15 of President Bush's appellate court nominees have had to wait over a year for a hearing. This is a higher total than the combined total that had to wait over a year for the past 50 years.

Almost 90 percent of the appellate court nominees made in the first 2 years of the Reagan, George H. W. Bush, and Clinton administrations were confirmed by the Senate. But in the first 2 years of this administration, only 54 percent were confirmed.

Chief Justice Rehnquist is not exaggerating when he says the status of judicial nominations threatens the very function of our court system and justice itself.

As for Mr. Estrada, he is a fitting nominee to break this logjam. Mr. Estrada is an inspiration. He has lived the American dream. He will become the first Hispanic to serve on that prestigious court. He is a fine example of the quality nominees President Bush has sent to the Senate.

Mr. Estrada came to the United States when he was 17 years old, growing up in Honduras. He spoke little English when he arrived in America, but that did not keep him from graduating magna cum laude from Columbia College and Harvard Law School. He is no stranger to the appellate court system.

After law school, he clerked for a judge at the Second Circuit Court of Appeals. After that, he was a clerk for Justice Kennedy at the Supreme Court. Mr. Estrada then served as an assistant U.S. attorney in New York and a deputy chief of the appellate section of the



U.S. Attorney's Office. Those jobs required him to try cases in the district courts and argue before the Second Circuit Court of Appeals.

Next, he served in the Office of the Solicitor General during William Jefferson Clinton's administration. Now he is a partner in the Washington, DC, law firm of Gibson, Dunn, & Crutcher.

It has been said many times, but I think it is worth repeating, Mr. Estrada earned the American Bar Association's highest rating for a nominee, a "unanimously well-qualified" rating.

He has been endorsed by a long list of political, business, and civil rights organizations. I have yet to hear any detractors make credible arguments that he is not qualified. I can see no obstacle to his being confirmed. He is supported by Seth Waxman, a Solicitor General under former President Clinton, as well as the former chief legal counsel to Vice President Gore. There is no question in my mind that Mr. Estrada will make a fine judge once confirmed. His life story is an inspiration for minorities, and all of us, throughout America. His hard work and dedication is obvious. His academic and legal achievements cannot be denied.

I urge the Senate to quickly hold a vote on this nomination, and I urge my colleagues to support Miguel Estrada.

I yield the floor.

#### EXHIBIT 1

U.S. SENATE,

Washington, DC, February 4, 2003.

DEAR COLLEAGUE: I write to urge you to support the confirmation of Miguel A. Estrada, who has been nominated for a seat on the United States Court of Appeals for the District of Columbia Circuit. If he is confirmed, he will be the first Hispanic to sit on this court, which is widely considered to be the second most important court in the country.

Mr. Estrada represents an immigrant success story. Born in Tegucigalpa, Honduras, his parents divorced when he was only four years old. Mr. Estrada remained in Honduras with his father while his sister immigrated to the United States with his mother. Years later, as a teenager, Mr. Estrada joined his mother in the United States. Although he had taken English classes during school in Honduras, he actually spoke very little English when he immigrated. He nevertheless taught himself the language well enough to earn a B- in his first college English course. In a matter of years, he not only perfected his English skills, but he exceeded the achievements of many persons for whom English is their native tongue. He graduated with a bachelor's degree magna cum laude and Phi Beta Kappa in 1983 from Columbia College, then received a J.D. degree magna cum laude in 1986 from Harvard Law School, where he was editor of the Harvard Law Review.

Mr. Estrada's professional career has been marked by one success after another. He clerked for Second Circuit Judge Amalya Kearse—a Carter appointee—then Supreme Court Justice Anthony Kennedy. He worked as an associate at Wachtell Lipton in New York—as high powered a law firm as they come. He then worked as a federal prosecutor in Manhattan, rising to become deputy chief of the appellate division. In recognition of his appellate skills, he was hired by the Department of Justice Solicitor Gen-

eral's Office in 1992. He stayed with that office for most of the Clinton Administration. When he left that office in 1997, he joined the Washington, D.C., office of Gibson, Dunn & Crutcher, where he has continued to excel as a partner. He has argued an impressive 15 cases before the United States Supreme Court, and the non-partisan American Bar Association has bestowed upon him its highest rating of Unanimously Well Qualified.

I take the time to offer up this brief recitation of Mr. Estrada's personal and professional history because I think it illustrates that he is, in fact, far from the right-wing ideologue that some have portrayed him to be. He clerked for Judge Kearse, a Carter appointee, then Justice Kennedy, a moderate by any standard. He joined the Solicitor General's Office during the first Bush Administration, but stayed on through much of the Clinton Administration. His supporters include a host of well-respected Clinton Administration lawyers, including Ron Klain, former Vice President Gore's Chief of Staff; Robert Litt, head of the Criminal Division in the Reno Justice Department; Randolph Moss, former Assistant Attorney General; and Seth Waxman, former Solicitor General for President Clinton. He has defended pro bono convicted criminals, including a death row inmate whom he represented before the Supreme Court in an effort to overturn his death sentence. He has broad support from the Hispanic community, including the endorsement of the League of United Latin American Citizens (which is the country's oldest Hispanic civil rights organization), the Hispanic National Bar Association, the U.S. Hispanic Chamber of Commerce, the Hispanic Business Roundtable, the Latino Coalition, and many others.

Mr. Estrada has been unfairly criticized by some for declining to answer questions at his hearing about whether particular Supreme Court cases were correctly decided. Lloyd Cutler, who was White House counsel to both President Carter and President Clinton, put it best when he testified before a Judiciary Committee subcommittee in 2001. He said, "Candidates should decline to reply when efforts are made to find out how they would decide a particular case." He further explained, "What is most important is the appointment of judges who are learned in the law, who are conscientious in their work ethic, and who possess what lawyers describe as 'judicial temperament.'" Mr. Estrada's academic achievement, his professional accomplishments, and the letters of bipartisan support we have received from his colleagues all indicate that Mr. Estrada fits this description.

Several opponents of Mr. Estrada have attempted to block his confirmation by boldly demanding that the Department of Justice release internal memoranda he authored while he was an Assistant to the Solicitor General. All seven living former Solicitors General—four Democrats and three Republicans—oppose this request. Their letter to the Committee explains that the open exchange of ideas upon which they relied as Solicitors General "simply cannot take place if attorneys have reasons to fear that their private recommendations are not private at all, but vulnerable to public disclosure." They concluded that "any attempt to intrude into the Office's highly privileged deliberations would come at a cost of the Solicitor General's ability to defend vigorously the United States' litigation interests cost that also would be borne by Congress itself." The Wall Street Journal and the Washington Post have also criticized the attempts to obtain these memoranda.

These misguided efforts should not prevent our confirmation of a well-qualified nominee who has pledged to be fair and impartial, and

to uphold the law regardless of his personal convictions. I have no doubt that Mr. Estrada will be one of the most brilliant federal appellate judges of our time, and I urge you to join me in voting to confirm him.

Sincerely,

ORRIN G. HATCH,  
Chairman.

LATINO COALITION  
FOR MIGUEL ESTRADA,

Washington, DC, February 5, 2003.

Hon. JIM BUNNING,  
Member, U.S. Senate,  
Washington, DC.

DEAR SENATOR BUNNING: At a time of a serious judicial vacancy crisis in our country, it is simply disingenuous that the Senate Democratic leadership is threatening to filibuster a nominee to the U.S. Court of Appeals, with impeccable credentials and a unanimous "well qualified" rating from the American Bar Association.

On May 9, 2001, President Bush nominated Miguel A. Estrada to fill a vacancy on the United States Court of Appeals for the District of Columbia Circuit. Mr. Estrada would be the first Hispanic in history to sit on that court, which is widely viewed as the most important and prestigious Court of Appeals in the nation. No wonder George Herrera, President and Chief Executive Officer of the United States Hispanic Chamber of Commerce, concludes that "Estrada's nomination can be a historic event for the Hispanic community. Latinos in this country have worked hard to break the barriers and obstacles that have stood in our way for too long and we now have the opportunity to do so. Estrada's appointment will also be a role model for Latino youth by demonstrating that a Latino can be appointed to one of the highest courts in the nation." He is just one of the overwhelming majority of national Hispanic grassroots organizations that are enthusiastically supporting his nomination, not just because he is Hispanic, but because he is superbly qualified.

Mr. Estrada is unique in another respect, too. As his colleagues can attest, both conservatives and liberals alike, Mr. Estrada is one of the most brilliant and effective appellate lawyers in the country. Having worked at the Justice Department under Republican and Democratic Administrations, he has demonstrated a commitment to upholding the integrity of the law and a dedication to public service. During his career, he has argued fifteen cases before the Supreme Court—all before reaching the age of 40. He richly deserves the unanimous "well qualified" rating the American Bar Association bestowed on him—the organization's highest possible evaluation.

Miguel Estrada is more than just a talented lawyer. He represents the potential of a growing population and what is possible in the United States. A native of Honduras, Mr. Estrada arrived in the United States at age 17, unable to speak much English. Yet he graduated magna cum laude from Columbia University and magna cum laude from Harvard Law School, where he was an editor of the Harvard Law Review. He clerked for Supreme Court Justice Anthony Kennedy—one of the more moderate Republican appointees who continues to be Estrada's mentor. Mr. Estrada's own journey from immigrant to successful attorney has inspired him to devote much of his career to serving his fellow Americans. Both in government service and in private practice, he has sought to ensure that all citizens receive the law's fullest protections and benefits, whether they are death-row inmates or abortion clinics targeted by violent protestors.

Never has a judicial nominee that has been voted out of the Judiciary Committee been

successfully filibustered in the Senate. Estrada's opponents argue that he is a Hispanic in name only and is an ideologue. This is absolute non-sense.

Miguel Estrada is considered by all who have worked with him to be a brilliant attorney who has demonstrated the ability to set aside any personal beliefs he may have and effectively argue cases based on the US constitution and the law. Perhaps the most compelling praise in support of Mr. Estrada's nomination has come from Democratic political appointees who worked with him in the Clinton Administration.

Prominent Democrats including Ron Klain, the former Chief of Staff of Vice President Gore; Seth Waxman, Clinton's Solicitor General; Robert Litt, Associate Deputy Attorney General in the Criminal Division; Drew Days III, Solicitor General; and Randolph Moss, Assistant Attorney General in the Office of Legal Counsel have all praised Miguel Estrada for his brilliance, compassion, fairness and respect for precedent (quotes attached).

It would be an ironic travesty of justice for any member of the US Senate—a body without a single Hispanic member—to vote against Mr. Estrada with the excuse that he is a Hispanic in name only or that he does not understand or represent the values of our community? Under normal circumstances, this argument would be so absurd that we would have ignored it. But under the current partisan environment, we cannot stand by and allow Mr. Estrada's ethnic background to be used against him.

Miguel Estrada was nominated on May 9, 2001. He did not receive his first hearing until September 26, 2002, 16 months after his nomination. Now his opponents complain that they have not enough time to evaluate his record and that his nomination should not be rushed to a vote. We believe that a nominee should not have to wait for 21 months for a vote and that the Senate has had plenty of opportunity to consider Miguel Estrada's qualifications. This same tactic was used to delay Richard Paez's nomination for more than 4 years. It was unfair then and it is unfair now.

Any attorney who has argued 15 cases before the US Supreme Court has an extensive legal track record that can be analyzed for accuracy, quality, effectiveness and bias. Yet, incredibly, Mr. Estrada's detractors claim that his legal record is too skimpy for them to make an informed decision on his nomination. This ridiculous claim underscores the opposition's real problem . . . that there is nothing in Miguel Estrada's record that would lead a reasonable person to conclude anything other than this nominee is an exceptionally well qualified, highly principled attorney, who will make a fine judge on the DC Circuit.

The Hispanic National Bar Association, the League of United Latin American Citizens (LULAC), The Latino Coalition, the United States Hispanic Chamber of Commerce, the American Association for the Advancement of Mexican Americans, MANA—a national Latina organization, and the Mexican American Grocers Association are among the many Hispanic organizations supporting the nomination of Miguel Estrada.

Miguel Estrada is a perfect example of an American success story, who deserves an up or down vote on the Senate floor. He brings to the court a distinguished and extensive legal record based on his many years of work in the public and private sector. Mr. Estrada also brings unique perspective and human experience understood only by those who have migrated to a foreign land.

It is for this cultural depth and his unique legal qualifications that on behalf of an overwhelming majority of Hispanics in this

country, we urge the leadership of both parties in the U.S. Senate to put partisan politics aside so that Hispanics are no longer denied representation in one of the most prestigious courts in the land.

Sincerely,

League of United Latin Americans Citizens, the Hispanic National Bar Association, the U.S. Hispanic Chamber of Commerce, the Association for the Advancement of Mexican Americans, The Latino Coalition, Mexican American Grocers Association, the Hispanic Contractors Association, the Interamerican College of Physicians & Surgeons, the American G.I. Forum, the Federation of Mayors of Puerto Rico, the Casa De Sinaloense, the Cuban American National Foundation, the Hispanic Business Roundtable, the Cuban Liberty Council, the Congregacion Cristiana y Misionera "Fe y Alabanza", the MANA, a National Latina Organization, the Nueva Esperanza Inc. Cuban American Voters National Community, the Puerto Rican American Foundations

The PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I compliment the Senator from Kentucky for his excellent remarks. He said much of what I wanted to say, outlining the extraordinary qualifications of Miguel Estrada. He very clearly laid out the case that there is no legitimate reason to filibuster his nomination, but that appears to be the tactic that is being contemplated and maybe even being engaged in by many on the other side of the aisle, certainly not all on the other side of the aisle. We are certainly grateful for Members who are discerning enough to understand, as has been quoted many times—the Washington Post has suggested that filibustering this nomination would be unjustifiable, I think is their term, and certainly beneath the standards in the Senate. The standard is that we do not filibuster judges for the circuit courts, that it would be an unprecedented move to filibuster a judge.

In the 220-odd-year history of the Senate, what makes this judge so unique? And that is what it would be, it would be unique because it is the first time in the history of this country a filibuster would be conducted on a circuit court nominee.

What makes this nominee so unique to warrant—and I am not using this term in a pejorative sense but in a factual context—an extreme reaction, extreme by the definition that it is the first time in almost 230 years of American history that this would occur, that this would be an extreme reaction because it has never been done before.

What has this nominee done, or what about this nominee causes such an overreaction, or extreme reaction, that raises the bar to this high level?

Let's look at this nominee. The Senator from Kentucky noted he is intellectually clearly qualified. He got into colleges I was not able to get into, I can say that. As the Senator from Kentucky said, he is a man who was raised in Honduras. English was not his first language. He was able to perform at the highest levels at some of the most rigorous universities in the country,

Columbia and then Harvard Law School. He was on Law Review, it is my understanding, at Harvard Law School. These are truly lofty attainments and a demonstration of not only a powerful intellect but a rigorous attitude toward his studies and a commitment to excellence.

He clerked for the appellate court, which is a high honor very rarely bestowed upon graduates of law school, and even a more rare honor is to clerk for a Supreme Court Justice. He obviously has the intellectual capability, even at a young age; that was established. He has gone on with a distinguished career in law, public service, and in the private sector. He has argued numerous cases before the Supreme Court, which, frankly, standing up before a panel of Supreme Court Justices is hard enough but, in all candor, standing up when you have a speech impediment has to be a thoroughly paralyzing experience. To have the courage to persuasively make arguments, nonetheless, and deal with the bench under this context is a testament not only to his intellectual capability and to the hard work he puts into his job but to the personal courage and determination this man has.

So we have in this nominee someone who has overcome adversity in language, adversity in disability, and performed at the highest levels of the legal profession in this country.

As the Senator from Kentucky mentioned, he has a unanimous well-qualified rating. I am sure this has been repeated many times, but the other side has said this is the gold standard, this is the stamp of approval, getting a qualified rating from the American Bar Association.

This was not a qualified rating. This was not a well-qualified rating. This was a unanimously well-qualified rating.

So what is it? What could it possibly be that this nominee has done in his life to potentially warrant the first ever filibuster of a circuit court judge in the history of the Senate? What has he done? What are the arguments on the other side?

One of the arguments on the other side is he does not have sufficient experience. Well, I am a lawyer, and I can say I do not have near the experience Miguel Estrada has. I have not performed nearly in the arena of the law he has. His experience is abundant.

He has never been a judge. He is being nominated for a position on a court where there are eight judges right now. Five of the eight confirmed by this Senate had no prior judicial experience. So if judicial experience was so important for this court, then why do over half the members on this court have no prior judicial experience? One could make that argument, but the cup the water is being held in is as empty as the top. It flows straight through. It does not hold any water.

He has refused to disclose his judicial philosophy. Since when do we expect

people who are applying for judicial nominations to tell us how they would rule on future cases? That would truly be an extreme view, an unprecedented view, for the consideration of judges in the Senate. We do not require people to prejudice cases. In fact, part of the canons is one does not prejudice cases. So to ask a judge-nominee how he would rule or what his feeling is on these matters is inappropriate and that is why most judges, if not—well, maybe some give opinions, but most nominees who come before the Senate for confirmation do not answer that question. They can talk general judicial philosophy, but to go through and talk about how they would rule on certain cases is something that is an inappropriate question, in my mind, and should not be answered.

The other side is saying he did not turn over his work papers. Now, I did practice a little bit of law, and there is a privileged work product of lawyers that is not available to the other side in a case. Generally speaking, it is not available for discovery. Why? Because when you are working on a case—having worked in my capacity for a senior partner in most cases, as is the case here, because Miguel Estrada was an Assistant Solicitor; he was not the Solicitor General; he was working for someone in the capacity of the Solicitor's office—you are preparing the case and trying to share his opinions, his candid opinions about what his boss should do.

His boss may make a different decision, but his boss needs, as my senior partner needed, my candid opinion about what I thought of the merits of our argument or the facts in the case or whatever the case may be. He needed my candid assessment. Why? Because I understood the issue better than he or she did. That work product was essential for coming to the decisionmaking with all the best information that decisionmaker needed to make the property assessment of the case and to move forward.

Mr. BENNETT. Will the Senator yield?

Mr. SANTORUM. I am happy to yield.

Mr. BENNETT. It is my understanding that Mr. Estrada was employed during the Reno Justice Department; is that the Senator's understanding?

Mr. SANTORUM. That is correct.

Mr. BENNETT. Is it not then the case that some of these papers the committee is demanding are papers that were submitted to a Clinton Presidential appointee who acted as Solicitor General; is that not the case?

Mr. SANTORUM. That is correct.

Mr. BENNETT. So is it not true that it is a Clinton appointee, former Solicitor General, who is now saying it would be inappropriate for Mr. Estrada's material to be made public?

Mr. SANTORUM. That is correct, including, I believe, six other Solicitor Generals who have said it would

threaten the viability of the Solicitor General's office if this information were discoverable through this nomination process.

Mr. BENNETT. If I could comment on the question, I find it interesting for those who supported Janet Reno for Attorney General and supported President Clinton's Presidential nominees in that office, which nominees, after confirmed, are saying Estrada's notes should not be made public, are saying those nominees are wrong.

Mr. SANTORUM. I find that incongruous. I find, frankly, all of the arguments to be specious, at best.

What is confounding is that such an extreme measure appears to be in the offing, which is a filibuster, on such a pathetically weak case against this nominee.

So one has to step back and ask, Why? What is going on here? Why is this nominee being singled out? What is it about this nominee that is unusual, that has raised the fear or the ire of so many in this Chamber?

Mr. BENNETT. Will the Senator yield?

Mr. SANTORUM. I am happy to yield.

Mr. BENNETT. I recall in the last Congress where the Democratic members of the Judiciary Committee, and particularly the Democratic leader, then majority leader, along with the then-chairman of that committee, Senator LEAHY, attacked Republicans for being insufficiently supportive of nominees who were women or members of minorities. We were given quotas, if you will, at least the language of quotas, that we should have so many women and so many minorities, and we were attacked in the strongest possible language. Indeed, it came close to violating Senate rules, of implying that everyone on this side of the aisle was either sexist or racist because we did not support a sufficient number of minority nominees or female nominees.

Mr. SANTORUM. I suggest it went further. We were accused, if we voted against any minority—they would single out any negative vote against any minority member—it was the equivalent of having some sort of antiracial agenda; that somehow we harbored ill feelings toward whatever particular race or gender happened to be the subject of that nominee.

Mr. BENNETT. The Senator's memory is correct. We were told if we voted against any nominee who happens to be either a woman or a minority, we were, indeed, guilty.

Now we have one who happens to be a minority. I do not believe nominations should be made on the basis of gender or minority status. But when we have a nominee based on quality, who happens to be in a minority status, I find it disingenuous of those who made the point of the minority status. We didn't; they did. Those who made the point of the minority status now are insisting that the minority status should not be considered. I wish they

would be consistent. Either minority status does not matter or it does, and if it does, as they insist, it should be a reason for them to vote for this nominee.

Mr. SANTORUM. I stand here, as the Senator from Kentucky and the Senator from Utah, and ask the question, Why this nominee? The Senator may have—I hope he has not—may have uncovered what may be the underlying cause of this obstruction. We have passed and considered judges who, through their nominating process, have disclosed their conservative ideology equal to Miguel Estrada. It is accepted that Miguel Estrada is conservative in answering his questions and how he interprets the law. It seems to be consistent with, frankly, most if not all of President Bush's nominees. President Bush believes in commonsense judges who take the Constitution for what it says and who follow the law.

As Miguel Estrada has said in his testimony, he would follow the law. The Supreme Court says this is the law; he will follow the law. That is all this President wants. That is all most Members, certainly on our side, would like to see—which is, judges who are not Supreme Court Judges now, because they are making more law than following law—judges on the district court and appellate courts and their responsibility to follow the higher court. Miguel Estrada said, without question, he will do so.

It is not that he will not follow precedent. The objection must be philosophy. If it is philosophy, look at all the nominees of this President. They are overwhelmingly almost universally more conservative than they are liberal. I don't know how you measure conservatism, but certainly they are almost all generally right around where Miguel Estrada is as far as his philosophy is concerned of government and of jurisprudence. Yet none of them have been filibustered on the floor of the Senate.

So, again, you come back: What is different about Miguel Estrada than all the other conservative district court judges, appellate court judges, who have been confirmed by the Senate? They have been given a vote. I won't even go to confirmed. They have just been given the opportunity for a vote.

I can speak from personal experience, one I know very well. We had probably the most contentious nominee to hit the floor the last session of Congress, a judge from Pennsylvania, Judge Brooks Smith. He was from the western district of Pennsylvania. Judge Brooks Smith is a conservative judge, very much in the mainstream of ideology on the court and America. But he tracks more conservatively in his opinions than those more activist in nature, or more liberal.

Did they oppose him on that? No, they found a few issues having to do with him being involved with a club, years ago, that excluded women. So they began to make this case that he

was antiwoman. So that was the reason for this whole thing, even though we had the local chapter of NOW in his own county come out and suggest this is a good guy. It didn't matter. They had a hook. So they stuck the hook in. But they gave him a vote. They reported him out of committee and we gave him a vote on the Senate floor and he passed with 60-plus votes here on the floor of the Senate.

I know Judge Smith well and have tremendous respect for him. But I suggest Judge Smith and Miguel Estrada, when it comes to judicial philosophy, are pretty much two peas in a pod. It's pretty hard to tell the difference between how they would approach the issues. Judge Smith got a vote, even though, arguably—even though I think it was a red herring—he had some other issue out there that could have been used to discolor or discredit him.

What issue does Miguel Estrada have that could potentially disqualify him? What has he done in his legal career that could be used against him? I have not heard anything that, through his experience or education or actions, has disqualified him from this position. I haven't heard of any clubs he belonged to. He is a minority, so it's hard to belong to a club that excluded minorities, if he was one, so we can't run into that problem.

Maybe that is the problem. Maybe that is the problem, that we have someone who is a conservative and a minority. Is that the combination that is lethal?

Mr. BENNETT. Will the Senator yield?

Mr. SANTORUM. I am happy to yield.

Mr. BENNETT. As the Senator from Pennsylvania seeks to find a reason for opposing Mr. Miguel Estrada, I suggest to him one that comes out of yesterday's editorial in the Washington Post, as the Washington Post points out that Mr. Estrada did not cooperate with the Democrats in producing a case against him. Then it says,

Because it stems from his own and the administration's discourteous refusal to arm Democrats with examples of the extremism that would justify their opposition, they are opposed to him.

The editorial concludes:

Such circular logic should not stall Mr. Estrada's confirmation any longer.

I agree with the Washington Post in this circumstance. It may be they were hoping he would be cooperative enough to give them something to use against him and when he refused to do that, and indeed his background says there is nothing in there he could have given them, in anger they decided to turn against him.

As the Senator looks for some reason why they are opposed to him, maybe they are just disappointed over the fact he passed?

Mr. SANTORUM. I know when you try to bully someone into doing something and they don't do it, it can be pretty frustrating. But that is no rea-

son to go to such an extreme unprecedented measure of filibustering an obviously competent, well-qualified—unanimously supported by the American Bar Association—nominee for the circuit court.

I would just say this in closing. It is my intention as a Senator to see this nominee through to a vote. I think this nominee deserves a vote. There has been no reason, no legitimate judicial reason why this nominee should not be given an opportunity to be voted on. So I will make this statement. It is this Senator's intention to do everything I can do to keep the Senate on this issue for as long as it takes for a vote to occur.

When I say "as long as it takes," let me underscore what I mean: As long as it takes.

If the other side likes to stand up and criticize Miguel Estrada and wants to filibuster his nomination, let me assure you, we will provide you plenty of opportunity and time to do that if that is what you want to do. If you want to make the next days, weeks, months, years an opportunity to talk about Judge Estrada's qualifications for this job, it is this Senator's intention to give you the opportunity to do that. He deserves, through his outstanding record of accomplishment, overcoming language, disability, and prejudice heretofore and potentially now, to get this vote.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Nevada.

Mr. REID. Mr. President, because of the statements made by my friends on the other side of the aisle relative to Mr. Estrada, I would like to take a few minutes and rebut some of what they have stated during today's session of the Senate.

It is true there is a conflict in our country as to whether or not he should be approved by the Senate. We have newspapers saying yes, newspapers saying no. My friend from Pennsylvania, the junior Senator from Pennsylvania, who stated he could not understand why there was a filibuster, first has to understand there has never been a statement on the floor to the effect there is a filibuster. A decision has not been made by the leadership on this side as to whether or not there will be a filibuster. But let me just say I think something as controversial as this nomination should have some consideration.

We just started this process at 2:45 p.m. yesterday. There was good debate on Wednesday. We had a memorial service for the *Columbia* this week in Houston. We had another one this morning. Many Senators attended the two services. There is no session this afternoon or Friday because of the majority being engaged in a retreat. There is nothing wrong with having a retreat. We are going to have one in May. We will have to take some time off.

But we should not rush to judgment. There will be a decision made as to

whether or not there will be a filibuster, but that decision has not been made, to my knowledge.

Let me say there are people who care a great deal about our country who oppose this nomination. There are people who care a great deal about our country who favor this nomination. That is the reason our Founding Fathers established the Senate of the United States.

We do not live in a dictatorship. President Bush is President Bush, not King George. He knows that, I hope, and I am confident he does.

Take, for example, the New York Times which said, among other things:

The Senate Judiciary Committee is scheduled to vote tomorrow on Miguel Estrada, a nominee to the D.C. Circuit Court of Appeals. Mr. Estrada comes with a scant paper trail but a reputation for taking extreme positions on important legal questions. He stonewalled when he was asked at his confirmation hearings last fall to address concerns about his views. Given these concerns, and given the thinness of the record he and his sponsors in the administration have chosen to make available, the Senate should vote to reject his nomination.

Mr. President, this is the New York Times. It is a newspaper that has circulation not in the tens of thousands or hundreds of thousands but in the millions.

Among other things, this editorial states:

Mr. Estrada has put few of his views in the public record. One way to begin to fill this gap, and give the Senate something to work with, would be to make available the numerous memorandums of law that Mr. Estrada wrote when he worked for the solicitor general's office, as other nominees have done. But the White House has refused senators' reasonable requests to review these documents.

Mr. Estrada, now a lawyer in Washington, also had an opportunity to elaborate on his views, and assuage senators' concerns, at his confirmation hearing, but he failed to do so. When asked his opinion about important legal questions, he dodged. Asked his views of *Roe v. Wade*, the landmark abortion case, Mr. Estrada responded implausibly that he had not given enough thought to the question. Mr. Estrada's case is particularly troubling because the administration has more information about his views, in the form of his solicitor general memos, but is refusing to share it with the Senate.

Finally, the article says:

The very absence of a paper trail on matters like abortion and civil liberties may be one reason the administration chose him. It is also a compelling—indeed necessary—reason to reject him.

It is not as if the objection to this man is out of nowhere. We have editorials and newspapers that are transmitted to millions of people every day that take the position this man shouldn't be confirmed as a circuit court judge. We can't discount those opinions, or think there are some left-wing kooks who have decided for reasons which are not substantive not to go with this man.

I would also say that there have been a number of Senators talking about how unusual it is—how unusual it is—that we are talking about a judge's qualifications. I think if there is anything in the extreme, all we need to do

is look at the newspaper of today—the Roll Call: “GOP Calls on K Street to Boost Estrada.”

What this is all about is getting the lobbyists involved—to put pressure on Senators to move forward on this nomination and approve him. This Roll Call story documents special interests being told by members of the Republican leadership that they have a stake in this nomination process.

I think if there is anything untoward, it is the pressure being put on these people.

I also note that one of the Senators in the majority complained today about vacancies in the Federal court system. We are talking about the D.C. Court of Appeals. We Democrats tried to fill those. We were not allowed to do so. Why? Among other reasons, we were told by the majority that the D.C. Court of Appeals was too big and the people we wanted to put on would be just unnecessary baggage; that it wasn't necessary to fill those vacancies.

What our friend on the other side of the aisle complained about was OK, but he failed to explain that the vacancies on the two courts he mentioned—the D.C. Court of Appeals and the Sixth Circuit—were caused by the Republicans' failure to act, or their success in blocking nominees to the DC court.

Allen Snyder, who was a nominee voted qualified by the ABA, was never given a hearing, and never had a committee vote for a seat on the District of Columbia Circuit.

Elena Kagan, a well-respected law professor, was never given a hearing and was never given a committee vote for her nomination to the District of Columbia Circuit Court.

On the Sixth Circuit, Kathleen McCree Lewis—I am only giving you examples—waited for more than a year, was never given a hearing, and was never given a committee vote on the Sixth Circuit.

Kent Markus—no hearing and no vote; Helene White waited 4 years—no hearing and no vote.

We have said here—Senator DASCHLE when he was majority leader and I have said—that this isn't get even time for when we were in the majority. We tried to treat the minority then as we wanted to be treated when we were in the minority. We expect to be treated as we treated the minority when we were in the majority for approximately 18 months. That is what we are asking.

Mr. President, the majority leader is on the floor. I would be happy to yield to the majority leader and then would retain the floor when the majority leader completes his statement.

The PRESIDING OFFICER. Without objection, the majority leader is recognized.

Mr. FRIST. Mr. President, I ask unanimous consent that on Monday there be an additional 6 hours for debate on the Estrada nomination; provided further that the time be 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. DASCHLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Given the objection, Mr. President, I ask my colleagues on the other side of the aisle if they need additional time, which I assume they do? And if so, would they be willing for me to modify the request to 8 hours or 10 hours or 12 hours?

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I would be happy to respond to the distinguished Republican leader, the majority leader. As he knows, we began this debate yesterday afternoon. We had a good debate yesterday, I think, for 3 or 4 hours. I thought it was a constructive debate.

There are strong feelings on both sides of the aisle with regard to this nomination. I think our colleagues, of course, would have been prepared to continue the debate this week, and, for good reason, we are unable to do that because of the Republican conference. Our conference is later on this spring. Theirs is now. That precludes our opportunity to continue the debate. But clearly, very few Senators have had a chance to be heard. Few Senators have had the occasion to look more carefully at these facts.

We cannot prescribe a particular time, at least at this point. We will continue to discuss this matter with our colleagues, and I will be in touch with the distinguished Republican leader at a later date. But clearly this nomination deserves careful consideration, with ample time for debate.

I would hope colleagues on both sides of the aisle could be afforded their chance to speak to this nomination. It is a controversial nomination and, therefore, requires perhaps more time than others. So for that reason, I object.

I, of course, would not be able to say how much additional time we would require, but certainly some time next week will be required.

Mr. REID. Will the majority leader yield so I can ask a question of the Democratic leader?

Mr. FRIST. I am happy to yield, Mr. President.

Mr. REID. I say to the distinguished Senator from South Dakota, there has been talk here by the majority that there is a filibuster taking place. I said, just a few minutes ago, unless I missed something you said, there has been no decision made from you as to whether or not there is going to be a filibuster. Is that a fair statement?

Mr. DASCHLE. I say to the Senator from Nevada, that is correct. As I said, I think I recall there were only three or four Senators who were able to speak yesterday. There are many oth-

ers who wish to have the opportunity to speak. And certainly to cut off debate prior to the time they have had that occasion, especially with a nomination of this import, would be unwise. But there is no filibuster as we speak.

Mr. FRIST. Mr. President, I very much appreciate the comments made by the assistant Democratic leader and the Democratic leader on the importance of this nomination and the importance of having adequate time for debate and discussion, in part because this is the first judge to come through in this Congress, and it is important that it be handled well and it be handled fairly and it be handled in a cooperative spirit, which has been demonstrated over the last 2 days.

The reason for extending the unanimous consent request for Monday, which was objected to—I do want to state very clearly we need to have people on the floor talking and debating and discussing as much as possible for the times that are made available. I will shortly announce we will come back Monday. I would hope we could go through Monday and Monday evening, if necessary, and use that time effectively so we do have adequate discussion and debate.

This is an important nomination. There has been good debate to date. I encourage all of our colleagues to take advantage of the opportunity we are making available. We will extend the hours, starting earlier and going later, in order to make sure people do have that ample opportunity.

In terms of the allegations of a filibuster—and certainly even the use of the term yet—individual Senators can express themselves, but I think it does show the desire to have good debate, useful debate, to have the points made on both sides of the aisle, and then to allow an up-or-down vote on this nominee. I think we are on course for that. I would appreciate, in the early part of next week—after checking with your side of the aisle; and I will do likewise—for us to try to get some sort of time certain so we can further plan the business of the Senate.

Mr. REID. Mr. President, can I ask the distinguished majority leader a couple questions?

Mr. FRIST. Yes.

Mr. REID. First question. I believe you will announce it later. Do you expect any votes on Monday?

Mr. FRIST. Yes. We will have votes on Monday.

Mr. REID. Second question: Let's say there is something worked out and we have a vote on this on Tuesday. What are we going to take up after that?

Mr. FRIST. We will have other judges we will go to, and there are a number of bills that are being considered. There is a children's bill that is related to pornography we will be taking up at some point. There are other bills that have come through. There is an antitheft bill that is being considered right now we might be able to take up on Monday.

Mr. REID. Those bills have been reported out of committee?

Mr. FRIST. The military tax bill has been reported out. We have the Moscow treaty, which is very important, that we passed through the Foreign Relations Committee. We would like to address that as soon as possible. There are other pieces of legislation that are being looked at now. So we do have a number of items we can go to.

Mr. REID. One final question, Mr. President: What time do you expect the vote to be on Monday? We have people on our side, and I am sure on your side, who are interested in that.

Mr. FRIST. Approximately 5 o'clock.

Mr. REID. I would just say, if we could make that 5:15, it helps one of our Senators.

Mr. DASCHLE. Mr. President, I thank the distinguished assistant Democratic leader. I know that our Republican colleagues are hoping to adjourn shortly so they can accommodate their schedule. I want to respect that, but I know Senator BIDEN also wanted to come to the floor for some brief remarks with regard to North Korea, which is why I originally came to the floor.

I wish to comment for a moment and thank the distinguished Senator from Nevada for his comments on the Estrada nomination. I think it may arguably be the most serious of all nominations which has been presented to the Senate by this administration—the seriousness of knowing so little with so little information having been provided, and with so significant a level of intransigency with regard to a willingness to provide the information we seek. We have a constitutional obligation to advise and consent.

For the life of me, I don't understand how anybody could be called upon to vote on the qualifications of this or any other individual with so little information provided, and with the arrogance demonstrated by this nominee and in this case by the administration with regard to our right to that information.

I am very troubled. I know when you look at the array of Hispanic organizations that have now publicly declared their opposition to a Hispanic nominee, you get some appreciation of the depth of feeling about this issue, about this candidate, about his qualifications, and about the stakes as we consider filling a position in the second highest court in the land.

I will have a lot more to say about this next week.

## LEGISLATIVE SESSION

### MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now return to legislative session and proceed to a period for morning business.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Reserving the right to object, I know Senator BIDEN had hoped to be heard.

Mr. FRIST. Mr. President, if the Democratic leader will hold it for just one second, we will allow plenty of opportunity. Be thinking of the time that you need.

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

### THE ONGOING CRISIS IN NORTH KOREA

Mr. DASCHLE. Mr. President, I commend the Secretary of State for the strong presentation to the United Nations Security Council that he made yesterday. He confirmed what many of us already knew—that Saddam Hussein is a threat who has, once again, failed to live up to his commitments to the international community.

And he did it at a place many of us had been pressing him and the administration to do it—at the United Nations.

I hope that President Bush will use Secretary Powell's presentation to build a broad international coalition to confront Iraq. Our national security is better served if he does.

But, as the world's attention was focused on Secretary Powell and his presentation, an even more ominous development regarding weapons of mass destruction was taking place in North Korea.

Yesterday, North Korea announced that it had flipped the switch and restarted a power plant that can be used to produce plutonium for nuclear weapons.

This is but the latest in a series of aggressive steps North Korea has taken to kick into gear its programs to develop weapons of mass destruction and the means to deliver them—steps that our intelligence community believes indicate that Iraq is months, if not years, away from being able to take.

At the U.N., Colin Powell talked about the potential that Iraq may build a missile that could travel 1,200 kilometers. In 1998, North Korea fired a multi-stage rocket over Japan, proving they are capable of hitting one of America's closest allies—and soon, America itself.

In November 2001, intelligence analysts presented a report to senior administration officials that concluded North Korea had begun construction of a plant to enrich uranium for use in nuclear weapons.

In October 2002, North Korea informed visiting U.S. officials that it had a covert nuclear weapons program.

In December 2002, North Korea turned off cameras that were being used to ensure that 8,000 spent nuclear fuel rods were not being converted into weapons-grade material.

Days later, North Korea kicked out an international team of weapons inspectors.

And, within the past week, the administration confirmed that North Korea has begun moving these fuel rods to an undisclosed location.

On Tuesday, former Assistant Secretary of Defense and Korea expert Ashton Carter called these events “a huge foreign policy defeat for the United States and a setback for decades of U.S. non-proliferation policy.”

He is right. But it is potentially even worse. North Korea could have six to eight additional nuclear weapons before autumn.

And we know, when it comes to nuclear weapons—it only takes one. Remember, everything North Korea makes, North Korea sells.

Those scuds we intercepted on a ship to Yemen—and then inexplicably returned—weren't a gift. They were an example of business as usual from what even this administration has acknowledged is the world's worst proliferator.

As alarming as this information is, the administration's reaction is even more troubling. The President said in the State of the Union:

the gravest danger in the war on terror . . . is outlaw regimes that seek and possess nuclear, chemical, and biological weapons.

As the chronology of events I detailed above indicates, the administration knew about North Korea's plans on enriching uranium as early as November 2001, and yet it has said little, and done less, to stop these plans.

We have heard the administration—through leaks in the press from unnamed sources—suggest that we cannot focus on North Korea because it will distract attention from Iraq.

And we have even heard—and this is on the record—that some in the administration believe that North Korea's expansion of its nuclear arsenal is not even necessarily a problem.

Proliferators with nuclear weapons are a problem—a serious one. And our attention should be focused on all the threats we face. It is well past time that the administration develop a clear policy on North Korea.

Earlier this week, an administration official testified before the Senate that we will have to talk directly to the North Koreans. But he went on to say that the administration had not reached out to the North Koreans to schedule talks and did not know when that might happen.

In the State of the Union, the President stated that the United States is “working with the countries of the region . . . to find a peaceful solution.” All indications, however, suggest that the countries in the region appear to be taking a course directly at odds with the administration's latest pronouncements.

North Korea is a grave threat that seems to grow with each day that passes without high-level U.S. engagement. It is one the President must redouble his efforts to confront.

The President should stop downplaying this threat, start paying more attention to it, and immediately engage the North Koreans in direct talks.

Secretary Powell was very effective in outlining the threats Iraq poses. But



we need a comprehensive strategy to effectively deal with “all” the threats we face.

Given the stakes of this situation and the ongoing confusion about the President’s and the administration’s policy, we should expect no less.

#### ENERGY POLICY

Mr. DORGAN. Mr. President, midday today President Bush is going to give a speech here in Washington, DC, on the subject of the development of fuel cell vehicles and moving to a hydrogen economy.

I was glad to hear the President express support for the concept of hydrogen and fuel cells in his State of the Union Address. After his speech, I gave him credit for discussing that with the American people.

Since last year, I have made a number of presentations on the Senate floor about fuel cells. Today, I would like to share with my colleagues my thoughts about the development of a hydrogen economy and the use of fuel cells in our future.

I have told all my colleagues previously that my first vehicle when I was a kid was an antique car I purchased for \$25. It was a 1924 Model T Ford. I am sure people are tired of hearing me talk about it. I was 16 years old, and I was the owner of an antique 1924 Model T Ford. I restored it. It took me a year and a half to 2 years to do that. I lovingly restored this old Model T. Then I sold it. I discovered, later in high school, that I wanted to date, and a Model T was not exactly a modern way to date.

The point of the story is, when I was a kid I put gasoline in a Model T Ford—a 1924 Model T Ford—the same way you put gasoline in a 2003 Ford. Nothing has changed in three-quarters of a century. You pull up to a pump. You pull the hose and put the nozzle in the tank and pump gas. The core technology has not changed.

Over the years, however, our dependence on a foreign source of that petroleum has worsened, and become very dangerous for our economy.

Yesterday, the Secretary of State made a presentation at the United Nations about the country of Iraq. Frankly, Iraq produces a lot of oil. So do other countries in that region.

It is a very troubled region. Yet our economy is dependent on foreign sources of energy, much of it from that region. Is that something that makes sense for us, for the American economy, for the American people? The answer is no.

By talking about a technological change to a hydrogen economy and to the use of fuel cells, I am not suggesting we should not and will not mine for coal, drill for oil and natural gas. I believe we will continue to use fossil fuel in our economy for a long while. And I believe we need to do that.

But we also need to understand that it is time to change. After a century of

running gasoline through the carburetors of our vehicles, it is time for our country to think in different ways, about how can technology change our energy future. I would like to talk a bit about that.

Again, let me say that I credit the President for talking about it in his State of the Union Address. I think this is a step forward on the part of the administration—a baby step to be sure—but an important step.

Mr. President, \$1.2 billion is what the President announced last week and is talking about today. That is not all new money. In fact, the majority of it is not new money. So it is a timid, small step forward, but, nonetheless, a step in the right direction, for which I give this President credit.

Let me talk a bit about why we need to take strong action. I have in the Chamber a chart that shows oil consumption—in millions of barrels per day. This shows total demand, and you see the line going up, up, up, and up. It also shows transportation demand, and that growth in transportation demand is the bulk of the growth in energy needs and energy usage in our country.

As you can see from the chart, shown here is domestic production. Domestic production does not come close to meeting the demand that exists in our country. So what do we do to meet the difference? What we do is we import oil from other parts of the world.

The issue of energy security is a significant issue for all of us. The White House issued a press release on that subject in connection with its hydrogen proposal, noting the gap between our projected demand for oil and our domestic supply. And that gap is going to increase, not decrease—even if we would drill in ANWR, which I do not think this Congress will decide to do.

This is what the White House had to say in proposing development of fuel cells:

America’s energy security is threatened by our dependence on foreign oil.

Absolutely. There is no question about that.

America imports 55 percent of the oil it consumes; that is expected to grow to 68 percent by the year 2025. Nearly all of our cars and trucks run on gasoline. They are the main reason America imports so much oil. Two-thirds of the 20 million barrels of oil Americans use each day is used for transportation.

The President went on to say:

Fuel cell vehicles offer the best hope of dramatically reducing our dependence on foreign oil.

If tonight, God forbid, a network of terrorists interrupted the supply of imported oil to this country, tomorrow morning this economy would be in desperate, desperate trouble. That is the jeopardy we have in this country with our dependence—overdependence—on foreign sources of energy.

Let me describe where this dependence resides. And one can make one’s own judgment about the stability of it all.

Our top supplier of oil is Saudi Arabia. That is not exactly describing a region of stability. Saudi Arabia is our top supplier. And then you have Mexico, Canada, Venezuela, Nigeria, Iraq, Angola, Norway, Colombia. Mr. President, 3.4 million barrels are imported into this country from these countries. And you understand—everyone understands—that Venezuela is in trouble. There is enormous turmoil in the country of Venezuela. Saudi Arabia, Iraq—these are areas of the world where there is not great stability.

It makes no sense to continue along, merrily whistling our way into the future, believing that our country will be just fine even as our economy is so dependent on sources of oil from outside our borders.

One-third of our oil comes from the Middle East. Iraq is the sixth largest supplier of oil; Venezuela is the fourth; Angola and Colombia, the seventh and ninth—both countries are also plagued with difficulties.

Hydrogen fuels offer a way out. The supply of hydrogen is inexhaustible. It is everywhere. It is in water. The issue of hydrogen fuels is an interesting one. The notion of using hydrogen and the development of fuel cells is not new. In fact, a man named William Robert Grove was one of those larger-than-life characters who in the 19th century could do almost anything. He studied law at Oxford, became a barrister and a judge. In his spare time, he was also a professor of physics. He ran into a patch of ill health and had his legal career interrupted, so he turned to science to occupy his time, and he developed what he called a gas voltaic battery, the forerunner of modern fuel cells.

He based his experiment on the notion that sending an electric current through water splits water into oxygen and hydrogen. He figured if you could reverse the reaction, combining hydrogen and oxygen, you can produce electricity and water. In effect, he burned the hydrogen to produce electricity.

Hydrogen can be derived from all sorts of energy sources. You take the hydrogen from water and use it to move through a fuel cell and use it to power an automobile and out the back tailpipe, you get water vapor. What a wonderful thing.

This is a picture of a Daimler-Chrysler fuel cell vehicle that in June of last year went from San Francisco to Washington, DC. This technology exists. It is being perfected.

The next chart shows a Ford fuel cell vehicle ready for production, a prototype, in autumn 2002. This is not a futuristic technology; there are fuel cell cars on the road today. I have driven a fuel cell car out in front of the Capitol Building, a car that is run by batteries powered by a fuel cell, that is using hydrogen as a fuel source.

The challenge is to make this technology cost effective. I have been meeting with the CEOs and representatives of companies, Shell Hydrogen,

Methenex, UTC Fuel Cells, Union of Concerned Scientists, Siemens Westinghouse, just to name a few, to get their ideas. A broad coalition of interests is coming together because they recognize the promise of a hydrogen technology, going to a hydrogen economy using fuel cells in our future.

I mentioned a Ford Focus fuel cell car. Here is a picture of Ford Focus fuel cell car that is being filled at a hydrogen fuel station. If we were to convert the automobile fleet to fuel cells, what would we have to do? We would have to build vehicles with fuel cells. We would have to find a reliable supply of hydrogen, determine how we will get the hydrogen, and then we have to have the infrastructure, fueling infrastructure and stations and technology to make this a commercial reality. That is one of the issues we have to deal with.

Fuel cell cars don't have to be limited in size to a Ford Focus. For example, Nissan has another fuel cell prototype car—we are seeing more and more companies involved in this—the Nissan Xterra, fueled by compressed hydrogen, tested on California roads in the year 2000.

General Motors now has an innovative prototype called the Hy-wire. This particular car has a detachable exterior so you can buy multiple exteriors with one chassis so you can switch between an SUV or sedan. It has no steering wheel or pedal. It is operated with a joystick. This is a fuel-cell-powered vehicle.

To make this vision a reality, the private sector is going to need public investment. You might ask, why is that the case? Virtually all of the new technologies, the pole vaulting to new technologies, requires Federal involvement, requires governmental involvement. People these days forget, when they go on their computers and on to the Internet, they don't remember that the Internet exists because the Government developed a project to create the Internet. Otherwise, the Internet would not exist. That was a government creation that then became privatized, democratized, and is now a ubiquitous presence all around the world.

If we are going to change the basic construct of our vehicle fleet—and yes, stationary engines and other approaches to the use of power as well—but especially with respect to vehicles, because of what I described with the increased use of oil in our transportation fleet, the only way that will happen is if we do what we have done in other major technological challenges: We need to think big. We need to be bold.

When we decided we were going to explore space, President John F. Kennedy said, we will put a man on the Moon, and he set a time deadline. America is going to put a man on the Moon.

We need an Apollo-type project with respect to the development of a hydrogen-based economy and the use of fuel cells, especially in our transportation fleet.

We need an Apollo-type project—not timid, not baby steps, bold, big steps—that says: Here is our goal. Here is what our country intends to do, and here is how.

The President has proposed \$1.2 billion over 5 years for this fuel cell initiative. About \$700 million at most is new spending. And his proposal has substantial redirection of funds from a range of other technologies we also need to be developing: solar energy, wind energy, biomass, and the other renewable and limitless sources of energy that exist. We need to continue to fund the research that is so important on those limitless sources.

This initiative—one the President supports, one I credit him for supporting—in my judgment deserves a strong financial commitment and aggressive and strong goals to be set. It should not come at the expense of research into other renewable sources of energy.

The Europeans are investing big in hydrogen. As discussed in a New York Times article in October, the European Commission has committed \$2 billion over 5 years. They want to have a hydrogen economy. The Japanese are betting big on hydrogen, as discussed in a Business Week article. The Business Week article says that:

Tokyo's fuel cell initiative has all the hallmarks of a farsighted strategy and calls to mind Tokyo's blossoming success in hybrids. Americans are snapping up these fuel-efficient, environmentally friendly cars. Fuel cells could turn out to be a bigger, more important chapter in the same book.

I propose legislation that is bold. It is an Apollo-type project that says: Let's set bold goals, \$6.5 billion in a 10-year program for hydrogen fuel cell research, development, and infrastructure. I have been working with a number of industry leaders in natural gas, oil, energy, methanol renewables, and fuel cell industries. Interestingly enough, the very companies that are now involved in the development of oil and natural gas and electricity are the companies that are going to be involved in this technology. They are the ones on the leading edge, involved in cutting-edge technology with respect to a hydrogen economy.

This initiative will not displace current energy firms. They will be very actively involved in the creation and development of this new future.

What I propose is a substantial boost over what the President is proposing to date, saying it is the right direction, but it is many steps short. Let's do this and do it boldly. We need to fund infrastructure, fund research, and set goals. R&D funding, pilot projects, yes, tax incentives for consumers who buy fuel cell vehicles, all of that is necessary. But it needs to be broad, bold, new money, not reprogrammed money, something that catches the imagination of the American people that we can make a change and decide our country will not be held hostage by oil coming from unstable regions of the world.

Is \$6.5 billion a significant investment? Absolutely. But over 10 years, my plan would cost an amount equal to less than 1 percent of the President's proposed \$675 billion tax cut.

Now, in our debate over energy, there will be discussion about where we should drill for oil. As I said before, my State produces oil, coal, and natural gas. I believe we are going to continue to do that, and we should. But if our strategy in energy is only to dig and drill, then our strategy should be called "yesterday forever." And that is not going to solve the problem of dependence on foreign oil.

In 2000, the president of Shell Oil attended the World Petroleum Congress, and this is what he said:

If the world thinks that carbon dioxide emissions should be reduced, I see this as an opportunity. The stone age didn't end because they ran out of stones, but as a result of competition from the bronze tools which better meet people's needs. I feel there is something in the air. People are ready to say this is something we should do.

You know, that is what our charge is at this point—to think ahead. We should not develop a policy and debate a policy that is simply "yesterday forever," and not to ignore the needs of those that produce coal, natural gas, and oil. We need to work with industry leaders to make them part of the solution, part of the answer, part of the cutting-edge change that will lead us to a hydrogen-based economy, with fuel cells powering not only stationary engines, but especially that part of our energy usage that is growing so rapidly, transportation.

I started by talking about my old Model T that I bought as a young boy. I am hoping that in years to come, someone walking into a showroom to buy a new car will be able to buy a really "new" vehicle, powered by fuel cells, a vehicle that is part of a new hydrogen-based economy, one that can move this country into the future, strengthen its economy, and rescue us from dependence on a supply of oil from such enormously troubled parts of our world.

Will Rogers used to say:

When there is no place left to spit, you either have to swallow your tobacco juice or change with the times.

On energy, there is "no place left to spit," in the vernacular. We have to change. We need to move beyond the same tired debate of where are we going to dig and drill. Let's work with those that produce fossil fuels and say you are valuable to this country and to our economy and will always be. Let's work with them to say you will also be the pioneers in the development of a hydrogen economy, developing fuel cells for our future. We can do that. This President says, let's move in that direction. I say, absolutely, good for you. But I say let's do more than just move. Let's be bold, establish a national goal, and make this happen.

## ASBESTOS IN ATTIC INSULATION

Mrs. MURRAY. Mr. President, I rise today to share a story with my colleagues. It's a true story about a family who happened to live in a neighborhood in Spokane, WA. They could have easily been in Memphis or Minneapolis or Midland as well. But they lived in my State, in Spokane, a typical American city in Eastern Washington.

Mr. President, as part of realizing their American dream, Ralph Busch and his wife Donna bought a house. They were newlyweds, and this was the home they bought after getting married. They soon discovered that it needed roof repairs, and so Ralph spent quite a bit of time in the attic, working on his roof.

The following year they found they had to renovate an addition that was put on the house in the 1950s.

They both had full-time jobs, so they spent many nights and weekends working on their home. They knocked down walls and tore through the old insulation, drywall and wood. They sanded and hammered and spent two entire years fixing up the place.

One morning, Ralph was reading the newspaper. Just by chance, he came across a story about a company that manufactured a household insulation called Zonolite. This insulation, he read, was tainted with deadly asbestos.

Ralph suddenly realized that Zonolite was in his home.

Ralph Busch was stunned as it dawned on him. He had just spent two years in his own home handling Zonolite insulation and he and his wife may have unknowingly been exposed to deadly asbestos.

What would happen from his and his wife's exposure?

How come no one had told him he had asbestos in his attic?

The Zonolite insulation was a product from the little town of Libby, MT. It was produced by the W.R. Grace Company.

W.R. Grace mined vermiculite from the hillside near Libby. The company turned the ore into insulation known as Zonolite by heating vermiculite to expand it into light granules.

The process was similar to popping popcorn. After sorting the popped vermiculite, W.R. Grace poured it into bags and sold it to use as insulation.

The company marketed Zonolite as "perfectly safe". . .

But laced throughout the vermiculite in the ground near Libby, another mineral was present: asbestos. W.R. Grace's process to make Zonolite and other products could not, and did not, remove all the asbestos from the end product. Zonolite insulation contains between .5 percent and 8 percent asbestos.

The community of Libby has suffered immensely from decades of mining the deadly vermiculite ore used to make Zonolite insulation and other consumer products.

At least 200 men and women from Libby have died from diseases caused

by exposure to asbestos-tainted vermiculite, and hundreds more people from the town are sick.

When inhaled, asbestos can cause deadly diseases, from asbestosis to mesothelioma, a deadly cancer of the lining of the lung that is almost always fatal. In fact, mesothelioma kills at least 2,000 people each year and is caused only by asbestos.

The diseases induced by exposure to asbestos result in horrible deaths and they are nearly always fatal. Treatment is harsh and debilitating.

These diseases can take years to strike. The late Congressman Bruce Vento and the father of the modern Navy, Admiral Elmo Zumwalt both died from asbestos they had been exposed to years earlier.

The asbestos-tainted insulation manufactured by the W.R. Grace Company was used in homes throughout the country for decades.

Vermiculite from Libby first started being sold commercially in 1921, and W.R. Grace bought the mine in 1963. Reviews of invoices indicate that more than 6 million tons of Libby ore was shipped to hundreds of sites nationwide for processing over the decades.

This chart behind me shows more than 300 sites across the Nation, where ore was processed, in many cases to make Zonolite insulation.

In internal memos and e-mails, the Environmental Protection Agency has estimated that as many as 35 million homes, schools and businesses may still contain this insulation. Moreover, W.R. Grace knew the Libby mine contained asbestos when the company purchased it in 1963. But Grace made millions of tons of Zonolite anyway and unabashedly marketed it as "safe."

If the manufacturer of this insulation knew it was contaminated with asbestos, why didn't it or the Federal Government make sure that Ralph Busch and millions of others across the country knew to leave it alone?

The answer to the first question is that W.R. Grace still claims its product isn't harmful. The answer to the second question is more complicated.

According to published reports and internal EPA documents, the EPA was preparing to tell the American people about the dangers of Zonolite insulation. But it didn't happen.

An investigation by Pulitzer Prize-winning reporter Andrew Schneider found that last spring while it was addressing the public health crisis in Libby, MT, the EPA was preparing to tell the American people about the dangers of Zonolite insulation in millions of homes across this country. But first, EPA had to deal with Libby. EPA decided it needed to minimize the exposure of Libby residents to asbestos-contaminated vermiculite, and the agency drafted a press release announcing its decision.

This document said that EPA:

. . . will spend \$34 million to remove dangerous asbestos-contaminated vermiculite insulation from 70 percent of residential and commercial buildings in Libby.

I am glad that EPA has taken aggressive steps to protect people in that small Montana town.

Senator BAUCUS deserves tremendous credit for the work he has done to bring Federal resources to Montana to help people in Libby.

And EPA deserves credit for doing the right thing, and going in to remove the insulation from Libby.

But what about the rest of the country? What about the millions of other homes with Zonolite insulation?

Since EPA decided to help Libby, the agency anticipated the logical follow-up question of what about the millions of homes nationwide that contain the same Zonolite insulation as homes in Libby.

According to the St. Louis Post-Dispatch, the EPA had drafted news releases, and drawn up lists of public officials to notify. The agency was preparing to embark on an outreach and education campaign to let people know about this hazard in their homes.

But what stopped EPA from following through with its warning?

It may have been the same person or people who blocked another government health agency from warning workers about asbestos exposure.

Last April, the National Institute for Occupational Safety and Health—NIOSH—was preparing to release new guidance for workers who come into contact with insulation in the course of their daily work.

NIOSH was preparing to alert workers, such as electricians, plumbers and maintenance workers, about how they can better protect themselves from exposure to asbestos in Zonolite insulation.

These materials were prepared last April, but they still have not been released.

Let me read from a "Pre-Decisional Draft" of a NIOSH Fact Sheet dated April 11, 2002.

I ask unanimous consent that it be printed in the RECORD in its entirety.

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

**NIOSH RECOMMENDATIONS FOR REDUCING RISK OF WORKER EXPOSURES TO VERMICULITE THAT MAY BE CONTAMINATED WITH ASBESTOS**

A vermiculite deposit formerly mined in Libby, Montana was contaminated with asbestos, raising concerns about occupational and public health risks to former miners, residents of Libby, and to workers and consumers who come in contact with vermiculite end-products, such as insulation and potting soil. This fact sheet summarizes existing recommendations by the U.S. Centers for Disease Control's (CDC) National Institute for Occupational Safety and Health (NIOSH) for reducing risk of worker exposures to asbestos or to materials that may be contaminated with asbestos. These recommendations serve as interim guidance from NIOSH for employers and workers involved at sites where vermiculite used as attic insulation or for other purposes may be contaminated with asbestos. NIOSH is conducting further research on vermiculite to provide more information on exposures that may pose the highest risks to workers.

How can a worker or an employer know if vermiculite they have is contaminated with asbestos?

The only way to determine conclusively whether vermiculite is contaminated is to have it analyzed by a trained microscopist. (Any suggestions by NIOSH beyond OSHA 1910 regarding methods for bulk analysis would be extremely helpful and reduce much of the confusion we are seeing as polarized light microscopy (PLM) has not been useful in evaluating and predicting airborne levels generated from VAD).

As a rule, we believe that any vermiculite that originated in Libby, Montana, before 1990 should be regarded as potentially contaminated. It is known that vermiculite from Libby was sold as attic insulation under the product name Zonolite Attic Insulation, and that this product is still in homes throughout the United States.

(Comment: WR Grace estimates several million homes contain VAI, which is most likely very conservative. If we don't wish to provide any indication of the magnitude of the potential VAI exposure in number of homes, we should be clear about the potential situation to provide a more accurate picture and warning. Also, it is uncertain whether other vermiculite products not originating in Libby contain potentially hazardous concentrations of asbestos, until we have definitive information to the contrary these materials should also be treated with caution)

How can workers be protected from asbestos-contaminated vermiculite?

They should isolate the work area from other areas in order to avoid spreading fibers, use local exhaust ventilation to reduce dust exposures, and use appropriate respiratory protection. If the employer or worker is concerned about potential exposure, and if at all possible, the vermiculite should not be disturbed.

Which respirators are appropriate to protect workers from asbestos exposure?

If asbestos cannot be contained to below 0.1 fibers per cubic centimeter of air (fiber/cm<sup>3</sup>) by engineering controls and good work practices, or when engineering controls are being installed or maintained, appropriate respirators should be provided to workers. When respirators are worn, it is advisable to wear a fit-tested, tight fitting half-mask air-purifying particulate respirator (not a disposable dust mask) equipped with an N-100 filter or better, because of the potential for episodic exposure to 1 fiber/cm<sup>3</sup>. A tight-fitting powered air-purifying respirator should be provided instead of a negative-pressure respirator whenever an employee chooses to use this type of respirator. Tight fitting respirators should be used in conjunction with a comprehensive respiratory protection program under the direction of a health and safety professional. Further information concerning respirator selection can be found on the NIOSH web site at: <http://www.cdc.gov/niosh/>; or the OSHA web site at: <http://www.osha.gov/>.

What can workers do to protect themselves from exposure to asbestos-contaminated vermiculite?

If at all possible, avoid handling or disturbing loose vermiculite that is not contained in a manner that will prevent the release of airborne dust.

Workers should guard against bringing dust home to the family on clothes by using disposable protective clothing or clothing that is left in the workplace. Do not launder work clothing with family clothing.

Some measures can be used to avoid spreading potentially contaminated dusts:

Use vacuum cleaners equipped with High-Efficiency Particulate Air (HEPA) filters to collect asbestos-containing debris and dust;

Employ wet methods or wetting agents, unless wetting is not feasible or creates a greater hazard (wetting absorbent vermiculite materials in an attic may not be feasible or advisable);

Use negative pressure air units, which are large mobile units that combine a fan and a HEPA filter critical for preventing other exposures to non-workers, to keep airborne asbestos levels to a minimum. Combined with temporary barriers or enclosures, they can be set up to make sure fibers do not contaminate other areas.

Dispose of wastes and debris contaminated with asbestos in leak-tight containers;

Never use compressed air to remove asbestos-containing materials;

Avoid dry sweeping, shoveling, or other dry clean-up methods for dust and debris containing vermiculite that is potentially contaminated with asbestos without environmental controls to avoid spreading contamination;

Use proper respiratory protection.

Are there regulations that pertain to asbestos-contaminated vermiculite?

Yes, the Occupational Safety and Health Administration (OSHA) asbestos regulations (29 CFR 1910.1001 and 1926.1101) for general industry and construction should be consulted to determine if there are specific requirements that need to be followed when handling asbestos-contaminated materials or potential asbestos-containing materials. Relevant information is posted on the OSHA Internet page at: <http://www.osha.gov/SLTC/asbestos/index.html>.

What should you do if you believe you have been exposed to asbestos-containing vermiculite?

Workers who believe they have had significant past exposure to asbestos-containing vermiculite, should consider getting an appropriate medical check up. The appendices to the OSHA asbestos standard describe the types of tests a physician will need to provide.

What did NIOSH find from past studies at Libby, Montana?

NIOSH has responded to past and current concerns about worker health by conducting needed research and disseminating its findings. In the 1980s, NIOSH conducted research and communicated findings about job-related exposures and health effects among workers employed in mining and milling vermiculite in Libby, Montana.

Our past studies identified asbestos contamination in the vermiculite mined and milled in Libby.

We determined, from examination of x-rays of Libby miners, that the miners showed evidence of adverse health effects associated with asbestos exposure.

In a review of death certificates of former Libby vermiculite miners, we identified an excess of deaths from lung cancer, and other lung diseases that are known to be related to asbestos exposure.

We made our findings available in 1985 through meetings in Libby with workers and their representatives, employer representatives, and members of the community. We also published the results in peer-reviewed scientific journals.

Is NIOSH planning further occupational health research on vermiculite?

NIOSH is currently conducting research to help determine whether the processing of vermiculite produced by mines other than the Libby mine results in workplace exposure to asbestos. Vermiculite is used in a variety of occupational settings including construction, agriculture, horticulture, and for miscellaneous industrial applications. Through carefully designed sampling, NIOSH will be better able to define the extent to which workers may be occupationally ex-

posed to vermiculite that may be contaminated with asbestos. Current plans are to: (1) conclude field exposure sampling, (2) send company-specific reports to each of the surveyed sites, and (3) prepare a summary of the overall result of exposure assessments.

(Question will NIOSH be performing any field investigations to evaluate the occupational exposures to airborne asbestos associated with Vermiculite Attic Insulation among commonly exposed workers (i.e. home reconstruction workers, electricians, cable TV workers)?)

Has NIOSH been involved in the public health response for Libby community?

NIOSH has been providing technical assistance to the U.S. Environmental Protection Agency (EPA) and the Agency for Toxic Substances and Disease Registry (ATSDR) which are the lead agencies for the Federal government in assessing current concerns about potential community health risks from asbestos exposures in Libby.

Mrs. MURRAY. Mr. President, NIOSH recommended that workers:

. . . should isolate the work area from other areas in order to avoid spreading fibers, use local exhaust ventilation to reduce dust exposures, and use appropriate respiratory protection.

If the employer or worker is concerned about potential exposure, and if at all possible, the vermiculite should not be disturbed.

But, astonishingly, this guidance was never released. How many of the construction workers, maintenance people, electricians, plumbers and homeowners across the country know they should "avoid spreading fibers, use local exhaust ventilation or appropriate respiratory protection?"

I suspect that like Mr. Ralph Busch, thousands of people across the U.S. are not taking these important precautions because they are simply unaware of the danger.

I would like to read to my colleagues another section from the never-released NIOSH Fact Sheet. This was in response to the question about how workers can know if the vermiculite they have is contaminated with asbestos. It says:

As a rule, we believe that any vermiculite that originated in Libby, Montana, before 1990 should be regarded as potentially contaminated . . .

It is known that vermiculite from Libby was sold as attic insulation under the product name Zonolite Attic Insulation and that this product is still in homes throughout the United States.

But especially interesting is the next section, which is in parentheses as a comment by the author:

W.R. Grace estimates several million homes contain "vermiculite attic insulation," which is most likely very conservative.

If we don't wish to provide any indication of the magnitude of the potential VAI (or vermiculite attic insulation) exposure in number of homes, we should be clear about the potential situation to provide a more accurate picture and warning.

I must ask my colleagues, why wouldn't NIOSH or others in the Administration—when they are taking great pains to do the job right in Libby—want to share with workers and the public an indication of the magnitude of the number of homes with asbestos-tainted vermiculite?

Isn't it our government's job to protect people from risks associated with hazardous substances such as asbestos?

Don't we need to know the scope of the problem in order to help gauge the extent of the potential risks?

Why aren't we warning workers and giving them the new guidance that has already been drafted by NIOSH?

Interestingly enough, on April 10, 2002, the day before the date on this NIOSH Fact Sheet, EPA received a letter from W.R. Grace defending their harmful product.

The letter read:

Zonolite Attic Insulation (ZAI) has been insulating homes for over 60 years and there is no credible reason to believe that ZAI has ever caused an asbestos-related disease in anyone who has used it in his/her home.

How then does Grace explain the fact that the company has settled at least 25 bodily injury claims caused by exposure to Zonolite?

Make no mistake. W.R. Grace is a company with one of the worst public health and environmental records in America. I draw my colleague's attention to a 1998 article by Dr. David Egilman, Wes Wallace and Candace Hom published in the journal *Accountability in Research* entitled "Corporate Corruption of Medical Literature: Asbestos Studies Concealed by W.R. Grace & Co."

I will read briefly from the abstract of this article:

In 1963, W.R. Grace acquired the mine (in Libby) and employee health problems at the mine became known to W.R. Grace executives and to Grace's insurance company, Maryland Casualty.

In 1976, in response to tighter federal regulation of asbestos and asbestos-containing products, W.R. Grace funded an animal study of tremolite toxicity.

They hoped to prove that tremolite did not cause mesothelioma, the cancer uniquely associated with asbestos exposure. However, the study showed that tremolite did cause mesothelioma.

W.R. Grace never disclosed the results of this animal study, nor did they disclose their knowledge of lung disease in the Libby workers, either to the workers themselves or to regulatory agencies.

These actions were intentional, and were motivated by Grace's conscious decision to prioritize corporate profit over human health.

Given the facts that W.R. Grace has knowingly manufactured and sold an asbestos-tainted product, has suppressed research findings showing that tremolite asbestos causes cancer, and has denied that their product is potentially dangerous, the company is woefully lacking for credibility.

Which brings us to our question: If EPA was planning to warn the American public about the dangers of Zonolite insulation, what stopped EPA from following through with its plan?

Why aren't we warning homeowners nationwide about Zonolite insulation?

Why aren't we warning workers and giving them new safety guidelines?

The answers might lie, not with the EPA, but with the White House Office of Management and Budget, OMB.

An internal e-mail from John F. Wood, the Deputy General Counsel at OMB, to staff at EPA contained details about finalizing the Action Memo for Libby.

Also copied on the e-mail were OMB Deputy Director Nancy Dorn and Associate Director of Natural Resources Programs Marcus Peacock.

Here's what OMB's lawyer wrote to EPA. I ask unanimous consent that this e-mail be printed in the RECORD.

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

John—thank you for your efforts to alleviate my concerns. Here are just a few edits, which are necessary to avoid the problems we discussed earlier. Please be sure to observe the deletion of the citation of Sect. 104(a)(4).

Mrs. MURRAY. Mr. President, it says:

Thank you for your efforts to alleviate my concerns. Here are just a few edits, which are necessary to avoid the problems we discussed earlier. Please be sure to observe the deletion of the citation of Sect. 104 (a) (4).

What is Section 104 (a) (4)?

It is a clause in the Superfund law, which enables the EPA to declare a public health emergency.

And why did OMB tell the EPA to "delete the citation" to Section 104 (a) (4)?

We don't know for sure, but if EPA had issued the public health emergency for Libby under Superfund, then the agency would have had to answer questions about asbestos-tainted insulation from every other homeowner in the country.

Here is what the St. Louis Post-Dispatch investigation concluded:

The Environmental Protection Agency was on the verge of warning millions of Americans that their attics and walls might contain asbestos-contaminated insulation. But, at the last minute, the White House intervened, and the warning has never been issued.

The Post-Dispatch got reaction from an EPA staffer about OMB's intervention:

It was like a gut shot," said one of those senior staffers involved in the decision. "It wasn't like they ordered us not to make the declaration, they just really, really strongly suggested against it. Really strongly. There was no choice left.

Mr. President, I ask unanimous consent that the St. Louis Post-Dispatch article be printed in the RECORD.

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

[From the St. Louis Post-Dispatch, Dec. 29, 2002]

WHITE HOUSE OFFICE BLOCKED EPA'S  
ASBESTOS CLEANUP PLAN  
(By Andrew Schneider)

WASHINGTON.—The Environmental Protection Agency was on the verge of warning millions of Americans that their attics and walls might contain asbestos-contaminated insulation. But, at the last minute, the White House intervened, and the warning has never been issued.

The agency's refusal to share its knowledge of what is believed to be a widespread

health risk has been criticized by a former EPA administrator under two Republican presidents, a Democratic U.S. senator and physicians and scientists who have treated victims of the contamination.

The announcement to warn the public was expected in April. It was to accompany a declaration by the EPA of a public health emergency in Libby, Mont. In that town near the Canadian border, ore from a vermiculite mine was contaminated with an extremely lethal asbestos fiber called tremolite that has killed or sickened thousands of miners and their families.

Ore from the Libby mine was shipped across the nation and around the world, ending up in insulation called Zonolite that was used in millions of homes, businesses and schools across America.

A public health emergency declaration had never been issued by any agency. It would have authorized the removal of the disease-causing insulation from homes in Libby and also provided long-term medical care for those made sick. Additionally, it would have triggered notification of property owners elsewhere who might be exposed to the contaminated insulation.

Zonolite insulation was sold throughout North America from the 1940s through the 1990s. Almost all of the vermiculite used in the insulation came from the Libby mine, last owned by W.R. Grace & Co.

In a meeting in mid-March, EPA Administrator Christie Todd Whitman and Marianne Horinko, head of the Superfund program, met with Paul Peronard, the EPA coordinator of the Libby cleanup and his team of health specialists. Whitman and Horinko asked tough questions, and apparently got the answers they needed. They agreed they had to move ahead on a declaration, said a participant in the meeting.

By early April, the declaration was ready to go. News releases had been written and rewritten. Lists of governors to call and politicians to notify had been compiled. Internal e-mail shows that discussions had even been held on whether Whitman would go to Libby for the announcement.

But the declaration was never made.

DERAILED BY WHITE HOUSE

Interviews and documents show that just days before the EPA was set to make the declaration, the plan was thwarted by the White House Office of Management and Budget, which had been told of the proposal months earlier.

Both the budget office and the EPA acknowledge that the White House agency was actively involved, but neither agency would discuss how or why.

The EPA's chief spokesman Joe Martyak said, "Contact OMB for the details."

Budget office spokesperson Amy Call said, "Those questions will have to be addressed to the EPA."

Call said the budget office provided wording for the EPA to use, but she declined to say why the White House opposed the declaration and the public notification.

"These are part of our internal discussions with EPA, and we don't discuss predecisional deliberations," Call said.

Both agencies refused Freedom of Information Act requests for documents to and from the White House Office of Management and Budget.

The budget office was created in 1970 to evaluate all budget, policy, legislative, regulatory, procurement and management issues on behalf of the president.

OFFICE INTERFERED BEFORE

Former EPA administrator William Ruckelshaus, who worked for Presidents Richard Nixon and Ronald Reagan, called the decision not to notify homeowners of the

dangers posed by Zonolite insulation “the wrong thing to do.”

“When the government comes across this kind of information and doesn’t tell people about it, I just think it’s wrong, unconscionable, not to do that,” he said. “Your first obligation is to tell the people living in these homes of the possible danger. They need the information so they can decide what actions are best for their family. What right does the government have to conceal these dangers? It just doesn’t make sense.”

But, he added, pressure on the EPA from the budget office or the White House is not unprecedented.

Ruckelshaus, who became the EPA’s first administrator when the agency was created by Nixon in 1970, said he never was called by the president directly to discuss agency decisions. He said the same held true when he was called back to lead the EPA by Reagan after Anne Gorsuch Burford’s scandal-plagued tenure.

Calls from a White House staff member or the Office of Management and Budget were another matter.

“The pressure could come from industry pressuring OMB or if someone could find a friendly ear in the White House to get them to intervene,” Ruckelshaus said. “These issues like asbestos are so technical, often so convoluted, that industry’s best chance to stop us or modify what we wanted to do would come from OMB.”

The question about what to do about Zonolite insulation was not the only asbestos-related issue in which the White House intervened.

In January, in an internal EPA report on problems with the agency’s much-criticized response to the terrorist attacks in New York City, a section on “lessons learned” said there was a need to release public health and emergency information without having it reviewed and delayed by the White House.

“We cannot delay releasing important public health information,” said the report. “The political consequences of delaying information are greater than the benefit of centralized information management.”

It was the White House budget office’s Office of Information and Regulatory Affairs that derailed the Libby declaration. The regulatory affairs office is headed by John Graham, who formerly ran the Harvard Center for Risk Analysis.

His appointment last year was denounced by environmental, health and public advocacy groups, who claimed his ties to industry were too strong. Graham passes judgment over all major national health, safety and environmental standards.

Sen. Dick Durbin, D-Ill., urged colleagues to vote against Graham’s appointment, saying Graham would have to recuse himself from reviewing many rules because affected industries donated to the Harvard University Center.

Thirty physicians, 10 of them from Harvard, according to The Washington Post, wrote the committee asking that Graham not be confirmed because of “a persistent pattern of conflict of interest, of obscuring and minimizing dangers to human health with questionable cost-benefit analyses, and of hostility to governmental regulation in general.”

Repeated requests for interviews with Graham or anyone else involved in the White House budget office decision were denied.

“IT WAS LIKE A GUT SHOT”

Whitman, Horinko and some members of their top staff were said to have been outraged at the White House intervention.

“It was like a gut shot,” said one of those senior staffers involved in the decision. “It wasn’t that they ordered us not to make the

declaration, they just really, really strongly suggested against it. Really strongly. There was no choice left.”

She and other staff members said Whitman was personally interested in Libby and the national problems spawned by its asbestos-tainted ore. The EPA’s inspector general had reported that the agency hadn’t taken action more than two decades earlier when it had proof that the people of Libby and those using asbestos-tainted Zonolite products were in danger.

Whitman went to Libby in early September 2001 and promised the people it would never happen again.

“We want everyone who comes in contact with vermiculite—from homeowners to handymen—to have the information to protect themselves and their families,” Whitman promised.

#### SUITS, BANKRUPTCIES GROW

Political pragmatists in the agency knew the administration was angered that a flood of lawsuits had caused more than a dozen major corporations—including W.R. Grace—to file for bankruptcy protection. The suits sought billions of dollars on behalf of people injured or killed from exposure to asbestos in their products or workplaces.

Republicans on Capitol Hill crafted legislation—expected to be introduced next month—to stem the flow of these suits.

Nevertheless, Whitman told her people to move forward with the emergency declaration. Those in the EPA who respect their boss fear that Whitman may quit.

She has taken heat for other White House decisions such as a controversial decision on levels of arsenic in drinking water, easing regulations to allow 50-year-old power plants to operate without implementing modern pollution controls and a dozen other actions which environmentalists say favor industry over health.

Newspapers in her home state of New Jersey ran front page stories this month saying Whitman had told Bush she wanted to leave the agency.

Spokesman Martyak said his boss is staying on the job.

#### EPA WAS POISED TO ACT

In October, the EPA complied with a freedom of Information Act request and gave the Post-Dispatch access to thousands of documents—in nine large file boxes. There were hundreds of e-mails, scores of “action memos” describing the declaration and piles of “communication strategies” for how the announcement would be made.

The documents illustrated the internal and external battle over getting the declaration and announcement released.

One of the most contentious concerns was the anticipated national backlash from the Libby declaration. EPA officials knew that if the agency announced that the insulation in Montana was so dangerous that an emergency had to be declared, people elsewhere whose homes contained the same contaminated Zonolite would want answers or perhaps demand to have their homes cleaned.

The language of the declaration was molded to stress how unique Libby was and to play down the national problem.

But many in the agency’s headquarters and regional offices didn’t buy it.

In a Feb. 22 memo, the EPA’s Office of Pollution Prevention and Toxics said “the national ramifications are enormous” and estimated that if only 1 million homes have Zonolite “(are) we not put in a position to remove their (insulation) at a national cost of over \$10 billion?”

The memo also questioned the agency’s claim that the age of Libby’s homes and severe winter conditions in Montana required a higher level of maintenance, which in turn

meant increased disturbance of the insulation in the homes there.

It’s “a shallow argument,” the memo said. “There are older homes which exist in harsh or harsher conditions across the country. Residents in Maine and Michigan might find this argument flawed.”

No one knows precisely how many dwellings are insulated with Zonolite. Memos from the EPA and the Agency for Toxic Substances and Disease Registry repeatedly cite an estimate of between 15 million and 35 million homes.

A government analysis of shipping records from W.R. Grace show that at least 15.6 billion pounds of vermiculite ore was shipped from Libby to 750 plants and factories throughout North America.

Between a third and half of that ore was popped into insulation and usually sold in 3-foot-high kraft paper bags.

Government extrapolations and interviews with former W.R. Grace Zonolite salesmen indicate that Illinois may have as many as 800,000 homes with Zonolite, Michigan as many as 700,000. Missouri is likely to have Zonolite in 380,000 homes.

With four processing plants in St. Louis, it is estimated that more than 60,000 homes, offices and schools were insulated with Zonolite in the St. Louis area alone.

Eventually, the internal documents show, acceptance grew that the agency should declare a public health emergency.

In a confidential memo dated March 28, an EPA official said the declaration was tentatively set for April 5.

But the declaration never came. Instead, Superfund boss Horinko on May 9 quietly ordered that asbestos be removed from contaminated homes in Libby. There was no national warning of potential dangers from Zonolite. And there was no promise of long-term medical care for Libby’s ill and dying. The presence of the White House budget office is noted throughout the documents. The press announcement of the watered-down decision was rewritten five times the day before it was released to accommodate budget office wording changes that played down the changes that played down the dangers.

#### DANGERS OF ZONOLITE

The asbestos in Zonolite, like all asbestos products, is believed to be either a minimal risk or no risk if it is not disturbed. The asbestos fibers must be airborne to be inhaled. The fibers then become trapped in the lungs, where they may cause asbestosis, lung cancer and mesothelioma, a fast-moving cancer of the lung’s lining.

The EPA’s files are filled with studies documenting the toxicity of tremolite, how even minor disruptions of the material by moving boxes, sweeping the floor or doing repairs in attics can generate asbestos fibers.

This also has been confirmed by simulations W.R. Grace ran in Weed-sport, N.Y. in July 1977; by 1997 studies by the Canadian Department of National Defense; and by the U.S. Public Health Service, which reported in 2000, that “even minimal handling by workers or residents poses a substantial health risk.”

Last December, a study by Christopher Weis, the EPA’s senior toxicologist supporting the Libby project, reported that “the concentrations of asbestos fibers that occur in air following disturbance of (insulation) may reach levels of potential human health concerns.”

Most of those who have studied the needle-sharp tremolite fibers in the Libby ore consider them far more dangerous than other asbestos fibers.

In October, the EPA team leading the cleanup of lower Manhattan after the attacks of Sept. 11 went to Libby to meet with



Peronard and his crew. The EPA had reversed an early decision and announced that it would be cleaning asbestos from city apartments.

Libby has been a laboratory for doing just that.

Peronard told the visitors from New York just how dangerous tremolite is. He talked about the hands-on research in Libby of Dr. Alan Whitehouse, a pulmonologist who had worked for NASA and the Air Force on earlier projects before moving to Spokane, Wash.

"Whitehouse's research on the people here gave us our first solid lead of how bad this tremolite is," Peronard said.

Whitehouse has not only treated 500 people from Libby who are sick and dying from exposure to tremolite. The chest specialist also has almost 300 patients from Washington shipyards and the Hanford, Wash., nuclear facility who are suffering health effects from exposure to the more prevalent chrysotile asbestos.

Comparing the two groups, Whitehouse has demonstrated that the tremolite from Libby is 10 times as carcinogenic as chrysotile and probably 100 times more likely to produce mesothelioma than chrysotile.

W.R. Grace has maintained that its insulation is safe. On April 3 of this year, the company wrote a letter to Whitman again insisting its product was safe and that no public health declaration or nationwide warning was warranted.

Dr. Brad Black, who runs the asbestos clinic in Libby and acts as health officer for Montana's Lincoln County, says "people have a right to be warned of the potential danger they may face if they disturb that stuff."

Marytak, chief EPA spokesman, argues that the agency has informed the public of the potential dangers. "It's on our Web site," he said.

Sen. Patty Murray, D-Wash., is sponsoring legislation to ban asbestos in the United States. She said the Web site warning is a joke.

"EPA's answer that people have been warned because it's on their Web site is ridiculous," she said. "If you have a computer, and you just happened to think about what's in your attic, and you happen to be on EPA's Web page, then you get to know. This is not the way the safety of the public is handled.

"We, the government, the EPA, the administration have a responsibility to at least let people know the information so they can protect themselves if they go into those attics," she said.

Mrs. MURRAY. Mr. President, because of OMB's involvement, EPA never conducted the planned outreach to warn people about Zonolite. NIOSH's guidance to workers about how to protect themselves was never finalized.

In response to these shocking reports, on January 3, 2003, I wrote to EPA Administrator Whitman and OMB Director Daniels to get some answers.

Mr. Daniels has not yet responded to the allegations that his office blocked the announcement.

Ms. Whitman wrote that she is responding on behalf of OMB. I can only ascribe this to OMB's desire to remain unaccountable and to hide the role it played in these decisions.

Ms. Whitman's response was woefully inadequate. She failed to explain the nature or the substance of OMB's involvement. She also wrote that it is not possible to know how many homes

contain vermiculite insulation even though HER OWN AGENCY has estimated it may be between 15 and 35 million homes, schools, and businesses.

Mr. President, I ask unanimous consent that Administrator Whitman's letter be printed in the RECORD.

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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY,

Washington, DC, January 16, 2003.

Hon. PATTY MURRAY,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR MURRAY: Thank, you for your letters dated January 3, 2003, to me and Mitch Daniels, Director of the Office of Management and Budget (OMB), regarding EPA's efforts to address asbestos contamination in the town of Libby, Montana. I am responding for both OMB and the Environmental Protection Agency (EPA).

I assure you that since my tenure at the Agency, every action regarding Libby, Montana has been taken with the goal of protecting the health of Libby residents from further harm. After visiting with the residents of Libby Montana in September 2001, I committed to have EPA do everything as quickly and comprehensively as possible to remove the multiple sources of asbestos exposure of Libby residents. The Action Memo signed on May 9, 2002, authorized significant additional measures in Libby, including the removal of attic insulation. Cleanup work has proceeded at an aggressive pace and substantial sources of exposure have already been removed.

While enclosed are EPA's Office of Solid Waste and Emergency Response detailed responses to your questions, I want to make it clear that neither OMB nor any other Federal agencies directed EPA to take a specific course of action regarding whether to employ the public health emergency provision of the Comprehensive Environmental Response and Liability Act ("CERCLA", or the Superfund Law). The Agency made its decision regarding the removal of asbestos contaminated vermiculite attic insulation from Libby homes in order to reduce the cumulative exposure to residents as quickly as possible. EPA based this decision on many factors, including legal, scientific, and practical considerations. The Agency concluded that asbestos contaminated vermiculite insulation found in homes in Libby could be removed without a public health emergency. Ultimately, EPA chose not to rely upon CERCLA's health emergency provision, in part, to minimize the possibility of removal work being delayed by possible legal challenges to this untested approach, and instead relied upon more traditional removal authorities.

Additional, I want to clarify that the decision to proceed with the cleanup in Libby is unrelated to the larger issue of whether asbestos contaminated vermiculite insulation poses a risk outside of Libby, Montana. Several questions in your letter imply that invoking the public health provision in CERCLA for the situation in Libby would give the Agency additional authority or impose additional requirements to inform the public nationwide about the health risks associated with asbestos contaminated vermiculite attic insulation. This is not the case. While the experience and data collected in Libby are important to a larger national evaluation, the Libby cleanup and the Agency's national evaluation of the potential risks of asbestos contaminated attic insulation are on parallel but different tracks.

Again, thank you for your support of EPA's cleanup efforts in Libby, Montana and your commitment to making sure that people nationwide are not at risk from asbestos. The Agency looks forward to working with you and your staff to continue our mutual goal to protect the health and welfare of the residents of Libby, Montana, and of the United States. If you have further questions or concerns, please contact me, or your staff may contact Betsy Henry in the Office of Congressional and Intergovernmental Relations at (202) 564-7222.

Sincerely yours,

CHRISTINE TODD WHITMAN.

ENCLOSURE: EPA OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE AND OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES

DETAILED RESPONSES TO SENATOR PATTY MURRAY'S QUESTIONS ON VERMICULITE ATTIC INSULATION AND THE LIBBY, MONTANA CLEANUP

*What were EPA's recommendations on formation of a policy to inform consumers of potential dangers from exposure to Zonolite insulation?*

The Agency's activity in Libby reflects a unique situation where citizens have been exposed for many years to widespread, high levels of asbestos contamination, and suffer unprecedented rates of asbestos related illness. After extensive consideration of scientific and health-related information, the Agency concluded that residents in Libby were a sensitive population, and asbestos exposure which would otherwise present an acceptable risk to a healthy population may cause an increase in disease for a highly impacted community like Libby. EPA decided to remove all potential sources of exposure to asbestos in Libby, including asbestos contamination in yards, playgrounds, parks, industrial sites, the interiors of homes and businesses, and vermiculite attic insulation.

The Agency's guidance to consumers outside of Libby has consistently been to manage in place asbestos or asbestos containing products found in the home. Based on currently available information and studies the Agency continues to believe that, absent the unique conditions present at Libby, vermiculite insulation poses minimal risk if left undisturbed. If removal of the insulation is desired, the Agency recommends that this work be done professionally.

To better understand the potential risks of asbestos contaminated vermiculite attic insulation, EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) initiated the first phase of a limited study to evaluate the level of asbestos in vermiculite attic insulation in homes in the Spring of 2001. The study included six homes in Vermont and simulations in an enclosure. This preliminary study will be used to help the Agency design the next phase of a more comprehensive study and to help determine whether the Agency's guidance in place for many years—to manage asbestos contaminated material in place or hire professionals to conduct removals—is still appropriate or should be revised. Formal external peer review is finished for the first phase of the study. The Agency's Office of Research and Development (ORD), as well as others, are currently reviewing the preliminary study.

Based on the findings from this study, EPA will revise or supplement the existing guidance and outreach materials as necessary, and further inform the public about how best to manage vermiculite attic insulation.

2. *Top what extent were OMB and other federal agencies and departments involved in the decision whether to declare a public health emergency in Libby or to notify people nationwide of the dangers potentially posed by exposure to Zonolite?*

EPA consulted extensively with other federal and state partners in determining the best course of action to address all sources of asbestos contamination in Libby. This included the Office of Management and Budget (OMB), the Department of Health and Human Services, the Center for Disease Control, the Agency for Toxic Substances and Disease Registry, U.S. Geological Survey, Occupational Safety and Health Administration, the State of Montana, and many others. These consultations focused on scientific issues associated with asbestos contaminated vermiculite exposure, not to discuss public health emergency declarations. The Agency was also contacted by several members of Congress who wished to express the depth of their concern and share their views regarding this matter. In general, EPA tries to share information and discuss potential response decisions with interested parties, especially those with expertise in the area, so it can make the most informed decision.

After consulting broadly with experts in the field, the Agency determined a course of action regarding both the removal of asbestos contaminated vermiculite attic insulation and the public outreach to be conducted beyond Libby, Montana. These decisions were made by the Administrator, in close consultation with the Office of Solid Waste and Emergency Response, the Office of Enforcement and Compliance Assurance, the Office of General Counsel, the Office of Prevention, Pesticides and Toxic Substances, and EPA Region 8.

3. *What process did the Administration use in making these decisions? Specifically what roles did individual agencies play and who in these agencies was involved in the process?*

EPA's primary focus was on protecting the residents of Libby by removing the multiple sources of asbestos exposure as quickly as possible. EPA considered many factors, including the National Oil and Hazardous Substances Pollution Contingency Plan. Ultimately, the Agency chose not to rely upon CERCLA's health emergency provision, in part, to minimize the possibility of removal work being delayed by possible legal challenges to this novel approach, and instead relied upon more traditional removal authorities. EPA concluded that homes in Libby contained vermiculite attic insulation that did not constitute a "product." The Agency therefore could clean up the insulation without addressing the question of whether it constituted a public health emergency.

In making its response decisions in Libby, EPA engaged in a major effort to discuss and consider the issues associated with its approach to cleaning up asbestos contamination, both in Libby and at more than 20 contaminated sites out of the 241 domestic vermiculite processing facilities. Although 175 of these sites had processed Libby vermiculite, EPA's sampling confirmed that contamination only remained at 22 sites. To date, EPA or the responsible parties have cleaned up or have cleanup underway at 10 of these sites and the remaining 12 sites are either being addressed or are under further investigation and response planning. This effort has been one of the most significant actions ever taken under the Superfund program, and has involved the participation and collaboration of a great many people and organizations at the local, state and federal level.

4. *Which outside parties, such as corporations, non-governmental organizations or associations, did EPA consult with on these decisions?*

During the more than two years in which EPA has been working on Libby, Agency officials have met with the Libby community and its Technical Assistance Group, other agencies, businesses in Libby and international corporations, various associations, the State and subcommittees of both houses of the U.S. Congress. Community members, the Vermiculite Association, and W.R. Grace Corporation have all corresponded with the Agency to state their opinions or to ask for information about our work at the site.

5. *What was OMB's final recommendation to EPA? What recommendations, if any, did EPA receive from other federal agencies and departments?*

Neither OMB, nor any other federal agency directed EPA to use a specific course of action regarding whether to employ the health emergency provision of CERCLA. As stated previously, EPA consulted extensively with other federal partners, including OMB, in determining the best course of action to address all sources of asbestos contamination.

6. *Who ultimately directed EPA not to issue a public health emergency in Libby last spring nor to proactively notify the public in a proper manner?*

No one directed the Agency. The decision was made by EPA. After searching broadly for input from the many agencies within the Executive Branch with expertise to inform our thinking, the Agency decided to perform the cleanup under traditional Superfund program removal authorities. Furthermore, regarding outreach on the Libby decision, the Agency has conducted many public meetings concerning the Libby cleanup, and testified before Congress in July, 2001. Since the Agency's first removal actions, the On-Scene Coordinator in Libby has been in regular contact with the citizens of Libby discussing the progress of the cleanup and communicating about the issues of the vermiculite attic insulation. The Administrator also spoke extensively on issues concerning vermiculite contamination during her visit to Libby, Montana in September of 2001.

7. *What are EPA's most current estimates of how many homes, businesses and schools still contain Zonolite? How did EPA derive these numbers?*

Over the years several attempts have been made to estimate the number of homes that may contain vermiculite attic insulation. While numbers have been included in at least one study conducted for the Agency in 1985, the Agency does not believe that these estimates are reliable. EPA recently again tried to estimate the number of homes, businesses and schools that may still contain vermiculite attic insulation but again determined that this task was virtually impossible to complete because there is little information about how many homes contain vermiculite insulation (outside of Libby) as well as little data about what happens to homes after they are built. Any numbers derived from such an effort would be inaccurate and misleading.

In the Libby valley, the Agency is identifying which homes contain asbestos contaminated vermiculite insulation in the attic and wall space by visually inspecting homes. The good news is that EPA is finding vermiculite insulation in fewer homes than the Agency anticipated in this region.

Mrs. MURRAY. Mr. President, my colleagues may be curious about why I am so interested in EPA's decisions regarding vermiculite from Libby.

This issue is important to me because residents in my State are being exposed to asbestos from Zonolite.

And, Mr. President, constituents in your state and every other State in America may also have this insulation.

I am deeply concerned that most people with Zonolite in their homes are completely unaware of this problem. I am afraid most will not learn of it until they have already been exposed to dangerous levels of asbestos. And I am most concerned that this administration may be stifling EPA's efforts to warn homeowners, consumers, and workers because of pressure from W.R. Grace.

And I must remind my colleagues: there is no safe known level of exposure to asbestos. Deadly diseases such as asbestosis, lung cancer and mesothelioma can develop decades after just brief exposures to high concentrations of asbestos.

Ultimately, I believe Administrator Whitman wanted to do the right thing by warning homeowners nationwide to be careful if they have Zonolite in their homes when the agency began removing Zonolite from homes in Libby, MT. But she was stopped. The reasons may never be known—the excuse may be buried in "executive privilege."

So where do we go from here?

First, I hope my colleagues will support efforts to get to the bottom of what stopped the EPA from warning the public. We have to increase pressure on EPA, NIOSH, and other public health agencies to raise public awareness about Zonolite.

Second, I hope my colleagues will support legislation to ban asbestos in America and to warn people about the potential dangers posed by Zonolite insulation.

I appreciate the support for this legislation I have received from Senators BAUCUS, CANTWELL, DAYTON, and our late colleague, Senator Wellstone, who were original cosponsors.

I have been working to raise awareness about the current dangers of asbestos for over 2 years.

In July of 2001, I chaired a Senate Health, Education, Labor and Pensions Committee hearing on asbestos and workplace safety.

In June of 2002, 2 days after introducing the Ban Asbestos in America Act, I testified at a Senate Environment and Public Works Committee hearing on Libby held by Senator BAUCUS.

My colleagues may wonder whatever happened to Ralph Busch and his wife Donna.

After reading about Zonolite in the Seattle Post-Intelligencer, Mr. Busch went to get the asbestos removed from his home. He learned it would cost \$32,000 to do so.

When he tried to secure compensation from his homeowners insurance to pay to clean up the contamination, his insurance company rejected the claim.

He got nowhere with the company that had inspected the home before he

purchased it. They hadn't known about Zonolite, either.

When he talked to his realtor about trying to sell his house, Mr. Busch's realtor emphasized that Mr. Busch and his wife would be responsible under the law for disclosing the presence of Zonolite to any potential buyer.

According to Mr. Busch, even his realtor—and I quote—“. . . expressed apprehension over entering the house saying he has young children and was fearful of asbestos exposure without a proper respirator . . . this about a house we were living in every day.”

In the end, having exhausted all of his options, Ralph Busch and his wife Donna sacrificed their home to foreclosure, having lost thousands of dollars and their good credit rating. They didn't feel that it was safe to live there anymore, or to bring other people into their home. Finally, they decided to move out of their “dream house” in Spokane. To this day, that home remains vacant.

Apart from the tremendous economic loss, Mr. Busch and his wife are concerned for their health. They are left wondering what long-term negative health effects they may suffer as a result of their exposure to asbestos fibers from the insulation.

Mr. Busch has told me, “I feel like the poster-child for the unsuspecting homeowner who unknowingly set off a time bomb in the process of remodeling his home.”

To this day, Mr. Busch is haunted by words he read in the *Spokesman-Review* almost three years ago. The March 12, 2000, article, entitled, “Zonolite's Effects Outlive Plant,” said this about mesothelioma.

[The disease] inflicts one of the most torturous deaths known to humankind. Some people require intravenous morphine to numb mesothelioma's pain. Some need part of their spinal cord severed. Some are driven to suicide.

If there is a role for Government in people's lives, then it should include protecting the public health. We have an opportunity to protect the public's health so that Ralph Busch and thousands—perhaps millions—of other Americans won't have to be needlessly exposed to the time bomb sitting in their homes, schools, and businesses.

And meanwhile, if you are planning to do work in your attic, look at your insulation carefully first to see if it is vermiculite. You can see pictures of what this insulation looks like by going to EPA's web site, which is [www.epa.gov/asbestos/insulation.html](http://www.epa.gov/asbestos/insulation.html).

If you think you have Zonolite, immediately contact EPA to get additional advice about how to handle it. According to EPA's web site, if you think you have Zonolite insulation, leave it alone and not disturb it. And then contact your Representative in Congress and ask him or her to pass legislation to ban asbestos, something we all should have done decades ago. We can make a difference, but we must act today.

Mr. BAUCUS. Mr. President, I would just like to follow up on the statements regarding asbestos-contaminated insulation made by my good friend from Washington, Senator MURRAY. The issues she raises are extremely important, and I applaud her for her determined efforts on behalf of her constituents, and her dedication to raising the profile of the continued hazards associated with asbestos.

I was very moved by Senator MURRAY's description of what happened to her constituent in Spokane, WA. I agree with her 100 percent that the Government should not be in the business of keeping important health-related information from the public, including information about the health risks posed by Zonolite insulation. Again, I commend the Senator from Washington for her leadership in championing this important public health and safety issue.

I just believe it is important for me to speak directly to the experience of my constituents in Libby, MT, to put some of this into perspective.

The experience of the residents of Libby is truly, tragically, unique. This little town in northwestern Montana, surrounded by millions of acres of Federal forest lands, has lost over 200 people to asbestos-related diseases and cancers. Hundreds more are sick, and thousands more may become sick. Libby doesn't have that many people. The magnitude of this tragedy is staggering.

The vermiculite mining and milling operations of W.R. Grace belched thousands and thousands of pounds of asbestos-contaminated dust into the air in and around Libby, coating the town and its inhabitants with the deadly substance. Folks used raw vermiculite ore or expanded vermiculite to fill their gardens, their driveways, the high school track, the little league field, in their homes and attics. W.R. Grace mineworkers brought the dust home with them on their clothing and contaminated their own families, without knowing the dust was poison. Asbestos was absolutely everywhere in Libby, for decades.

It is also becoming more and more clear that the fibers unique to Libby, including tremolite asbestos fibers, are particularly deadly—more so than other forms of asbestos, such as chrysotile asbestos. Senator MURRAY is absolutely right to be concerned about insulation manufactured from vermiculite ore mined and milled in Libby.

But let me also be clear, that the situation in Libby demanded a unique, determined, and coordinated response from the Environmental Protection Agency, other Federal agencies, the State, and the community itself just to address the enormous task of cleaning up the town because, as I just mentioned, the contaminated vermiculite was everywhere.

Because of the extraordinary levels of asbestos contamination in Libby, an

important part of this clean-up effort included removing asbestos-contaminated materials from Libby homes. People in Libby used vermiculite insulation, raw vermiculite tailings, or other vermiculite material that they brought home from W.R. Grace to fill their walls and attics.

Last year, I personally urged the EPA to leave no stone unturned as it sought to determine how to best begin an expeditious removal of contaminated materials from homes in Libby, in an effort to continue to reduce the exposure of Libby residents to deadly tremolite asbestos. The EPA responded admirably to my requests, and as Senator MURRAY mentioned, the agency is currently removing asbestos-contaminated vermiculite material from homes in Libby.

I only highlight these issues because I believe the timing and scope of the EPA's decision to go into Libby homes and remove the vermiculite in their walls and ceilings was absolutely appropriate and necessary given the sheer volume of asbestos to which the people in Libby have been exposed.

Should the EPA have issued a public health emergency declaration in Libby prior to taking that action? I don't know. What I do know is that the decision was made and the correct on-the-ground result is happening in Libby. I have recently written to Administrator Whitman asking her to explain to me any health care benefits that may or may not be available to the people of Libby in the event that a public health emergency is declared in Libby. At this point, that is the most important issue to the people in Libby.

In fact, the Montana delegation, the State of Montana, the community of Libby, and many concerned private citizens have been working hard to bring new economic development and much-needed health care resources to Libby. It is amazing to see how everyone has come together to create something positive from a terrible situation.

The people in Libby are proud folks. They have had more than their share of hard knocks, and they just keep on going—getting up and trying. They are survivors, and I am privileged to know them so well. In January of 2000, I traveled to Libby to meet with 25 extremely ill people for the first time.

I had been briefed a number of times on what I might expect to hear that night. These kind men and women—some whom are no longer with us—gathered to share huckleberry pie and coffee in the home of Gayla Benefield. They opened their hearts and poured out unimaginable stories of suffering and tragedy on a scale I was absolutely stunned and unprepared to hear: entire families—fathers, mothers, uncles, aunts, sons, and daughters all dead and all bound by their exposure to tremolite asbestos, mined by W.R. Grace in this isolated, community of several thousand—located as far away from Washington, DC, as one can be, with a foot still in Montana.

I will never forget meeting another gentleman who has become my dear friend, Les Skramstad. Les watched me closely all evening. He was wary and approached me after his friends and neighbors had finished speaking. He said to me, Senator, a lot of people have come to Libby and told us they would help, then they leave and we never hear from them again.

"Max," he said, "please, as a man like me—as someone's father too, as someone's husband, as someone's son, help me. Help us. Help us make this town safe for Libby's sons and daughters not even born yet. They should not suffer my fate too. I was a miner and breathed that dust in. And what happened to me and all the other men who mined wasn't right—but what has happened to the others is a sin.

"Every day, I carried that deadly dust home on my clothes. I took it into our house, and I contaminated my own wife and each of my babies with it, too. Just like me, they are sick, and we will each die the same way. I just don't know how to live with the pain of what I have done to them. If we can make something good come of this, maybe I'll stick around to see that, maybe that could make this worthwhile.

"Find someone to use me, to study me, to learn something about this dust that is still in my lungs right now." I told him I would do all that I could and that I wouldn't back down and that I wouldn't give up. Les accepted my offer and then pointed his finger and said to me, "I'll be watching Senator."

Les is my inspiration. He is the face of hundreds and thousands of sick and exposed folks in this tiny Montana community. When I get tired, I think of Les, and I can't shake what he asked me to do. In all of my years as an elected official, this issue of doing what is right for Libby is among the most personally compelling things I have ever been called on to do.

Doing what is right for the community and making something good come of it, is my mission in Libby, and I thank Les Skramstad every day for handing me out my marching orders. My staff and I have worked tirelessly in Libby—not for thanks or recognition but because the tragedy is just that gripping.

The "something good," Les challenged me to deliver keeps our eye on the ball. I secured the first dollars from HHS 3 years ago to establish the Clinic for Asbestos Related to Disease, to allow the Agency for Toxic Substances and Disease Registry to begin the necessary screening of folks who had been exposed to Libby's asbestos. Federal dollars have flowed to Libby for cleanup, healthcare, and revitalizing the economy.

Last Congress, I was pleased to introduce the Libby Health Care Act, to secure longterm health funding for sick people in Libby, and I will introduce similar legislation this year. We seek ongoing funding for asbestos patient care and continue to closely monitor

and support asbestos cleanup efforts by the Environmental Protection Agency.

At the first field hearing I held in Libby of the Committee for Environment and Public Works, Dr. Blad Black, now the director of the Libby Clinic for Asbestos Related Disease, called for developing a research facility so that Libby's tragedy could be used to protect the health of men, women, and children.

The wheels are on the cleanup and health screening, and the time for making Brad's vision a reality is here. Working together with Montana Congressional delegation and our State's Governor to develop a leading edge, world class research facility with the mission of one day developing cures for asbestos-related disease is exactly what Les called for that evening more than 3 years ago as well. He and the hundreds and thousands who suffer like Les and his family have my commitment.

#### EXPLANATION OF ABSENCE

Mr. DASCHLE. Mr. President, on behalf of Senator GRAHAM, I ask unanimous consent that a letter from Senator GRAHAM to Senator FRIST and myself be printed in the RECORD.

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

U.S. SENATE,

Washington, DC, January 31, 2003.

Hon. BILL FRIST,

U.S. Senate,

Washington, DC.

Hon. TOM DASCHLE,

U.S. Senate,

Washington, DC.

DEAR SENATOR FRIST AND SENATOR DASCHLE: The purpose of this letter is to share with you and my colleagues a development regarding my health.

This morning at the National Naval Medical Center in Bethesda, Maryland, I underwent successful surgery to replace the aortic valve in my heart. My doctors advised me to have this procedure now to correct a deteriorating condition that could have led to permanent damage of my heart muscle.

Accordingly, under Senate Rule VI(2), I will be necessarily absent from the floor and committee activities until my doctors clear me for a return to work. I ask that this letter be inserted in the Congressional Record of this date to explain my absence.

Given the overall excellent state of my health, the doctors tell me that I should have renewed vigor and energy following a short hospitalization and recovery period.

With the extremely competent medical care I am receiving, as well as the loving support of my wife Adele and our family, I am confident that my absence will be brief. I look forward to rejoining you in the very near future to resume work on the agenda that is so important to my state of Florida, our nation and the world.

Thank you for your good wishes, your understanding and your support.

With kind regards,  
Sincerely,

BOB GRAHAM,  
U.S. Senator.

#### REMEMBERING ASTRONAUT WILLIAM MCCOOL

Mr. ENSIGN. Mr. President, I rise today to extend my deepest condolences to the families of the seven astronauts whose lives were lost on February 1. To Nevadans Audrey and Barry McCool, whose son William piloted the final *Columbia* mission, I offer my sympathy and the sincere gratitude of an entire nation.

You raised an incredible human being. William McCool represented the best and the brightest of this country. Though his life was taken prematurely, his legacy will be felt indefinitely.

William was incredibly smart, a talented athlete, and a true patriot. The combination of these traits, along with devoted parents and religious conviction, produced an American hero. We mourn that hero today, as Audrey and Barry McCool mourn their son. And while we stand with them in grief, we should also express our admiration for the type of son they raised.

Many children dream of one day becoming an astronaut. A very elite few ever make that dream a reality. For William McCool, his dream was his destiny. As a child, he looked up to his Marine and Navy pilot father, built model airplanes, and became an Eagle Scout. As a young man, he excelled by graduating second in his class at the Naval Academy, maintaining a 4.0 grade point average, and earning advanced degrees in computer science and aeronautical engineering. Not applying to be an astronaut until his thirties, by the time of his last mission William had logged more than 2,800 hours of flight experience in 24 aircraft, including more than 400 landings on aircraft-carrier decks.

As a pilot, William McCool risked his life often for this country. On January 16, he left his wife, sons, parents, and siblings grounded on Earth while he soared toward his lifetime dream among the stars. William was kept from completing his journey home, but our gratitude for his service must not be short lived.

We must ensure that these 7 astronauts, and the 10 other NASA astronauts who died in pursuit of knowledge, did not do so in vain. We owe it to their children to continue the quest of space science, and we owe it to all our children to continue reaching for the stars.

#### TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Mr. BAUCUS. Mr. President, I rise today to express my disappointment and dismay that the Secretary of Agriculture has failed to meet the deadline mandated by Congress to establish a program of Trade Adjustment Assistance for Farmers.

In the Trade Act of 2002, Congress directed the Secretary to get this program running by no later than this week, February 3, 2003.

It is running? No. Is it even close to running? No.

In fact, the Department of Agriculture tells me that their anticipated startup date is still another six months away. Meanwhile, the \$90 million that Congress set aside for this program in fiscal year 2003 has no way of reaching its intended beneficiaries. This is simply unacceptable.

Senators GRASSLEY and CONRAD recently joined me in a letter making this very point to secretary Veneman. We told her then—and I repeat it now—that we hold her personally accountable for dropping the ball on TAA for Farmers. Frankly, I expected better.

The Trade Act of 2002 renewed the President's trade promotion authority after a lapse of 8 years. In exchange for Congress', and the Nation's, renewed commitment to trade liberalization, the President agreed to expand the trade adjustment assistance program to better meet the needs of those who might be negatively impacted by trade.

A critical part of the President's commitment was the creation of a trade adjustment assistance program for farmers, ranchers, and other agricultural producers.

We all know that opening foreign markets to American agricultural products can provide great advantages to U.S. farmers and ranchers. Already, nearly one-fifth of Montana's agricultural production is exported. For Montana wheat, a full two-thirds is exported. And opening foreign markets is the best way to create new opportunities for our farmers and ranchers.

This is one reason I have always been a strong supporter of trade liberalization and an equally strong advocate for a level playing field for our farmers in world markets.

But trade liberalization can have a downside as well. It can leave our farmers and ranchers more vulnerable to sudden import surges, devastating commodity price swings, and other countries' unfair trading practices. That is why they need this TAA program.

The Department of Labor's TAA program for workers has nominally covered family farmers, ranchers, and fishermen all along. But hardly any have participated. They usually can't qualify because they don't become unemployed in the traditional sense.

After decades of trying without success to squeeze farmers into eligibility rules designed for manufacturing workers, it was time to try something new, something that would help farmers adjust to import competition before they lost their farms.

What the Trade Act does is create a TAA program tailored to the needs of farmers, ranchers, and fishermen. Basically, the program creates a new trigger for eligibility. Instead of having to show a layoff, the farmer, rancher, or fisherman has to show commodity price declines related to imports.

The trigger is different, but the program serves the same purpose as all

our trade adjustment programs. It assists the farmer, rancher, or fisherman to adjust to import competition, to retrain, to obtain technical assistance, and to have access to income support to tide them over during the process. And the income support is capped to make sure that the program is not being abused.

So last summer the President made a commitment—to the Congress and to the American agricultural community—to make this program a reality. I think it is fair to say that this was one of just a few key elements that got the President those critical few votes he needed to pass TPA in the House and the pass it with a strong bipartisan vote in the Senate.

And now I say to the President, and to Secretary Veneman: the farmers and ranchers of Montana—and indeed throughout America—continue to wait for your administration to fulfill this commitment.

I hope this will happen sooner, rather than later.

Indeed, there is absolutely no excuse for a 6-month delay in getting this program off the ground. There certainly wasn't a 6-month delay in launching negotiations for four new free-trade agreements under TPA. There shouldn't be a delay here either.

My staff and I stand ready to assist in any way we can to kick start this process. But Secretary Veneman needs to do the heavy lifting here. And that is my challenge to her today.

#### BLACK HISTORY MONTH

Mr. SMITH. Mr. President, each year I come to the floor during the month of February to celebrate Black History Month and to discuss many of the contributions made by Black Americans to my home State of Oregon. Today, at the beginning of this year's celebration of Black History Month, I would like to begin another series of floor statements with a short discussion of a significant event in Oregon's history, the Vanport flood.

In 1929, Dr. DeNorval Unthank moved to Portland, OR from Pennsylvania, becoming one of the city's first black physicians. When he moved into a segregated, nearly all-White neighborhood, he and his family were greeted by rocks thrown through the windows of his home. When he replaced those windows, more rocks were thrown. Phone calls threatening his family were also common. Ultimately, Dr. Unthank was forced to move to another part of town.

The city of Portland was highly segregated in its early history, and, although experiences like Dr. Unthank's were not uncommon, there were very few Black Portlanders. World War II changed all that. Between 1941 and 1943, the African-American population in Portland increased tenfold, from roughly 2,000 to over 20,000. People came from all over the country to work in Portland's shipyards, and to accommodate this influx of labor, the city of

Vanport—a combination of the names Vancouver and Portland—was built. At the time, it was the largest public housing project in the Nation, and it became home to thousands of Black Oregonians.

Due to the housing shortage in Portland after the war, the temporary housing at Vanport was allowed to linger on long past its original intended purpose. Restrictive policies of the local real estate industry, as well as the hostility to be found in Portland's White neighborhoods, kept Black residents largely confined to Vanport. On Memorial Day 1948, the Columbia River overflowed its banks and washed away Vanport City, leaving behind a large lake and thousands of homeless people. White residents of Vanport could be fairly easily absorbed into the larger fabric of the White community with minimal disruption; however, the response to the plight of Vanport's Black residents presented a dramatic challenge to the previous patterns of racial thought and action in the city.

According to Dr. Darrell Millner, professor at Portland State University, Portland generally rose to meet the challenge of the flood in a display of admirable humanitarianism. While some distinctions related to color were made in the aftermath of the disaster, other new interracial dynamics emerged from the event that, in the long term, helped change the course of Portland race relations.

H.J. Belton Hamilton, a former chair of the Urban League of Portland's board, recalls, "A lot of people got to know each other then." Many White families took displaced Vanport Blacks into their homes after the flood, and the old artificial boundaries of the African-American community were stretched to accommodate the relocation of residents. "The Vanport flood had a major impact on Portland," said Bobbie Nunn, and early activist in the NAACP and Urban League. The city of Portland had to accommodate its Black citizens, and the movement for positive racial change was on the rise.

We can see the changes in Portland by looking back again on the life of Dr. Unthank. Not only did Dr. Unthank cofound the Urban League of Portland, but by 1958, the Oregon State Medical Society named him Doctor of the Year. Four years later, he was named Citizen of the Year by the Portland Chapter of the National Conference of Christians and Jews. In 1969, DeNorval Unthank Park was dedicated in Portland. Forty years before, rocks had been thrown through the windows of his Portland home.

Portland and the entire State of Oregon went through as many changes in the middle part of the 20th century as did most other parts of our country. In the case of Portland, it was a major catastrophe, the Vanport flood, that served as one of the major catalysts for positive change. During Black History Month, I think it is important that we remember the people and events, like

Dr. Unthank and the Vanport flood, that helped shape the history of Oregon. I will come back to the floor each week this month to talk more about why Black History Month is important to Oregonians.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress, Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred April 26, 2001, in Los Angeles, CA. A college student assaulted a police officer outside a fraternity. The student, Adam Guerrero, 23, threw objects and shouted racial slurs at a Black traffic officer who was standing outside the fraternity house. The student was charged with counts of committing a hate crime, battery on a peace officer, and assault on a peace officer.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### RULES OF THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. SHELBY. Mr. President, in accordance with Rule XXVI.2. of the Standing Rules of the Senate, I ask unanimous consent to have printed in the RECORD the rules of the Committee on Banking, Housing, and Urban Affairs, as unanimously adopted by the committee on January 30, 2003.

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

#### RULES OF PROCEDURE FOR THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS [Adopted in executive session, January 30, 2003]

##### RULE 1. REGULAR MEETING DATE FOR COMMITTEE

The regular meeting day for the Committee to transact its business shall be the last Tuesday in each month that the Senate is in Session; except that if the Committee has met at any time during the month prior to the last Tuesday of the month, the regular meeting of the Committee may be canceled at the discretion of the Chairman.

##### RULE 2. COMMITTEE

[a] Investigations. No investigation shall be initiated by the Committee unless the Senate, or the full Committee, or the Chairman and Ranking Member have specifically authorized such investigation.

[b] Hearings. No hearing of the Committee shall be scheduled outside the District of Columbia except by agreement between the

Chairman of the Committee and the Ranking Member of the Committee or by a majority vote of the Committee.

[c] Confidential testimony. No confidential testimony taken or confidential material presented at an executive session of the Committee or any report of the proceedings of such executive session shall be made public either in whole or in part or by way of summary, unless specifically authorized by the Chairman of the Committee and the Ranking Member of the Committee or by a majority vote of the Committee.

[d] Interrogation of witnesses. Committee interrogation of a witness shall be conducted only by members of the Committee or such professional staff as is authorized by the Chairman or the Ranking Member of the Committee.

[e] Prior notice of markup sessions. No session of the Committee or a Subcommittee for marking up any measure shall be held unless [1] each member of the Committee or the Subcommittee, as the case may be, has been notified in writing of the date, time, and place of such session and has been furnished a copy of the measure to be considered at least 3 business days prior to the commencement of such session, or [2] the Chairman of the Committee or Subcommittee determines that exigent circumstances exist requiring that the session be held sooner.

[f] Prior notice of first degree amendments. It shall not be in order for the Committee or a Subcommittee to consider any amendment in the first degree proposed to any measure under consideration by the Committee or Subcommittee unless fifty written copies of such amendment have been delivered to the office of the Committee at least 2 business days prior to the meeting. It shall be in order, without prior notice, for a Senator to offer a motion to strike a single section of any measure under consideration. Such a motion to strike a section of the measure under consideration by the Committee or Subcommittee shall not be amendable. This section may be waived by a majority of the members of the Committee or Subcommittee voting, or by agreement of the Chairman and Ranking Member. This subsection shall apply only when the conditions of subsection [e][1] have been met.

[g] Cordon rule. Whenever a bill or joint resolution repealing or amending any statute or part thereof shall be before the Committee or Subcommittee, from initial consideration in hearings through final consideration, the Clerk shall place before each member of the Committee or Subcommittee a print of the statute or the part or section thereof to be amended or repealed showing by stricken-through type, the part or parts to be omitted, and in italics, the matter proposed to be added. In addition, whenever a member of the Committee or Subcommittee offers an amendment to a bill or joint resolution under consideration, those amendments shall be presented to the Committee or Subcommittee in a like form, showing by typographical devices the effect of the proposed amendment on existing law. The requirements of this subsection may be waived when, in the opinion of the Committee or Subcommittee Chairman, it is necessary to expedite the business of the Committee or Subcommittee.

##### RULE 3. SUBCOMMITTEES

[a] Authorization for. A Subcommittee of the Committee may be authorized only by the action of a majority of the Committee.

[b] Membership. No member may be a member of more than three Subcommittees and no member may chair more than one Subcommittee. No member will receive assignment to a second Subcommittee until, in

order of seniority, all members of the Committee have chosen assignments to one Subcommittee, and no member shall receive assignment to a third Subcommittee until, in order of seniority, all members have chosen assignments to two Subcommittees.

[c] Investigations. No investigation shall be initiated by a Subcommittee unless the Senate or the full Committee has specifically authorized such investigation.

[d] Hearings. No hearing of a Subcommittee shall be scheduled outside the District of Columbia without prior consultation with the Chairman and then only by agreement between the Chairman of the Subcommittee and the Ranking Member of the Subcommittee or by a majority vote of the Subcommittee.

[e] Confidential testimony. No confidential testimony taken or confidential material presented at an executive session of the Subcommittee or any report of the proceedings of such executive session shall be made public, either in whole or in part or by way of summary, unless specifically authorized by the Chairman of the Subcommittee and the Ranking Member of the Subcommittee, or by a majority vote of the Subcommittee.

[f] Interrogation of witnesses. Subcommittee interrogation of a witness shall be conducted only by members of the Subcommittee or such professional staff as is authorized by the Chairman or the Ranking Member of the Subcommittee.

[g] Special meetings. If at least three members of a Subcommittee desire that a special meeting of the Subcommittee be called by the Chairman of the Subcommittee, those members may file in the offices of the Committee their written request to the Chairman of the Subcommittee for that special meeting. Immediately upon the filing of the request, the Clerk of the Committee shall notify the Chairman of the Subcommittee of the filing of the request. If, within 3 calendar days after the filing of the request, the Chairman of the Subcommittee does not call the requested special meeting, to be held within 7 calendar days after the filing of the request, a majority of the members of the Subcommittee may file in the offices of the Committee their written notice that a special meeting of the Subcommittee will be held, specifying the date and hour of that special meeting. The Subcommittee shall meet on that date and hour. Immediately upon the filing of the notice, the Clerk of the Committee shall notify all members of the Subcommittee that such special meeting will be held and inform them of its date and hour. If the Chairman of the Subcommittee is not present at any regular or special meeting of the Subcommittee, the Ranking Member of the majority party on the Subcommittee who is present shall preside at that meeting.

[h] Voting. No measure or matter shall be recommended from a Subcommittee to the Committee unless a majority of the Subcommittee are actually present. The vote of the Subcommittee to recommend a measure or matter to the Committee shall require the concurrence of a majority of the members of the Subcommittee voting. On Subcommittee matters other than a vote to recommend a measure or matter to the Committee no record vote shall be taken unless a majority of the Subcommittee is actually present. Any absent member of a Subcommittee may affirmatively request that his or her vote to recommend a measure or matter to the Committee or his vote on any such other matters on which a record vote is taken, be cast by proxy. The proxy shall be in writing and shall be sufficiently clear to identify the subject matter and to inform the Subcommittee as to how the member wishes his



or her vote to be recorded thereon. By written notice to the Chairman of the Subcommittee any time before the record vote on the measure or matter concerned is taken, the member may withdraw a proxy previously given. All proxies shall be kept in the files of the Committee.

#### RULE 4. WITNESSES

[a] Filing of statements.—Any witness appearing before the Committee or Subcommittee [including any witness representing a Government agency] must file with the Committee or Subcommittee [24 hours preceding his or her appearance] 75 copies of his or her statement to the Committee or Subcommittee, and the statement must include a brief summary of the testimony. In the event that the witness fails to file a written statement and brief summary in accordance with this rule, the Chairman of the Committee or Subcommittee has the discretion to deny the witness the privilege of testifying before the Committee or Subcommittee until the witness has properly complied with the rule.

[b] Length of statements. Written statements properly filed with the Committee or Subcommittee may be as lengthy as the witness desires and may contain such documents or other addenda as the witness feels is necessary to present properly his or her views to the Committee or Subcommittee. The brief summary included in the statement must be no more than 3 pages long. It shall be left to the discretion of the Chairman of the Committee or Subcommittee as to what portion of the documents presented to the Committee or Subcommittee shall be published in the printed transcript of the hearings.

[c] Ten-minute duration. Oral statements of witnesses shall be based upon their filed statements but shall be limited to 10 minutes duration. This period may be limited or extended at the discretion of the Chairman presiding at the hearings.

[d] Subpoena of witnesses. Witnesses may be subpoenaed by the Chairman of the Committee or a Subcommittee with the agreement of the Ranking Member of the Committee or Subcommittee or by a majority vote of the Committee or Subcommittee.

[e] Counsel permitted. Any witness subpoenaed by the Committee or Subcommittee to a public or executive hearing may be accompanied by counsel of his or her own choosing who shall be permitted, while the witness is testifying, to advise him or her of his or her legal rights.

[f] Expenses of witnesses. No witness shall be reimbursed for his or her appearance at a public or executive hearing before the Committee or Subcommittee unless such reimbursement is agreed to by the Chairman and Ranking Member of the Committee.

[g] Limits of questions. Questioning of a witness by members shall be limited to 5 minutes duration when 5 or more members are present and 10 minutes duration when less than 5 members are present, except that if a member is unable to finish his or her questioning in this period, he or she may be permitted further questions of the witness after all members have been given an opportunity to question the witness.

Additional opportunity to question a witness shall be limited to a duration of 5 minutes until all members have been given the opportunity of questioning the witness for a second time. This 5-minute period per member will be continued until all members have exhausted their questions of the witness.

#### RULE 5. VOTING

[a] Vote to report a measure or matter. No measure or matter shall be reported from the Committee unless a majority of the Committee is actually present. The vote of the

Committee to report a measure or matter shall require the concurrence of a majority of the members of the Committee who are present.

Any absent member may affirmatively request that his or her vote to report a matter be cast by proxy. The proxy shall be sufficiently clear to identify the subject matter, and to inform the Committee as to how the member wishes his vote to be recorded thereon. By written notice to the Chairman any time before the record vote on the measure or matter concerned is taken, any member may withdraw a proxy previously given. All proxies shall be kept in the files of the Committee, along with the record of the rollcall vote of the members present and voting, as an official record of the vote on the measure or matter.

[b] Vote on matters other than to report a measure or matter.—On Committee matters other than a vote to report a measure or matter, no record vote shall be taken unless a majority of the Committee are actually present. On any such other matter, a member of the Committee may request that his or her vote may be cast by proxy. The proxy shall be in writing and shall be sufficiently clear to identify the subject matter, and to inform the Committee as to how the member wishes his or her vote to be recorded thereon. By written notice to the Chairman any time before the vote on such other matter is taken, the member may withdraw a proxy previously given. All proxies relating to such other matters shall be kept in the files of the Committee.

#### RULE 6. QUORUM

No executive session of the Committee or a Subcommittee shall be called to order unless a majority of the Committee or Subcommittee, as the case may be, are actually present. Unless the Committee otherwise provides or is required by the Rules of the Senate, one member shall constitute a quorum for the receipt of evidence, the swearing in of witnesses, and the taking of testimony.

#### RULE 7. STAFF PRESENT ON DAIS

Only members and the Clerk of the Committee shall be permitted on the dais during public or executive hearings, except that a member may have one staff person accompany him or her during such public or executive hearing on the dais. If a member desires a second staff person to accompany him or her on the dais he or she must make a request to the Chairman for that purpose.

#### RULE 8. COINAGE LEGISLATION

At least 67 Senators must cosponsor any gold medal or commemorative coin bill or resolution before consideration by the Committee.

#### EXTRACTS FROM THE STANDING RULES OF THE SENATE—RULE XXV, STANDING COMMITTEES

1. The following standing committees shall be appointed at the commencement of each Congress, and shall continue and have the power to act until their successors are appointed, with leave to report by bill or otherwise on matters within their respective jurisdictions:

[d][1] Committee on Banking, Housing, and Urban Affairs, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

1. Banks, banking, and financial institutions.
2. Control of prices of commodities, rents, and services.
3. Deposit insurance.
4. Economic stabilization and defense production.
5. Export and foreign trade promotion.
6. Export controls.

7. Federal monetary policy, including Federal Reserve System.

8. Financial aid to commerce and industry.

9. Issuance and redemption of notes.

10. Money and credit, including currency and coinage.

11. Nursing home construction.

12. Public and private housing [including veterans' housing].

13. Renegotiation of Government contracts.

14. Urban development and urban mass transit.

[2] Such committee shall also study and review, on a comprehensive basis, matters relating to international economic policy as it affects United States monetary affairs, credit, and financial institutions; economic growth, urban affairs, and credit, and report thereon from time to time.

#### COMMITTEE PROCEDURES FOR PRESIDENTIAL NOMINEES

Procedures formally adopted by the U.S. Senate Committee on Banking, Housing, and Urban Affairs, February 4, 1981, establish a uniform questionnaire for all Presidential nominees whose confirmation hearings come before this Committee.

In addition, the procedures establish that:

[1] A confirmation hearing shall normally be held at least 5 days after receipt of the completed questionnaire by the Committee unless waived by a majority vote of the Committee.

[2] The Committee shall vote on the confirmation not less than 24 hours after the Committee has received transcripts of the hearing unless waived by unanimous consent.

[3] All nominees routinely shall testify under oath at their confirmation hearings.

This questionnaire shall be made a part of the public record except for financial information, which shall be kept confidential.

Nominees are requested to answer all questions, and to add additional pages where necessary.

#### HEALTH CARE IN THE 108TH CONGRESS

Mr. SMITH. Mr. President, this Congress will address a number of very serious issues this year, but there is perhaps no issue we will discuss with greater long-term implications than health care.

Last year, my colleagues and I came to the Senate floor to talk about and debate the pressing need for an affordable, universal, and voluntary prescription drug benefit for America's seniors. Unfortunately, our efforts were not successful, and our Nation's seniors continue to live in fear that the loss of their health could lead to the loss of their homes.

For the past several years, I have also tried to address the growing problem of the uninsured: Every day, 41 million Americans live, work, and go to school without health coverage. While the economic downturn this past year has caused many families to tighten their belts, it has had more serious results for almost 2 million men, women, and children who have lost their health insurance along with their jobs.

Last year, the Senate Budget Committee chairman's mark included a \$500 billion health fund, to be used to modernize Medicare with the addition of a

prescription drug benefit, and to reduce the number of uninsured in this country. With annual prescription drug cost inflation, any legislation to address the long-neglected need of Medicare seniors for an affordable prescription drug benefit this year will consume at least as much. Additionally, growing State fiscal woes coupled with the increase in the number of uninsured Americans will require a substantial Federal response.

With the threat of war and ongoing economic downturn, it may be difficult to consider new initiatives this year. But we must. The current economic climate is all the more reason to focus attention and resources on covering the uninsured now, when the need is great. In addition, every year that passes without adding a prescription drug benefit to Medicare, seniors continue to suffer, and the cost of adding such a benefit increases substantially. We must make every effort to provide a very real benefit for our Nation's seniors and uninsured, and I urge my colleagues to support a sufficient sum to make these goals a reality this year.

#### TAX CUTS AND JOBS

Mr. HATCH. Mr. President, I rise today to make a suggestion about how we can work more effectively to get the engine of our economy running on all of its cylinders again.

We have heard a great deal this week about the current state of our economy and whether the President's growth plan, which he released this past Monday, will be effective in putting Americans who have lost their jobs back to work. Many of my colleagues on the other side of the aisle are questioning whether there is a link between high taxes and jobs.

The current debate has featured quotations and commentary from some of the most prominent economists and tax experts in America. Both sides rely on knowledgeable and learned authorities to make their case that the Bush growth plan will or will not be effective in creating jobs. And, as the old saying goes, you can find an expert to prove any point you wish.

But too often, I think we tend to overlook the wisdom of people on the front lines of the U.S. economy. Sometimes these people can provide answers with clarity and common sense.

A few months ago, a small business owner in Moab, UT, Jeffrey Davis, sent me a very heartfelt letter, and his sentiment has stuck in my mind. I want to share it with my colleagues here today.

Moab is a relatively small town in southeastern Utah whose economy is greatly dependent on tourism. Within just a few miles of this town lies some of the most spectacular scenery on Earth. However, the people who make Moab their home face the same economic realities with which everyone else in America deals.

Mr. Davis owns and operates a restaurant in Moab, and over the years he

has tried his hand at a few other retail businesses as well. From his letter, it is obvious he has faced both good times and bad times with his businesses. Unfortunately, the recent trends have not been positive. He currently employs between 13 and 20 people, depending upon the season, and he worries that these people, who depend on him, might find themselves out of a job if conditions do not soon improve. Mr. Davis understands all too well the pressures that face all small business owners.

In his letter to me, Mr. Davis makes a point that is extremely important to the current debate on taxes and jobs—that if high taxes force the small business person to go out of business, the U.S. Government will not get any tax money.

As simple and obvious as that concept sounds, I fear it might be one who is sometimes lost on those of us in Congress. Taxes and other government requirements have a real cost on small businesses in this country, many of which are right at the edge of viability. In the case of businesses in many towns in Utah and around the country, things have been really tough for the past couple of years. The one-two punch of a slowing economy and the greatly reduced travel resulting from the events of September 11 have moved many thousands of small businesses in Utah and around the Nation right to the edge of going out of business. This is especially true of businesses in towns that depend heavily on tourism, such as Moab.

Tax cuts, such as the President is proposing, can make the difference between a small business surviving and it closing its doors. We must keep in mind that a high percentage of small businesses pay taxes at the individual rates.

As we debate the best way to deal with our slow recovery over the next weeks, we will surely hear a great deal more from economists and experts on the macro effect of various plans and how gross domestic product will be affected by enacting one idea or another.

These opinions and analyses are a very much needed and welcome part of the political process. But I urge my colleagues to not forget to also consider the wisdom of those back home in their States, who, like Jeffrey Davis of Moab, UT, face the real world effects of our decisions.

#### ADDITIONAL STATEMENTS

##### 30th ANNIVERSARY OF THE TURTLE MOUNTAIN COMMUNITY COLLEGE

• Mr. CONRAD. Mr. President, I rise today to congratulate the Turtle Mountain Community College located on the Turtle Mountain Indian Reservation in my State of North Dakota on its 30th anniversary.

Turtle Mountain Community College was one of the six original tribal col-

leges formed to meet the higher education needs of American Indians. Without the college, the dream of a college education would have been out of reach for so many on the reservation.

It is quite exciting to see how this college has evolved over the past 30 years. The college started from very humble beginnings. On the third floor of an abandoned Catholic convent, with fewer than 60 students and only 3 full-time faculty members, the college offered its first course to those on the reservation. Today, the college has grown to serve over 650 students, with more than 150 courses and 65 full- and part-time faculty members. Additionally, the college serves more than 250 adults who are working to earn their general equivalency degree.

Turtle Mountain Community College was the first tribal college to be granted 10-year accreditation by the North Central Association of Colleges and Schools and was the one of the first to fully integrate traditional culture throughout the curriculum.

By far one of the largest accomplishments for the college was the opening of its new campus building in 1999. The college worked for years to raise the needed funds to construct this facility. Located on a 234-acre site, the 105,000-square-foot facility includes state-of-the-art technology, general classroom space, science and engineering labs, a library, learning resource center, and a gymnasium.

Over 2,000 tribal members have graduated from the college since its creation, a truly commendable accomplishment. Nearly half of the graduates have gone on to other institutions to earn a 4-year degree. Last spring, the college graduated the first group of students to earn a bachelor of science degree in elementary education.

For the past 30 years, the college has also played a critical role in reservation life, supporting tribal business development, worker training to meet the needs of local industries, and year-round activities for elementary, middle, and high school students.

I congratulate the college, its faculty, and students on this momentous occasion and wish them much success in the next 30 years.●

#### ARTHUR ASHE

• Mrs. CLINTON. Mr. President, Arthur Ashe said: "True heroism is remarkably sober, very undramatic. It is not the urge to surpass all others at whatever cost, but the urge to serve others at whatever cost." This is more than an eloquent definition of heroism; it was how Arthur Ashe lived his life.

Ashe emerged from segregated Richmond, VA, to become one of the finest individuals to play the game of tennis. He shattered barrier after barrier and showed the world that anyone who worked hard enough and trained could rise to the top. Ashe's triumphs began in Maryland in 1957 when he was the

first African American to ever participate in the Maryland boy's tennis championships. After graduating first in his high school class, he attended UCLA. At UCLA, he helped his team win the NCAA Championship in 1965 by winning the individual championship. Ashe became the first African American ever to be appointed to the Davis Cup Team and played for the team from 1963 to 1970, and also in 1975, 1976, and 1978, and served as captain in 1980.

The world also admired Ashe for his great individual victories. He won the U.S. Open in 1968, the Australian Open in 1970, the French Open in 1971, and no one can forget his victory over Jimmy Connors in the Wimbledon Championship of 1975. Each victory, from the Maryland boy's championship to the triumph at Wimbledon, earned Arthur Ashe a spot in the International Tennis Hall of Fame in 1985.

But tennis is just one part of Ashe's legacy. He was in the military. He was an author, a husband, and a father. He understood that with great success came even greater responsibility. And in the early 1970s he denounced apartheid and worked tirelessly for South Africa's expulsion from the International Lawn Tennis Association. Ashe was the first African-American professional to play in South Africa's national tennis championships. He seized that moment in the spotlight to highlight the struggle of the South African people against the terrible oppression of apartheid. And when the South African Government refused reforms, Ashe refused to play and was even arrested in 1985 outside the South African Embassy while protesting apartheid.

Ashe never wavered in his commitment to use his position to help further important causes. Whether it was the plight of Haitian refugees or creating the USTA National Junior Tennis League to help young inner-city athletes, each effort was a measure of a man determined to make this world a better place.

Then the news came in 1992 that Ashe was HIV positive. As the news traveled to all who were inspired by Ashe, sadness spanned the globe. But once again, Ashe used his position in the world to further one last cause. He went before the General Assembly of the United Nations and called for an increase in AIDS funding and research, and he started the Arthur Ashe foundation to promote these and other causes. Arthur Ashe passed away on February 6, 1993, but his legacy continues thanks to his dedicated wife Jeanne who serves as the chairperson of the Arthur Ashe Endowment for the Defeat of AIDS, his daughter Camera, and all of those who admired this truly heroic individual.

A decade ago, the world lost one of its great heroes. And on this day, in recognition of all of his accomplishment for athletes, and the exemplary role he fulfilled as activist, author, husband, father, and individual, we salute Arthur Robert Ashe, Jr. ●

#### RETIREMENT OF MR. DAVID B. HARRITY

● Mr. SUNUNU. Mr. President, I rise today on behalf of myself and my good friend and colleague, the senior Senator from New Hampshire, JUDD GREGG, to extend our congratulations to Mr. David B. Harrity on the occasion of his retirement from the U.S. Department of Housing and Urban Development.

Dave has had an exemplary career in Federal service, devoting more than 34 years to our Nation. Because of his dedication to duty, Dave rose through the ranks at HUD and retires today as director of the New Hampshire field office. Dave's accomplishments are not limited to his decades of Federal service, but extend to the difference he has made in the lives of countless citizens. His years of leadership and generosity have helped make Manchester, NH, the strong and vibrant community it is today.

Dave began his service with HUD at its inception in 1965, starting in the Philadelphia field office where he provided assistance to the people of Pennsylvania and southern New Jersey. From there, Dave moved to HUD's Boston regional office where, in 1971, he became the first low-rent housing specialist in New England and worked in close concert with all of the local housing authorities in each of the six New England States.

When HUD created the Executive Identification and Development Program in 1974, Dave was one of only 21 individuals selected from a national competition of more than 700 to participate in the leadership training. After completing and receiving a certificate from the Urban Executive Program of the Sloan Management School at the Massachusetts Institute of Technology, Dave was appointed special assistant to the Regional Administrator in 1975.

In 1978, Dave was tapped to serve as the director of the Housing Development and Management Divisions of the Hartford, CT, HUD Field Office. Dave's team of staff professionals worked closely with HUD customers, providing mortgage insurance, housing subsidies, and management oversight of federally assisted housing. In 1988, Dave moved on to an opportunity with the State of Connecticut's Department of Housing. In this position, he administered HUD's Section 8 Existing Certificate and the Small Cities Community Development Block Grant Programs.

In October of 1992, Dave was appointed Manager of HUD's Manchester office by then-Secretary Jack Kemp. Dave's managerial style has been and continues to be, one of working with, and in support of, local officials to ensure that each city and town in New Hampshire receives the maximum benefit from HUD's programs. While protecting the Federal Government's interests, Dave has instilled in his staff a willingness to find ways to allow local officials to administer HUD's programs

in a manner which best meets the specific needs of New Hampshire's residents. Because of Dave's leadership skills, a recent Quality Management Review of the Manchester office resulted in one of the highest overall ratings of any HUD office in the Nation.

Besides the help he provides the men and women of New Hampshire through his service at HUD, Dave's philosophy of giving is reflected in a number of other community activities. He is president of the board of directors of "The CareGivers, Inc." a nonprofit organization serving the Manchester and Nashua areas of the Granite State and whose mission is "helping the frail, elderly and disabled to maintain their independence and dignity." He is also the past president of the New Hampshire Federal Executive Association and is a leader within the Greater Manchester Chamber of Commerce. As another part of his community participation, Dave serves as a "Granite State Ambassador," greeting visitors to New Hampshire at information kiosks in both the airport and downtown Manchester. He is also a member of the board of directors of the Manchester Rotary Club.

Dave's career has truly been an inspiration to those who look to form a better future through active participation in the community. While Senator GREGG and I trust Dave will enjoy his retirement with his wife Patricia, and being able to spend more time with his daughters Suzanne and Tracey and his grandsons Ryan and Thomas, we also know he will not cease giving of himself in service to his fellow man.

On behalf of the citizens of Manchester and of the Granite State, Senator GREGG and I congratulate David Harrity and thank him for all he has done for his community, the State of New Hampshire, and the Nation. ●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGE FROM THE HOUSE

#### ENROLLED JOINT RESOLUTION SIGNED

At 11:15 a.m., a message from the House of Representatives, delivered by one of its clerks, announced that the

Speaker has signed the following enrolled joint resolution:

H.J. Res. 18. A joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

The enrolled joint resolution was signed subsequently by the President pro tempore (Mr. STEVENS).

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-991. A communication from the Assistant Secretary, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule "Endangered and Threatened wildlife and plants; final designation or non designation of critical habitat for 95 plant species from the islands of Kauai and Niihau, Hawaii; final rule (RIN1018-AG71)" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-992. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Marine Waters" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-994. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Ambient Water Quality Criteria Recommendations: Rivers and Streams in Ecoregion V" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-995. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Amboem Water Quality Criteria Recommendation: Rivers and Streams in Ecoregion I" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-996. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Method for Evaluating Wetland Condition: #10 Using Vegetation to Assess Environment Conditions in Wetlands" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-997. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Method for Evaluating Wetlands Conditions: #1 Introduction to Wetland Biological Assessment" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-998. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Method for Evaluating Wetlands Condition: #4 Study Design for Monitoring Wetlands" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-999. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmit-

ting, pursuant to law, the report of a document entitled "Method for Evaluating Wetlands Condition: #9 Developing an Invertebrate Index of Biological Integrity" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1000. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Methods for Evaluating Wetland Condition: #12 Using Amphibians in Bioassessments of Wetlands" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1001. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Methods for Evaluating Wetlands Condition: #16 Vegetation-Based Indicators of Wetland Nutrient Enrichment" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1002. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Methods for Evaluating Wetlands Condition: #17 Land-Use Characterization for Nutrient and Sediment Risk Assessment" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1003. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Methods for Evaluating Wetlands Condition: #11 Using Algae to Assess Environmental Conditions in Wetlands" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1004. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Methods for Evaluating Wetlands Condition: #13 Biological Assessment for Birds" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1005. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Methods for Evaluating Wetlands Condition: #6 Developing Metrics and Indexes of Biological Integrity" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1006. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Methods for Evaluating Wetlands Conditions: #8 Volunteers and Wetland Biomonitoring" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1007. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Methods for Evaluating wetlands Conditions: #7 Wetlands Classification" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1008. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Ambient Water Quality Criteria Recommendations: Lakes and Reservoirs in Ecoregion IV" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1009. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Ambient Water Quality Criteria Recommendations: Lakes and Reservoirs in Ecoregion V" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1010. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Ambient Water Quality Criteria Recommendations: Lakes and Reservoirs in Ecoregion XIV" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1011. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Ambient Water Quality Criteria Recommendations: Rivers and Stream in Ecoregion VIII" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1012. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Ambient Water Quality Criteria Recommendations: Rivers and Streams in Ecoregion X" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1013. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Ambient Water Quality Criteria Recommendations: Lakes and Reservoirs in Ecoregion III" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1014. A communication from the Assistant Secretary, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rio Grande Silvery Minnow (RIN1018-AH91)" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1015. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling emissions from Existing Commercial and Industrial Solid Waste Incinerators (FRL7447-6)" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1016. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Control of Emission from New Marine Compression-Ignition Engines at or Above Liters per Cylinder (FRL7448-9)" received on February 5, 2003; to the Committee on Environment and Public Works.

EC-1017. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, the Fiscal Year 2002 Annual Report of the Environmental Protection Agency, received on February 1, 2003; to the Committee on Environment and Public Works.

EC-1018. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. ACT 14-89 "Independence of the Chief Financial Officer Establishment Act of

2001" received on February 1, 2003; to the Committee on Governmental Affairs.

EC-1019. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the Department of Defense Fiscal Year (FY) 2002 Performance and Accountability Report, received on January 31, 2003; to the Committee on Governmental Affairs.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, without amendment and with a preamble:

S. Res. 49. A resolution designating February 11, 2003, as "National Inventors' Day."

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH for the Committee on the Judiciary.

John R. Adams, of Ohio, to be United States District Judge for the Northern District of Ohio.

S. James Otero, of California, to be United States District Judge for the Central District of California.

Robert A. Junell, of Texas, to be United States District Judge for the Western District of Texas.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LEVIN (for himself, Ms. STABENOW, and Mr. SCHUMER):

S. 324. A bill to amend the National Trails System Act to clarify Federal authority relating to land acquisition from willing sellers for certain trails in the National Trails System; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY (for himself and Mr. FEINGOLD):

S. 325. A bill to amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. NELSON of Florida:

S. 326. A bill to amend the Uniform Code of Military Justice to apply to prosecutions of child abuse cases in courts-martial an extended statute of limitations applicable to prosecutions of child abuse cases in United States District Courts, and for other purposes; to the Committee on Armed Services.

By Mr. LEVIN (for himself and Mr. JEFFORDS):

S. 327. A bill to amend part A of title IV of the Social Security Act to allow up to 24 months of vocational educational training to be counted as a work activity under the temporary assistance to needy families program; to the Committee on Finance.

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 328. A bill to designate Catoctin Mountain Park in the State of Maryland as the "Catoctin Mountain National Recreation Area," and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. EDWARDS:

S. 329. A bill to assist the Neighborhood Watch program to empower communities and citizens to enhance awareness about threats from terrorism and weapons of mass destruction, and encourage local communities to better prepare to respond to terrorist attacks; to the Committee on the Judiciary.

By Mr. CAMPBELL (for himself, Mr. COCHRAN, Mr. MILLER, Mr. JOHNSON, Mr. INOUE, Mr. CONRAD, Mr. BINGAMAN, Mr. LEAHY, Mr. BUNNING, Mr. DOMENICI, Ms. MURKOWSKI, and Mr. CRAIG):

S. 330. A bill to further the protection and recognition of veterans' memorials, and for other purposes; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. MCCAIN, Mr. INOUE, Mr. BAUCUS, Mr. JOHNSON, Mr. DOMENICI, Mr. BINGAMAN, Mr. COCHRAN, and Ms. STABENOW):

S. 331. A bill to amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas; to the Committee on Finance.

By Mr. DORGAN (for himself, Mr. DASCHLE, Mr. LEVIN, Mr. BAUCUS, and Mr. CONRAD):

S. 332. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State; to the Committee on Agriculture, Nutrition, and Forestry.

#### ADDITIONAL COSPONSORS

S. 50

At the request of Mr. JOHNSON, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 50, a bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care, and for other purposes.

S. 113

At the request of Mr. KYL, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 113, a bill to exclude United States persons from the definition of "foreign power" under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism.

S. 150

At the request of Mr. ALLEN, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

S. 196

At the request of Mr. ALLEN, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 196, a bill to establish a digital and wireless network technology program, and for other purposes.

S. 205

At the request of Mr. BIDEN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 205, a bill to authorize the issuance

of immigrant visas to, and the admission to the United States for permanent residence of, certain scientists, engineers, and technicians who have worked in Iraqi weapons of mass destruction programs.

S. 207

At the request of Mr. SMITH, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 207, a bill to amend the Internal Revenue Code of 1986 to provide a 10-year extension of the credit for producing electricity from wind.

S. 245

At the request of Mrs. DOLE, her name was added as a cosponsor of S. 245, a bill to amend the Public Health Service Act to prohibit human cloning.

S. 250

At the request of Mr. DURBIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 250, a bill to address the international HIV/AIDS pandemic.

S. 287

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 287, a bill to amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 300

At the request of Mr. KERRY, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 303

At the request of Mr. HATCH, the names of the Senator from California (Mrs. BOXER) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 303, a bill to prohibit human cloning and protect stem cell research.

S. RES. 48

At the request of Mr. AKAKA, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. Res. 48, A resolution designating April 2003 as "Financial Literacy for Youth Month".

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN (for himself, Ms. STABENOW, and Mr. SCHUMER):

S. 324. A bill acquisition from willing sellers for certain trails in the National Trails System; to the Committee on Energy and Natural Resources.

Mr. LEVIN. Mr. President, I ask unanimous consent that the Willing Seller bill be printed in the RECORD.

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

S. 324

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. NATIONAL TRAILS SYSTEM.**

(a) ACQUISITION OF LAND FROM WILLING SELLERS.—Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended—

(1) in paragraph (8), by adding at the end the following: “No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail without the consent of the owner of the land or interest.”;

(2) in paragraph (10), by adding at the end the following: “No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail without the consent of the owner of the land or interest.”; and

(3) in the fourth sentence of paragraph (11)—

(A) by striking “No lands or interests therein outside the exterior” and inserting “No land or interest in land outside the exterior”; and

(B) by inserting before the period at the end the following: “without the consent of the owner of the land or interest”.

(b) CONFORMING AMENDMENT.—Section 10(c)(1) of the National Trails System Act (16 U.S.C. 1249(c)(1)) is amended by striking “the North Country National Scenic Trail, The Ice Age National Scenic Trail.”.

By Mr. GRASSLEY (for himself and Mr. FEINGOLD):

S. 325. A bill to amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. GRASSLEY. Mr. President, during the last Congress Senator FEINGOLD and I sponsored the Transparency for Independent Livestock Producers Act, or what we have generally referred to as the “Transparency Act”. Today we are once again working together in a bipartisan fashion to re-introduce this important legislation.

As everyone knows, I introduced the packer ban this Congress because I want more competition in the marketplace. While I don't think packers should be in the same business as independent livestock producers, it's not the fact that the packers own the livestock that bothers me as much as the fact that the packers' livestock competes for shackle space and adversely impacts the price independent producers receive.

My sponsorship of the packer ban is based on the belief that independent producers should have the opportunity to receive a fair price for their livestock. The last few years have led to widespread consolidation and concentration in the packing industry. Add on the trend toward vertical integration among packers and there is no question why independent producers are losing the opportunity to market their own livestock during profitable cycles in the live meat markets.

The past CEO of IBP in 1994 explained that the reason packers own livestock is that when the price is high the packers use their own livestock for the lines and when the price is low the packers buy livestock. This means that independent producers are most likely being limited from participating in the most profitable ranges of the live market. This is not good for the survival of the independent producer.

This bipartisan legislation would guarantee that independent producers have a share in the market place while assisting the Mandatory Price Reporting system. The proposal would require that 25 percent of a packer's daily kill comes from the spot market. By requiring a 25 percent spot market purchase daily, the mandatory price reporting system, which has been criticized due to reporting and accuracy problems, would have consistent, reliable numbers being purchased from the spot market, improving the accuracy and transparency of daily prices. In addition, independent livestock producers would be guaranteed a competitive position due to the packers need to fill the daily 25 percent spot/cash market requirement.

The packs required to comply would be the same packs required to report under the Mandatory Price Reporting system. Those are packs that kill either 125,000 head of cattle, 100,000 head of hogs, or 75,000 lambs annually, over a 5 year average.

Packers are arguing that this will hurt their ability to offer contracts to producers, but the fact of the matter is that the majority of livestock contracts pay out on a calculation incorporating Mandatory Price Reporting data. If the Mandatory Price Reporting data is not accurate, or open to possible manipulation because of low numbers on the spot market, contracts are not beneficial tools for producers to manage their risk. This legislative proposal will hopefully give confidence to independent livestock producers by improving the accuracy and viability of the Mandatory Price reporting system and secure fair prices for contracts based on that data.

It's just common sense, when there aren't a lot of cattle and pigs being purchased on the cash market, it's easier for the Mandatory Price reporting data to be inaccurate or manipulated. The majority of livestock production contracts are based on that data, so if that information is wrong the contract producers suffer.

This legislation will guarantee independent livestock producers market access and a fair price. It will accomplish these goals by making it more difficult for the Mandatory Price Reporting System to be manipulated because of low numbers being reported by the packs. The Transparency Act is crucial legislation to guarantee livestock producers receive a fair shake at the farm gate and I am looking forward to working on this legislation in a bipartisan fashion.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 325

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SPOT MARKET PURCHASES OF LIVESTOCK BY PACKERS.**

Chapter 5 of subtitle B of the Agricultural Marketing Act of 1946 (7 U.S.C. 1636 et seq.) is amended by adding at the end the following:

**“SEC. 260. SPOT MARKET PURCHASES OF LIVESTOCK BY PACKERS.**

“(a) DEFINITIONS.—In this section:

“(1) COOPERATIVE ASSOCIATION OF PRODUCERS.—The term ‘cooperative association of producers’ has the meaning given the term in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(2) COVERED PACKER.—

“(A) IN GENERAL.—The term ‘covered packer’ means a packer that is required under this subtitle to report to the Secretary each reporting day information on the price and quantity of livestock purchased by the packer.

“(B) EXCLUSION.—The term ‘covered packer’ does not include a packer that owns only 1 livestock processing plant.

“(3) NONAFFILIATED PRODUCER.—The term ‘nonaffiliated producer’ means a producer of livestock—

“(A) that sells livestock to a packer;

“(B) that has less than 1 percent equity interest in the packer, which packer has less than 1 percent equity interest in the producer;

“(C) that has no officers, directors, employees, or owners that are officers, directors, employees, or owners of the packer;

“(D) that has no fiduciary responsibility to the packer; and

“(E) in which the packer has no equity interest.

“(4) SPOT MARKET SALE.—

“(A) IN GENERAL.—The term ‘spot market sale’ means a purchase and sale of livestock by a packer from a producer—

“(i) under an agreement that specifies a firm base price that may be equated with a fixed dollar amount on the date the agreement is entered into;

“(ii) under which the livestock are slaughtered not more than 7 days after the date on which the agreement is entered into; and

“(iii) under circumstances in which a reasonable competitive bidding opportunity exists on the date on which the agreement is entered into.

“(B) REASONABLE COMPETITIVE BIDDING OPPORTUNITY.—For the purposes of subparagraph (A)(iii), circumstances in which a reasonable competitive bidding opportunity shall be considered to exist if—

“(i) no written or oral agreement precludes the producer from soliciting or receiving bids from other packers; and

“(ii) no circumstance, custom, or practice exists that—

“(I) establishes the existence of an implied contract (as determined in accordance with the Uniform Commercial Code); and

“(II) precludes the producer from soliciting or receiving bids from other packers.

“(b) GENERAL RULE.—Of the quantity of livestock that is slaughtered by a covered packer during each reporting day in each plant, the covered packer shall slaughter not less than the applicable percentage specified in subsection (c) of the quantity through spot market sales from nonaffiliated producers.



“(c) APPLICABLE PERCENTAGES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the applicable percentage shall be—

“(A) in the case of a covered packer that is not a cooperative association, 25 percent; and

“(B) in the case of a covered packer that is a cooperative association, 12.5 percent.

“(2) EXCEPTIONS.—

“(A) COVERED PACKERS WITH A HIGH PERCENTAGE OF CAPTIVE SUPPLY CATTLE.—In the case of a covered packer (other than a covered packer described in subparagraph (B)) that reported to the Secretary in the 2001 annual report that more than 75 percent of the cattle of the covered packer were captive supply cattle, the applicable percentage shall be the greater of—

“(i) the difference between the percentage of captive supply so reported and 100 percent; and

“(ii)(I) during each of calendar years 2004 and 2005, 5 percent;

“(II) during each of calendar years 2006 and 2007, 15 percent; and

“(III) during calendar year 2008 and each calendar year thereafter, 25 percent.

“(B) COOPERATIVE ASSOCIATIONS WITH HIGH PERCENTAGE OF CAPTIVE SUPPLY CATTLE.—In the case of a covered packer that is a cooperative association and that reported to the Secretary in the 2001 annual report that more than 87.5 percent of the cattle of the covered packer were captive supply cattle, the applicable percentage shall be the greater of—

“(i) the difference between the percentage of captive supply so reported and 100 percent; and

“(ii)(I) during each of calendar years of 2004 and 2005, 5 percent;

“(II) during each of calendar years of 2006 and 2007, 7.5 percent; and

“(III) during calendar year 2008 and each calendar year thereafter, 12.5 percent.

“(d) NONPREEMPTION.—Notwithstanding section 259, this section does not preempt any requirement of a State or political subdivision of a State that requires a covered packer to purchase on the spot market a greater percentage of the livestock purchased by the covered packer than is required under this section.

“(e) RELATIONSHIP TO OTHER PROVISIONS.—Nothing in this section affects the interpretation of any other provision of this Act, including section 202.”

By Mr. NELSON of Florida:

S. 326. A bill to amend the Uniform Code of Military Justice to apply to prosecutions of child abuse cases in courts-martial an extended statute of limitations applicable to prosecutions of child abuse cases in United States District Courts, and for other purposes; to the Committee on Armed Forces.

Mr. NELSON of Florida. Mr. President, I rise today to introduce legislation to close a gaping loophole in the Victims of Child Abuse Act that currently ties the hands of military prosecutors.

Congress passed the Victims of Child Abuse Act to extend the statute of limitations for prosecuting offenses involving the sexual or physical abuse of minor children. But the military's highest court recently said the VCAA's extended statute of limitations doesn't apply to courts martial.

Because Congress did not expressly address the relationship of this provision to the Uniform Code of Military

Justice serious crimes against children are now out of military prosecutors' reach.

This loophole became tragically apparent to me after I was contacted by the father of a young girl who was sexually abused by a member of the military. The victim's father called my office to express his frustration that the Air Force couldn't properly prosecute the man for molesting his daughter over a 7-year period. The military couldn't convict the offender on the worst counts levied against him because of the insufficient 5-year statute of limitations provided by the Uniform Code of Military Justice.

Air Force prosecutors originally used the extended statute of limitations provided by the Victims of Child Abuse Act to convict the defendant of several crimes, but the most serious convictions were overturned by the U.S. Court of Appeals for the Armed Forces which determined that the shorter statute of limitations provided by the UCMJ applied to the case instead of the extended prosecution period provided by the VCAA.

The Court's narrow interpretation of the VCAA means this sex offender will do a very short sentence at best, even though he abused this young girl for years.

The bill I introduce today is designed to ensure that kids aren't denied justice just because the defendant happens to be a member of the military. Military prosecutors need the power to put these criminals away for a long time.

The statute of limitations provided by the VCAA allows prosecutions until the victim's 25th birthday. My bill clarifies that the VCAA's statute of limitations applies to courts martial whenever a case arises involving the sexual or physical abuse of a child.

Child victims of sexual crimes sometimes struggle to come to terms with the crimes committed against them and often are not willing, or able, to bring the crime to the attention of authorities until they are much older. Applying the longer statute of limitations provided by the VCAA to courts martial will allow military prosecutors to throw the book at sexual predators.

I strongly urge my colleagues to support this simple, but very important, change to the law. Our kids deserve this protection and we should give it to them without delay.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 326

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. EXTENDED LIMITATION PERIOD FOR PROSECUTION OF CHILD ABUSE CASES IN COURTS-MARTIAL.**

Section 843(b) of title 10, United States Code (article 43 of the Uniform Code of Military Justice, is amended by adding at the end the following new paragraph:

“(3) Section 3283 of title 18, relating to an extension of a period of limitation for prosecution of an offense involving sexual or physical abuse of a child under the age of 18 years, shall apply to liability of a person for trial for such an offense by a court-martial and liability of a person for punishment for such an offense under section 815 of this title (article 15).”

By Mr. LEVIN (for himself and Mr. JEFFORDS):

S. 327. A bill to amend part A of title IV of the Social Security Act to allow up to 2 months of vocational educational training to be counted as a work activity under the temporary assistance to needy families program; to the Committee on Finance.

Mr. LEVIN. Mr. President, I am pleased to be joined by the Senator JEFFORDS in reintroducing legislation that seeks to add an important measure of flexibility to a provision of the Temporary Assistance for Needy Families program, TANF, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The legislation we are introducing increases from 12 to 24 months the limit on the amount of vocational education training that a State can count towards meeting its work participation rate.

Under the pre-1996 Aid to Families with Dependent Children program, welfare recipients could participate in post-secondary vocational training or community college programs for up to 24 months while receiving assistance. While I support TANF's emphasis on moving welfare recipients into jobs, I am troubled by the restriction on post-secondary education training, limiting it to 12 months. Only one year of vocational education counts as an approved work activity. The second year of post-secondary education study does not.

The limitation on post-secondary education and training raises a number of concerns, not the least of which is whether individuals may be forced into low-paying, short-term employment that will lead them back onto public assistance because they are unable to support themselves or their families. According to recent studies, this is exactly what has happened in far too many cases.

A March 13, 2001, report of the Congressional Research Service, indicates that the average hourly wage for these former welfare recipients ranged from \$5.50 to \$8.80 per hour. According to the U.S. Census Bureau, the mean earnings of adults with an associate degree are 20 percent higher than adults who have not achieved such a degree.

A majority of the Senate has previously voted to make 24 months of post-secondary education a permissible work activity under TANF. The Levin-Jeffords amendment to the 1997 Reconciliation bill, permitting up to 24 months of post-secondary education, received 55 votes—falling five votes short of the required procedural vote of 60. I must note the efforts of our dear friend and colleague Senator Paul

Wellstone who was committed to this issue and who subsequently, in 1998, offered similar legislation as an amendment to the Higher Education Act reauthorization, which I cosponsored. The Senate adopted his amendment, however, the amendment was dropped during conference negotiations.

In June of last year, Senator JEFFORDS and I were very pleased that our proposal was included in the Senate Finance Committee reported bill reauthorizing TANF. It is our hope that the Senate will again act favorably and expeditiously on this legislation and that the House will support this much-needed state flexibility. We must do what is necessary to achieve TANF's intended goal of getting families permanently off of welfare and onto self-sufficiency.

Finally, I would like to share with my colleagues some examples of the difference that completion of two years of vocational or community college can make. The following are jobs that an individual could prepare for in a structured two-year training or community college program, including the average starting salary, as provided by the Bureau of Labor Statistics.

AVERAGE STARTING SALARY NATIONWIDE

Respiratory Therapist .....	\$29,700
Occupational Therapy Assistant .....	25,220
Electrician .....	24,230
Physical Therapy Assistant .....	23,590
Computer Support Specialist .....	22,710
Interior Designer .....	21,490
Legal Secretary .....	22,360
Food Service Manager .....	20,370

We must ensure that all citizens have the opportunity to become productive and successful members of the workforce. Again, I urge my colleagues to act with haste on this legislation. This modification will give the states the flexibility they need to improve the economic status of families across America.

I ask unanimous consent that the text of the legislation Senator JEFFORDS and I are introducing be printed in the RECORD.

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

S. 327

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. INCREASE IN NUMBER OF MONTHS OF VOCATIONAL EDUCATIONAL TRAINING COUNTED AS A WORK ACTIVITY UNDER THE TANF PROGRAM.**

Section 407(d)(8) of the Social Security Act (42 U.S.C. 607(d)(8)) is amended by striking "12" and inserting "24".

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 328. A bill to designate Catoctin Mountain Park in the State of Maryland as the Catoctin Mountain National Recreation Area," and for other purposes; to the Committee on Energy and Natural Resources.

Mr. SARBANES. Mr. President, today I am re-introducing legislation, together with my colleague Senator MIKULSKI, to re-designate Catoctin

Mountain Park as the Catoctin Mountain National Recreation Area. I first introduced this measure in October 2002, but unfortunately it was not acted upon during the closing days of the 107th Congress. It is my hope that the legislation will receive full and prompt consideration this year.

I spoke last year about the need for this legislation and would like to underscore the principal arguments today. Catoctin Mountain Park is a hidden gem in our National Park System. Home to Camp David, the Presidential retreat, it has been aptly described as "America's most famous unknown park." Comprising nearly 6000 acres of the eastern reach of the Appalachian Mountains in Maryland, the park is rich in history as well as outdoor recreation opportunities. Visitors can enjoy camping, picnicking, cross-country skiing, fishing, as well as the solitude and beauty of the woodland mountain and streams in the park.

Catoctin Mountain Park had its origins during the Great Depression as one of 46 Recreational Demonstration Areas, RDA, established under the authority of the National Industrial Recovery Act. The Federal Government purchased more than 10,000 acres of mountain land that had been heavily logged and was no longer productive to demonstrate how sub-marginal land could be turned into a productive recreational area and help put people back to work. From 1936 through 1941, hundreds of workers under the Works Progress Administration and later the Civilian Conservation Corps were employed in reforestation activities and in the construction of a number of camps, roads and other facilities, including the camp now known as Camp David, and one of the earliest—if not the oldest—camp for disabled individuals. In November 1936, administrative authority for the Catoctin RDA was transferred to the National Park Service by Executive Order.

In 1942, concern about President Roosevelt's health and safety led to the selection of Catoctin Mountain, and specifically Camp Hi-Catoctin as the location for the President's new retreat. Subsequently approximately 5,000 acres of the area was transferred to the State of Maryland, becoming Cunningham Falls State Park in 1954. The remaining 5,770 acres of the Catoctin Recreation Demonstration Area was renamed Catoctin Mountain Park by the Director of the National Park Service in 1954. Unfortunately, the Director failed to include the term "National" in the title and the park today remains one of 17 units in the entire National Park System and one of 9 units in the National Capital Region that does not have this designation. Those units include four parkways, four wild and scenic rivers, the White House and Wolf Trap Farm Park for the Performing Arts.

The proximity of Catoctin Mountain Park, Camp David, and Cunningham Falls State Park, and the differences

between national and state park management, has caused longstanding confusion for visitors to the area. Catoctin Mountain Park is continually misidentified by the public as containing lake and beach areas associated with Cunningham Falls State Park, being operated by the State of Maryland, or being closed to the public because of the presence of Camp David. National Park employees spend countless hours explaining, assisting and redirecting visitors to their desired destinations.

My legislation would help to address this situation and clearly identify this park as a unit of the National Park System by renaming it the Catoctin Mountain National Recreation Area. The mission and characteristics of this park—which include the preservation of significant historic resources and important natural areas in locations that provide outdoor recreation for large numbers of people—make this designation appropriate. This measure would not change access requirements or current recreational uses occurring within the park. But it would assist the visiting public in distinguishing between the many units of the State and Federal systems. It will also, in my judgment, help promote tourism by enhancing public awareness of the National Park unit.

The legislation is supported by the Board of County Commissioners and Tourism Council of Frederick County. I urge approval of this legislation.

By Mr. CAMPBELL (for himself, Mr. COCHRAN, Mr. MILLER, Mr. JOHNSON, Mr. INOUE, Mr. CONRAD, Mr. BINGAMAN, Mr. LEAHY, Mr. BUNNING, Mr. DOMENICI, Ms. MURKOWSKI, and Mr. CRAIG):

S. 330. A bill to further the protection and recognition of veterans' memorials, and for other purposes; to the Committee on the Judiciary.

Mr. CAMPBELL. Mr. President, today I introduce legislation that would recognize and protect the sanctity of veterans' memorials standing tributes to the brave American men and women who have fought for our enduring freedom. I am pleased to be joined by eleven of my colleagues, who are original cosponsors of this bill, the "Veterans' Memorial Preservation and Recognition Act of 2003."

This bill is based on legislation which passed the Senate in the 107th Congress, S.1644. When I introduced S.1644, it was four days before Veterans' Day—an appropriate marker to honor those who so admirably served our country. Under my bill, someone who willfully destroys any type of monument commemorating those in the Armed Services on Federal property would be fined or put in jail. The violator would be subject to a civil penalty in addition to a fine, equal to the cost of repairing the damage.

The second part of this bill would permit states to place supplemental

guide signs for veterans' cemeteries on Federal-aid highways. By allowing signs to be posted on well-traveled roads, these sites will gain the recognition they deserve. It is my goal to make cemeteries easily accessible to those who want to pay their respect there. Many Americans do stop and recognize the sacrifice so many have made for our freedom, and I am convinced many more would if they were aware of where our memorials are located.

Our veterans, living and lost, are reminders of our national unity. Those who have served in our Armed Services remind us of freedom and justice in the midst of conflict and during times of peace. We are losing thousands of them forever, each year, as the veteran population ages. We have to honor their sacrifices by protecting those sites that recognize them. There are hundreds of veterans' memorials, on Federal property, where we go to heal and to remember. As a veteran myself, I am committed to seeing that not a single one is stripped of its dignity.

I learned that approximately one month before introducing my bill, vandals in Mead, CO, had stolen four headstones and shattered another at a local cemetery. One of those headstones belonged to a Civil War veteran. I commend the Weld County Sheriff's office for their work on the ongoing investigation into the crime, as well as local residents who have volunteered their time to rebuild the site.

This was a local cemetery, which received overwhelming local support. Unfortunately, when heartbreaking incidents like this happen on Federal land, there currently is no comprehensive law to protect the site nor to punish the perpetrators.

I encourage my colleagues to work together for swift consideration of this important legislation. It doesn't cost the taxpayers a thing, but it could save the American people from the injustices of thoughtless vandalism. I have the support of several veterans' organizations who have offered words of encouragement for this bill. These Americans know, first hand, the concept of service. Let's honor what they and thousands of others have done so bravely to preserve our freedom.

I ask unanimous consent that the bill and letters of support be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

S. 330

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Memorial Preservation and Recognition Act of 2003".

#### SEC. 2. CRIMINAL PENALTIES FOR DESTRUCTION OF VETERANS' MEMORIALS.

(a) IN GENERAL.—Chapter 65 of title 18, United States Code, is amended by adding at the end the following:

#### "§ 1369. Destruction of veterans' memorials

"(a) Whoever, in a circumstance described in subsection (b), willfully injures or destroys, or attempts to injure or destroy, any structure, plaque, statue, or other monument on public property commemorating the service of any person or persons in the armed forces of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

"(b) A circumstance described in this subsection is that—

"(1) in committing the offense described in subsection (a), the defendant travels or causes another to travel in interstate or foreign commerce, or uses the mail or an instrumentality of interstate or foreign commerce; or

"(2) the structure, plaque, statue, or other monument described in subsection (a) is located on property owned by, or under the jurisdiction of, the Federal Government."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 65 of title 18, United States Code, is amended by adding at the end the following:

"1369. Destruction of veterans' memorials."

#### SEC. 3. HIGHWAY SIGNS RELATING TO VETERANS' CEMETERIES.

(a) IN GENERAL.—Notwithstanding the terms of any agreement entered into by the Secretary of Transportation and a State under section 109(d) or 402(a) of title 23, United States Code, a veterans cemetery shall be treated as a site for which a supplemental guide sign may be placed on any Federal-aid highway.

(b) APPLICABILITY.—Subsection (a) shall apply to an agreement entered into before, on, or after the date of the enactment of this Act.

#### THE AMERICAN LEGION,

*Washington, DC, January 27, 2003.*

Hon. BEN NIGHTHORSE CAMPBELL,  
*U.S. Senate, Russell Senate Office Building,*  
*Washington, DC.*

DEAR SENATOR CAMPBELL: On behalf of the 2.9 million members of The American Legion, I would like to express full support for the Veterans' Memorial Preservation and Recognition Act. We applaud your effort to prohibit the desecration of veterans' memorials, and to permit guide signs to veterans cemeteries on federal highways.

The American Legion recognizes the need to preserve the sanctity and solemnity of veterans' memorials. These historic monuments serve not only to honor the men and women of the Nation's armed services, but to educate future generations of the sacrifices endured to preserve the freedoms and liberties enjoyed by all Americans.

Once again, The American Legion fully supports the Veterans' Memorial Preservation and Recognition Act. We appreciate your continued leadership in addressing the issues that are important to veterans and their families.

Sincerely,

STEVE A. ROBERTSON,  
*Director, National Legislative Commission.*

#### AMVETS,

*Lanham, MD, January 14, 2003.*

Hon. BEN NIGHTHORSE CAMPBELL,  
*U.S. Senate, Russell Office Building, Wash-*  
*ington, DC.*

DEAR SENATOR CAMPBELL: On behalf of AMVETS, I am writing to commend your introduction of legislation to ban desecration of veterans' memorials, provide for timely repair of memorials, and ensure appropriate placement of guide signs to veterans' cemeteries along federal highways.

Our nation's veterans' memorials are national shrines to the bravery and dedication

of the men and women who have served in our Armed Forces. It is hard to believe that certain individuals within our communities would even consider the desecration of a memorial to those who defended freedom. Yet, it unfortunately occurs.

AMVETS strongly supports the goals of your legislative proposal and endorses your effort to do more to protect our veterans' memorials and honor the memory of their military service. We also give strong backing to the provision in your proposal that identifies the need and importance of providing information to travelers on our Nation's highways about the location of these beautiful memorials.

We appreciate your steadfast support on issues important to the men and women who have served in our Armed Forces. And, again, thank you for the leadership on veterans' issues.

Sincerely,

RICHARD "RICK" JONES,  
*National Legislative Director.*

PARALYZED VETERANS OF AMERICA,  
*Washington, DC, January 8, 2003.*

Hon. BEN NIGHTHORSE CAMPBELL,  
*U.S. Senate,*  
*Washington, DC.*

DEAR SENATOR CAMPBELL: On behalf of the Paralyzed Veterans of America (PVA) I am writing to offer our support of the "Veterans' Memorial Preservation and Recognition Act of 2003."

Memorials to the men and women who have served this Nation, in times of war and in times of peace, are tokens of our gratitude for this service, and their sacrifice. They are tangible reminders of our past, and an inspiration for our future. For this reason they are well worth protecting and preserving. This legislation addresses both of these goals.

Again, thank you for introducing the "Veterans' Memorial Preservation and Recognition Act of 2003."

Sincerely,

RICHARD B. FULLER,  
*National Legislative Director.*

ROLLING THUNDER®, INC,  
NATIONAL CHAPTER 1,  
*Neshanic Station, NJ, January 8, 2003.*

Senator BEN "NIGHTHORSE" CAMPBELL,  
*Russell Senate Office Building,*  
*Washington, DC.*

HONORABLE BEN CAMPBELL: I am sending this letter in support of Bill, "Veterans Memorial Preservation and Recognition Act of 2003."

Rolling Thunder National and our members are in full support of this bill. Those who destroy and deface any Veterans Memorial should be punished and made to pay full restitution for the damages they have caused. Many Americans have fought and died for the Freedom of all Americans and their Memorials should be honored and respected by all.

I thank you for all your help and support to all American Veterans.

Sincerely,

SGT. ARTIE MULLER,  
*National President.*

By Mr. DASCHLE (for himself,  
Mr. McCAIN, Mr. INOUE, Mr.  
BAUCUS, Mr. JOHNSON, Mr.  
DOMENICI, Mr. BINGAMAN, Mr.  
COCHRAN, and Ms. STABENOW):

S. 331. A bill to amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas; to the Committee on Finance.

Mr. DASCHLE. Mr. President, today I am reintroducing legislation to correct an inequity in the laws affecting many Native American children. I am joined by Senators MCCAIN, INOUE, BAUCUS, JOHNSON, DOMENICI, BINGAMAN, COCHRAN and STABENOW, in sponsoring this important piece of legislation. This effort is also supported by the National Indian Child Welfare Association, the American Public Human Services Association, and the National Congress of American Indians.

Every year, for a variety of often tragic reasons, thousands of children across the country are placed in foster care. To assist with the cost of food, shelter, clothing, daily supervision and school supplies, foster parents of children who have come to their homes through state court placement receive financial assistance through Title IV-E of the Social Security Act. Additionally, States receive funding for administrative training and data collection to support this program. Unfortunately, because of a legislative oversight, many Native American children who are placed in foster care by tribal courts do not receive foster care and adoptive services and assistance to which all other income-eligible children are entitled.

Not only are otherwise eligible Native children denied foster care maintenance payments, but this inequity also extends to children who are adopted through tribal placements. Currently, the IV-E program offers limited assistance for expenses associated with adoption and the training of professional staff and parents involved in the adoption. These circumstances, sadly, have made it even harder for Indian children to attain the permanency they need and deserve.

In many instances, these children face insurmountable odds. Many come from abusive homes. Foster parents who open their doors to care for these special children deserve our help. These generous people should not have to worry about whether they have the resources to provide nourishing food or a warm coat, or even adequate shelter for these children. This legislation will go a long way to ease their concerns.

Currently, some tribes and states have entered into IV-E agreements, but these arrangements are the exception. They also, by and large, do not include funds to train tribal social workers and foster and adoptive parents. This bill would make it clear that tribes would be treated like a state when they choose to run their own programs under the IV-E program.

The bill we are introducing today would: extend the Title IV-E entitlement programs to children placed by tribal agencies in foster and adoptive homes; authorize tribal governments to receive direct funding from the Department of Health and Human Services for administration of IV-E programs (tribes must have HHS-approved programs); allow the Secretary flexibility to modify the requirements of the IV-

E law for tribes if those requirements are not in the best interest of Native children; and allow continuation of tribal-State IV-E agreements.

In a 1994 report, HHS found that the best way to serve this underfunded group is to provide direct assistance to tribal governments qualified tribal families. This bill would not result in reduced funding for the States, as they would continue to be reimbursed for their expenses under the law.

I strongly believe Congress should address this oversight and provide equitable benefits to native American children who are under the jurisdiction of their tribal governments, and I urge my colleagues to support this bill.

By Mr. DORGAN (for himself, Mr. DASCHLE, Mr. LEVIN, Mr. BAUCUS, and Mr. CONRAD):

S. 332. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DORGAN. Today I am introducing legislation to correct a longstanding inequity that has caused hardship for American farmers. That inequity is the pricing of agricultural pesticides for American producers in relationship to Canadian pesticide pricing. My bill would solve this inequity by allowing individual States to label Canadian pesticides that have the same formula as those used in the U.S. for use by American farmers.

Farmers combine land, water, commercial inputs, labor, and their management skills into practices and systems to produce food and fiber. To sustain production over time, farmers must make a profit and preserve their resource and financial assets. Society wants food and fiber products that are low-cost, safe to consume, and aesthetically pleasing, and wants production systems that preserve or enhance the environment. These often competing goals and pressures are reflected not only in the inputs made available for production, but also in how the inputs are selected, combined, and managed at the farm level.

Time and time again I have come to Senate floor to point out the stark realities of free trade. I have talked at length about the flood of imported grain that streams across our border. Come to my State of North Dakota. Every day truckload after truckload of Canadian commodities, wheat, barley, durum, come across our border to compete with commodities grown here at home. These Canadian imports are grown with the aid of pesticides, pesticides of the same makeup and composition as those purchased in the United States. Yet Canadian producers have the luxury of buying those same chemicals at prices substantially lower than those American farmers have to pay.

Why? The answer is simple; pesticide manufacturers charge American farm-

ers more because they can. In agricultural policy, benefits from the North American Free Trade Agreement flow the same direction as the Red River of my State, north. This is especially true of pesticide pricing.

A recent survey completed by North Dakota State University surveyed 15 different pesticides commonly used in both Canada and North Dakota. All would qualify for registration in North Dakota under this bill. Of the 15, not one, not one, had a price differential in favor of the American farmer. When you totaled it all out, those 15 chemicals cost, in North Dakota alone, \$23.7 million more, in 1 year, for the American producer. That's just not right.

If we're going to have free trade, let's make it fair trade. If we are going to open our borders to Canadian grain grown with Canadian pesticides, we ought to open our borders to similar pesticides for U.S. producers at the same cost. It's time to level the playing field for American farmers, we must give them the same advantages that Canadian producers have enjoyed for years. If we're going to have a free trade agreement with Canada, let's all sing from the same page, using the same music. Because putting American farmers at a disadvantage in the world marketplace over pesticide prices that are not in harmony with our competitors is a practice that must be stopped. It must be stopped now.

Nothing in this legislation harms the environment, unless you're in the environment of profits. This legislation would create a procedure whereby individual states could apply and receive an Environmental Protection Agency label for agricultural chemicals sold in Canada that are identical or substantially similar to agricultural chemicals used in the United States. Thus, U.S. producers and suppliers could purchase such chemicals in Canada for use in the United States.

The new labels for the chemicals would still be under the strict scrutiny of the Environmental Protection Agency as would their use. This would continue to insure safety in the food supply. Food safety is a number one priority for all of us. Chemical safety is a number one priority for all of us. This bill keeps those priorities intact.

It is impossible to defend chemical price imbalance. You can't defend it to the growers, you can't defend it to the chemical distributor, and you can't defend it to the chemical retailer. Most importantly, you can't defend it to the American consumer, who ultimately pays the tab.

Let's be clear, this is not the end of the journey but the beginning. We have a long way to go to cure the imbalances of trade between our nations. If we don't begin the journey, we can't end it. This bill is a step in the right direction.

I request unanimous consent that the text of the bill be printed in the RECORD.

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

S. 332

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REGISTRATION OF CANADIAN PESTICIDES BY STATES.**

(a) IN GENERAL.—Section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136v) is amended by adding at the end the following:

“(d) REGISTRATION OF CANADIAN PESTICIDES BY STATES.—

“(1) DEFINITIONS.—In this subsection:

“(A) CANADIAN PESTICIDE.—The term ‘Canadian pesticide’ means a pesticide that—

“(i) is registered for use as a pesticide in Canada;

“(ii) is identical or substantially similar in its composition to a comparable domestic pesticide registered under section 3; and

“(iii) is registered in Canada by the registrant of the comparable domestic pesticide or by an affiliated entity of the registrant.

“(B) COMPARABLE DOMESTIC PESTICIDE.—The term ‘comparable domestic pesticide’ means a pesticide—

“(i) that is registered under section 3;

“(ii) the registration of which is not under suspension;

“(iii) that is not subject to—

“(I) a notice of intent to cancel or suspend under any provision of this Act;

“(II) a notice for voluntary cancellation under section 6(f); or

“(III) an enforcement action under any provision of this Act;

“(iv) that is used as the basis for comparison for the determinations required under paragraph (4);

“(v) that is registered for use on each site of application for which registration is sought under this subsection;

“(vi) for which no use is the subject of a pending interim administrative review under section 3(c)(8);

“(vii) that is not subject to any limitation on production or sale agreed to by the Administrator and the registrant or imposed by the Administrator for risk mitigation purposes; and

“(viii) that is not classified as a restricted use pesticide under section 3(d).

“(2) AUTHORITY TO REGISTER CANADIAN PESTICIDES.—

“(A) IN GENERAL.—A State may register a Canadian pesticide for distribution and use in the State if the registration—

“(i) complies with this subsection;

“(ii) is consistent with this Act; and

“(iii) has not previously been disapproved by the Administrator.

“(B) PRODUCTION OF ANOTHER PESTICIDE.—A pesticide registered under this subsection shall not be used to produce a pesticide registered under section 3 or subsection (c).

“(C) EFFECT OF REGISTRATION.—A registration of a Canadian pesticide by a State under this subsection—

“(i) shall be deemed to be a registration under section 3 for all purposes of this Act; and

“(ii) shall authorize distribution and use only within that State.

“(D) REGISTRANT.—

“(i) IN GENERAL.—A State may register a Canadian pesticide under this subsection on its own motion or on application of any person.

“(ii) STATE OR APPLICANT AS REGISTRANT.—

“(I) STATE.—If a State registers a Canadian pesticide under this subsection on its own motion, the State shall be considered to be the registrant of the Canadian pesticide for all purposes of this Act.

“(II) APPLICANT.—If a State registers a Canadian pesticide under this subsection on application of any person, the person shall be considered to be the registrant of the Canadian pesticide for all purposes of this Act.

“(3) REQUIREMENTS FOR REGISTRATION SOUGHT BY PERSON.—A person seeking registration by a State of a Canadian pesticide in a State under this subsection shall—

“(A) demonstrate to the State that the Canadian pesticide is identical or substantially similar in its composition to a comparable domestic pesticide; and

“(B) submit to the State a copy of—

“(i) the label approved by the Pesticide Management Regulatory Agency for the Canadian pesticide; and

“(ii) the label approved by the Administrator for the comparable domestic pesticide.

“(4) STATE REQUIREMENTS FOR REGISTRATION.—A State may register a Canadian pesticide under this subsection if the State—

“(A) obtains the confidential statement of formula for the Canadian pesticide;

“(B) determines that the Canadian pesticide is identical or substantially similar in composition to a comparable domestic pesticide;

“(C) for each food or feed use authorized by the registration—

“(i) determines that there exists an adequate tolerance or exemption under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that permits the residues of the pesticide on the food or feed; and

“(ii) identifies the tolerances or exemptions in the notification submitted under subparagraph (E);

“(D) obtains a label approved by the Administrator that—

“(i) includes all statements, other than the establishment number, from the approved labeling of the comparable domestic pesticide that are relevant to the uses registered by the State; and

“(ii) excludes all labeling statements relating to uses that are not registered by the State;

“(iii) identifies the State in which the product may be used;

“(iv) prohibits sale and use outside the State identified under clause (ii);

“(v) includes a statement indicating that it is unlawful to use the Canadian pesticide in the State in a manner that is inconsistent with the labeling approved by the Administrator under this subsection; and

“(vi) identifies the establishment number of the establishment in which the labeling approved by the Administrator will be affixed to each container of the Canadian pesticide; and

“(E) not later than 10 business days after the issuance by the State of the registration, submit to the Administrator a written notification of the action of the State that includes—

“(i) a description of the determination made under this paragraph;

“(ii) a statement of the effective date of the registration;

“(iii) a confidential statement of the formula of the registered pesticide; and

“(iv) a final printed copy of the labeling approved by the Administrator.

“(5) DISAPPROVAL OF REGISTRATION BY ADMINISTRATOR.—

“(A) IN GENERAL.—The Administrator may disapprove the registration of a Canadian pesticide by a State under this subsection if the Administrator determines that the registration of the Canadian pesticide by the State—

“(i) does not comply with this subsection or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

“(ii) is inconsistent with this Act.

“(B) EFFECTIVE PERIOD.—If the Administrator disapproves a registration by a State under this subsection by the date that is 90 days after the date on which the State issues the registration, the registration shall be ineffective after the 90th day.

“(6) LABELING OF CANADIAN PESTICIDES.—

“(A) IN GENERAL.—Each container containing a Canadian pesticide registered by a State shall bear the label that is approved by the Administrator under this subsection.

“(B) DISPLAY OF LABEL.—The label shall be securely attached to the container and shall be the only label visible on the container.

“(C) ORIGINAL CANADIAN LABEL.—The original Canadian label on the container shall be preserved underneath the label approved by the Administrator.

“(D) PREPARATION AND USE OF LABELS.—After a Canadian pesticide is registered under this subsection, the registrant shall—

“(i) prepare labels approved by the Administrator for the Canadian pesticide; and

“(ii) conduct or supervise all labeling of the Canadian pesticide with the approved labeling.

“(E) REGISTERED ESTABLISHMENTS.—Labeling of a Canadian pesticide under this subsection shall be conducted at an establishment registered by the registrant under section 7.

“(7) REVOCATION.—

“(A) IN GENERAL.—After the registration of a Canadian pesticide, if the Administrator finds that the Canadian pesticide is not identical or substantially similar in composition to a comparable domestic pesticide, the Administrator may issue an emergency order revoking the registration of the Canadian pesticide.

“(B) TERMS OF ORDER.—The order—

“(i) shall be effective immediately;

“(ii) may prohibit the sale, distribution, and use of the Canadian pesticide; and

“(iii) may require the registrant of the Canadian pesticide to purchase and dispose of any unopened product subject to the order.

“(C) REQUEST FOR HEARING.—Not later than 10 days after issuance of the order, the registrant of the Canadian pesticide subject to the order may request a hearing on the order.

“(D) FINAL ORDER.—If a hearing is not requested in accordance with subparagraph (C), the order shall become final and shall not be subject to judicial review.

“(E) JUDICIAL REVIEW.—If a hearing is requested on the order, judicial review may be sought only at the conclusion of the hearing on the order and following the issuance by the Administrator of a final revocation order.

“(F) PROCEDURE.—A final revocation order issued following a hearing shall be reviewable in accordance with section 16.

“(8) SUSPENSION OF STATE AUTHORITY TO REGISTER CANADIAN PESTICIDES.—

“(A) IN GENERAL.—If the Administrator finds that a State that has registered 1 or more Canadian pesticides under this subsection is not capable of exercising adequate controls to ensure that registration under this subsection is consistent with this subsection, other provisions of this Act, or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or has failed to exercise adequate controls of 1 or more Canadian pesticides registered under this subsection, the Administrator may suspend the authority of the State to register Canadian pesticides under this subsection until such time as the Administrator determines that the State can and will exercise adequate control of the Canadian pesticides.

“(B) NOTICE AND OPPORTUNITY TO RESPOND.—Before suspending the authority of a State to register a Canadian pesticide, the Administrator shall—

“(i) notify the State that the Administrator proposes to suspend the authority and the reasons for the proposed suspension; and

“(ii) before taking final action to suspend authority under this subsection, provide the State an opportunity to respond to the proposal to suspend within 30 calendar days after the State receives notice under clause (i).

“(9) LIMITS ON LIABILITY.—No action for monetary damages may be heard in any Federal court against—

“(A) a State acting as a registering agency under the authority of and consistent with this subsection for injury or damage resulting from the use of a product registered by the State under this subsection; or

“(B) a registrant for damages resulting from adulteration or compositional alteration of a Canadian pesticide registered under this subsection if the registrant did not have and could not reasonably have obtained knowledge of the adulteration or compositional alteration.

“(10) DISCLOSURE OF INFORMATION BY ADMINISTRATOR TO THE STATE.—The Administrator may disclose to a State that is seeking to register a Canadian pesticide in the State information that is necessary for the State to make the determinations required by paragraph (4) if the State certifies to the Administrator that the State can and will maintain the confidentiality of any trade secrets and commercial or financial information provided by the Administrator to the State under this subsection to the same extent as is required under section 10.

“(11) PROVISION OF INFORMATION BY REGISTRANTS OF COMPARABLE DOMESTIC PESTICIDES.—

“(A) IN GENERAL.—On request by a State, the registrant of a comparable domestic pesticide shall provide to the State that is seeking to register a Canadian pesticide in the State under this subsection information that is necessary for the State to make the determinations required by paragraph (4) if the State certifies to the registrant that the State can and will maintain the confidentiality of any trade secrets and commercial and financial information provided by the registrant to the State under this subsection to the same extent as is required under section 10.

“(B) PENALTY FOR NONCOMPLIANCE.—

“(i) IN GENERAL.—If the registrant of a comparable domestic pesticide fails to provide to the State, not later than 15 days after receipt of a written request by the State, information possessed by or reasonably accessible to the registrant that is necessary to make the determinations required by paragraph (4), the Administrator may assess a penalty against the registrant of the comparable pesticide.

“(ii) AMOUNT.—The amount of the penalty shall be equal to the product obtained by multiplying—

“(I) the difference between the per-acre cost of the application of the comparable domestic pesticide and the application of the Canadian pesticide, as determined by the Administrator; and

“(II) the number of acres in the State devoted to the commodity for which the State registration is sought.

“(C) NOTICE AND OPPORTUNITY FOR HEARING.—No penalty under this paragraph shall be assessed unless the registrant is given notice and opportunity for a hearing in accordance with section 14(a)(3).

“(D) ISSUES AT HEARING.—The only issues for resolution at the hearing shall be—

“(i) whether the registrant of the comparable domestic pesticide failed to timely provide to the State the information possessed by or reasonably accessible to the reg-

istrant that was necessary to make the determinations required by paragraph (4); and

“(ii) the amount of the penalty.

“(12) PENALTY FOR DISCLOSURE BY STATE.—

“(A) IN GENERAL.—The State shall not make public information obtained under paragraph (10) or (11) that is privileged and confidential and contains or relates to trade secrets or commercial or financial information.

“(B) DISCLOSURE.—Any State employee who willfully discloses information described in subparagraph (A) shall be subject to penalties described in section 10(f).

“(13) DATA COMPENSATION.—A State or person registering a Canadian pesticide under this subsection shall not be liable for compensation for data supporting the registration if the registration of the Canadian pesticide in Canada and the registration of the comparable domestic pesticide are held by the same registrant or by affiliated entities.

“(14) FORMULATION CHANGES.—

“(A) IN GENERAL.—The registrant of a comparable domestic pesticide shall notify the Administrator of any change in the formulation of a comparable domestic pesticide or a Canadian pesticide registered by the registrant or an affiliated entity not later than 30 days before any sale or distribution of the pesticide containing the new formulation.

“(B) STATEMENT OF FORMULA.—The registrant of the comparable domestic pesticide shall submit, with the notice required under subparagraph (A), a confidential statement of the formula for the new formulation if the registrant has possession of or reasonable access to the information.

“(C) SUSPENSION OF REGISTRATION FOR NONCOMPLIANCE.—

“(i) IN GENERAL.—If the registrant fails to provide notice or submit a confidential statement of formula as required by this paragraph, the Administrator may issue a notice of intent to suspend the registration of the comparable domestic pesticide for a period of not less than 1 year.

“(ii) EFFECTIVE DATE.—The suspension shall become final not later than the end of the 30-day period beginning on the date of the issuance by the Administrator of the notice of intent to suspend the registration, unless during the period the registrant requests a hearing.

“(iii) HEARING PROCEDURE.—If a hearing is requested, the hearing shall be conducted in accordance with section 6(d).

“(iv) ISSUES.—The only issues for resolution at the hearing shall be whether the registrant has failed to provide notice or submit a confidential statement of formula as required by this paragraph.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136v(c)) is amended—

(A) in paragraph (1), by inserting “IN GENERAL.—” after “(1)”;

(B) in paragraph (2), by inserting “DISAPPROVAL.—” after “(2)”;

(C) in paragraph (3), by inserting “CONSISTENCY WITH FEDERAL FOOD, DRUG, AND COSMETIC ACT.—” after “(3)”;

(D) by striking “(4) If the Administrator” and inserting the following:

“(4) SUSPENSION OF AUTHORITY TO REGISTER PESTICIDES.—Except as provided in subsection (d)(8), if the Administrator”.

(2) The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended by striking the item relating to section 24(c) and inserting the following:

“(c) Additional uses.

“(1) In general.

“(2) Disapproval.

“(3) Consistency with Federal Food, Drug, and Cosmetic Act.

“(4) Suspension of authority to register pesticides.

“(d) Registration of Canadian pesticides by States.

“(1) Definitions.

“(2) Authority to register Canadian pesticides.

“(3) Requirements for registration sought by person.

“(4) State requirements for registration.

“(5) Disapproval of registration by Administrator.

“(6) Labeling of Canadian pesticides.

“(7) Revocation.

“(8) Suspension of State authority to register Canadian pesticides.

“(9) Limits on liability.

“(10) Disclosure of information by Administrator to the State.

“(11) Provision of information by registrants of comparable domestic pesticides.

“(12) Penalty for disclosure by State.

“(13) Data compensation.

“(14) Formulation changes.”.

(c) EFFECTIVE DATE.—This section and the amendments made by this section take effect 180 days after the date of enactment of this Act.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON FOREIGN RELATIONS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 6, 2003, at 9:30 a.m., to hold a hearing on the foreign affairs budget.

Witness: The Honorable Colin L. Powell, Secretary, Department of State, Washington, DC.

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

### COMMITTEE ON THE JUDICIARY

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, February 6, 2003, at 11:30 a.m., in Dirksen Room 226.

(Tentative) Agenda

### I. Nominations

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



*II. Bills*

S. 253, A bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns. [Campbell/Leahy/Hatch/Grassley/DeWine/Kyl/Sessions/Craig/Cornyn/Graham/Feinstein/Schumer]

S. 113, A bill to exclude United States persons from the definition of "foreign power" under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism. [Kyl/Hatch/DeWine/Schumer/Chambliss]

*III. Resolutions*

S. , National Inventor's Day [Hatch/Leahy]

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

## APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to Public Law 93-642, appoints the Senator from Washington (Mrs. MURRAY) to be a member of the Harry S Truman Scholarship Foundation Board of Trustees, vice the former Senator from Missouri (Mrs. Carnahan).

## ORDERS FOR MONDAY, FEBRUARY 10, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 a.m., Monday, February 10. I further ask unanimous consent that on Monday, following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then return to executive session to resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit.

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

## PROGRAM

Mr. FRIST. For the information of Senators, on Monday, the Senate will resume debate on the nomination of Miguel Estrada. We have had a number of Senators speak on the nomination over the past 2 days. The debate has been productive. I will continue to try to reach agreement with my colleagues on the other side of the aisle to set a time certain for a vote on the confirmation of this very important nomination.

In addition, I understand three additional district court judges were reported by the Judiciary Committee today. We are also attempting to clear several important pieces of legislation that may require a small amount of debate and a rollcall vote. If we are still unable to vote on the Estrada nomination on Monday, it would be my hope

and expectation to vote on a district judge or one of the bills we are working towards clearing. Therefore, Members should be on notice that the next rollcall vote can be expected approximately at 5:15 on Monday. We will alert Members to the precise timing, but it won't be any earlier than 5:15 on Monday.

Mr. REID. If I could interrupt the majority leader, I wish to speak for up to 15 minutes, and then Senator BIDEN wishes to speak for up to 15 minutes.

## ORDER FOR ADJOURNMENT

Mr. FRIST. Mr. President, if there is no further business, I ask unanimous consent that the Senate resume executive session, and that following the remarks of the assistant Democratic leader for 15 minutes and the Senator from Delaware for up to 15 minutes, the Senate then stand in adjournment under the previous order.

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

## EXECUTIVE SESSION

## NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—Continued

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. I apologize to the Chair. I know the Chair has things to do. We have been in the same position. We know that it is not convenient sometimes to preside, but we were kind of dared to come out here today, even though there are a lot of things going on. We had a number of people who went to the memorial. Senators from the other side said: I am amazed there are no Democrats here to debate Estrada. We recognize there is going to be other time to debate, but we do not want the record to appear that we are not interested. That is the reason I came down here, to offer my opinion.

Migrada Estrada has literally had no paper trail. Despite what some of my colleagues have said on the other side of the aisle, it is indisputable that Solicitor General memoranda have been turned over in the past. For example, the Department of Justice turned over Solicitor General memoranda for Bork, Rehnquist, and Easterbrook. On executive branch appointments, the Department of Justice turned over memoranda for Benjamin Civiletti.

While my colleagues may note that former Solicitors General have written a letter opposing the release of these memos, they cite no legal authority for keeping these memos secret. Basically what they say is it would impede these people from writing their opinions. It doesn't happen very often that these people are asked to serve on the second highest court of the land. It is not often they are asked to serve on the

U.S. Supreme Court. But in cases in the past when that has occurred, with Rehnquist, Bork and, of course, another important appointment, Easterbrook, they were made available. And they should be made available here.

There is no attorney-client privilege at work here. The courts have determined that applying that privilege to Congress would impede our work. Both the House and the Senate have refused to recognize the privilege in their rules. Former Solicitors argue that the policy considerations of ensuring candid advice outweighs the Senate's interest in examining this nominee. I don't think that is valid.

As I mentioned, the precedent supports release of these memos to the Senate. Further, the United States' own Department of Justice guidelines from 2000 state:

Our experience indicates that the Justice Department can develop accommodations with congressional committees that satisfy their needs for the information that may be obtained in deliberative material while at the same time protecting the Department's interest in avoiding a chill in the candor of future deliberations.

It is my understanding the Department of Justice has made no attempt to reach such an accommodation with the Judiciary Committee. The stonewalling on the Estrada nomination is part of a larger systematic effort by this administration to disable the Senate, to govern in secret, to advance the interests of big business over the public interests.

I joined an amicus curiae brief in a matter where Vice President CHENEY had all these meetings with big oil companies. It was determined that there should be some divulging of whom he met with, when he met with them, and what they talked about. Litigation had to be filed on that, and I joined in that litigation, filing a friend of the court brief. It is not right that there be stonewalling. Here is another example of what has happened in this administration.

My colleague and a dear friend, the chairman of the Judiciary Committee, Senator HATCH, has called the Democratic calls for more information about Estrada "silly." Well, we have a role as Members of the Senate to advise and give consent to nominations forwarded to us by the White House. I don't think what we are asking is silly.

My friend may not agree with our position, but it is not a silly position. Here is a person about whom the Hispanic caucus of the Congress unanimously said: We don't want him.

Here is a person about whom I put in the RECORD over 50 organizations yesterday saying: We don't want him.

There are lots of different reasons organizations give based on his qualifications, his temperament. We have one of his former employers who said his temperament, demeanor is not appropriate to serve on a circuit court. In fact, he said he was an ideologue.

That is not silly. People may disagree with our position, but it is not a silly position. The Constitution's consent requirement is not just a rubberstamp requirement, as my colleague himself once observed. When a Democratic President sat in the White House, my Republican colleagues called for voluminous document presentations from his judicial nominees, and they got them.

Judge Paez, I talked to his mother, trying to get him confirmed, and we finally did. Senator HATCH knows this. I had his mother talk to Senator HATCH. He was held up for 4 years. He was asked to provide documentation of every instance during his tenure as a lower court judge where he reduced a sentence downward from Federal sentencing guidelines. I had no problem with their asking for them. Why did he do it? Was his judicial temperament, his activism, as it is called by my friend from Utah, so much that he couldn't vote to confirm? That is a right that he has.

Judge Marcia Berzon was required to provide the minutes from every single California ACLU meeting that occurred while she was a member, regardless of whether she had even attended the meeting.

At that time, Chairman HATCH stated:

[T]he Senate can and should do what it can to ascertain the jurisprudential views a nominee will bring to the bench in order to prevent the confirmation of those who are likely to be judicial activists.

That is not a "silly" thing he is doing. He has a right to do that. Senator HATCH continued:

Determining which of President Clinton's nominees will become activists is complicated and it will require the Senate to be more diligent and extensive in its questioning of nominees' jurisprudential views.

He had a right to do that. I think the Senate should be similarly diligent and probing in its review of Mr. Estrada's record. Basically, the Judiciary Committee asked him roughly 80 questions and he didn't give any answers. He gave answers such as "I have not read the briefs;" "I wasn't present during arguments;" "I have to independently research the issue." He was asked to name three cases from the last 40 years—Supreme Court cases—of which he was critical. He didn't have any.

Even Chief Justice Rehnquist, who presided in the Senate during the impeachment trial—and the Presiding Officer was one of the prosecutors—and, I thought, handled that impeachment proceeding with great solemnity—he was diligent and fair. I may not agree with all of his legal opinions, but what a nice man. I was chairman of the Democratic Policy Committee, and I called the Chief Justice and said: Come visit with us at election time; would you do that? He did that. He answered questions, was real funny, and he had a great sense of humor. So Chief Justice Rehnquist, a person I have great respect for, said:

Since most justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formu-

lated at least some tentative notions that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another.

This nominee doesn't fall under that. He also commented:

It would not merely be unusual, but extraordinary if they had not at least given opinions as to Constitutional issues in their previous legal careers.

They are asking that the man be on the second highest court in this land and he doesn't have any opinion about other opinions written by judges. I think that really says it all—why there are questions being raised.

I am going to bring in here—I was hoping to do it today. Everybody brings in visual aids to the Senate, and there have been efforts to cut the size of them, or to cut them out. Anyway, that has not been done. Let's assume we had a chart back here, a big white piece of cardboard, or posterboard, and we had here the judicial experience of Mr. Estrada. It would be blank. There would not be anything on it. We would bring out another chart and on that it would have Miguel Estrada and it would have there the questions he answered for the Judiciary Committee. It would be blank. There would be nothing on it.

Does it seem "silly" that we are asking questions about this man? I don't think so. So I would say that we have a right and an obligation to move forward the way we are.

The administration's secrecy is deeply disturbing in all these areas. It is more so in the case of Miguel Estrada. I have talked about Vice President CHENEY not giving us information about the oil companies, and this nomination is also very troubling to me. If I could file another court brief in this instance, I would. It is not available. This is a different type of proceeding.

Senators have a constitutional duty to evaluate this nominee. This nominee has stayed silent, refusing the American people a window into his views, judicial philosophy, and his manner of thinking. The administration has similarly refused to turn over documents that would illustrate those things to the Senate.

Should we approve this nomination, the Senate would be setting a dangerous precedent that would greatly narrow the scope of the important power vested in us by our Founding Fathers.

It would serve neither the Senate, the people of Nevada, nor the rest of the American people to confer such a rubber stamp on this or any administration, Republican or Democrat.

The Founders carefully balanced the powers of each branch of government, and the Senate's role in approving a President's nominee is a critical part of that balance, this separation of powers.

I submit that the examples I have provided show that this administration has forgotten, or ignored, the importance of that balance.

There is no more important a time to remind this administration of the importance of that balance than in the

case of a person who is nominated for a lifetime judicial appointment to the second highest court in our land.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

#### LEGISLATIVE SESSION

Mr. BIDEN. I ask unanimous consent that the Senate now return to legislative session.

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

#### CRISIS IN NORTH KOREA

Mr. BIDEN. Mr. President, I thank the majority leader, Senator FRIST, for accommodating my being able to speak at this moment.

I rise today, after coming from a hearing of my Foreign Relations Committee, where Secretary Powell has just testified. I note at the outset that I, for one—and I think my view is shared by many—think Secretary Powell made a compelling and irrefutable case yesterday about Saddam Hussein's possession of and continued effort to hide his weapons of mass destruction and his desire to gain more. But I am fearful—that is the wrong word—I am concerned that our understandable focus on Iraq at this moment is taking focus off of what I believe to be an equal, if not more immediate, threat to U.S. interests and those of our allies. I speak of Korea.

Last week we learned that North Korea has moved plutonium fuel rods out of storage and possibly towards a production—for everybody listening, this is complicated stuff and I will explain what I mean. They announced today they are beginning their 5 megawatt nuclear powerplant. What happens with that type of nuclear powerplant—which we, until now, had them shut down with the IAEA, when there were cameras and inspectors making sure it was shut down. What happens is they have fuel rods—as my friend knows well, fuel is a nuclear power, produces nuclear power. That spent rod—in other words, the byproduct of that process of generating electricity through nuclear power—that so-called spent rod is then taken out of that reactor and, because of the type of reactor this is, it is the byproduct of that reactor. It is a spent rod that has plutonium in it. Plutonium—and I am giving an unscientific analysis. Not that the American public could not understand it, but this is an unscientific analysis of how it works.

That spent rod is then stored somewhere because it has a radioactive half life that is longer than any of us, or our grandchildren, or great-grandchildren are going to have. What we have always worried about is they would take that spent rod and move it to a plant not far from the reactor that generates electricity, such as the lights that are on in this Chamber, and they are put in a reprocessing plant.

The reprocessing plant is another process by which that spent rod that no longer generates electricity, that has the fissile material in it, essentially

takes that rod—it is a long rod and it looks like a big pole, sort of. When it is put in that reprocessing plant, within 1 month there would be enough plutonium—figuratively—that comes out of that rod that is in a different form—enough plutonium to construct one additional nuclear bomb. That material does not lend itself to easy detection. Geiger counters don't click when it passes through a detection area. It is very hard to pick up, like we pick up knives in suitcases going through at the airport. That plutonium is exportable and hardly detectable. It is the stuff of which a nuclear bomb is made.

Correct, and prophetic! How then, do we explain the administration's muted response to the world's worst proliferator taking concrete steps that could permit it to build a nuclear arsenal?

We can't afford to put this problem on the back burner just because we are preoccupied with Iraq and the war on terrorism. The administration needs to demonstrate the ability to walk, chew tobacco, and spit at the same time.

If we follow the hard-headed engagement prescription, will it work? Will the North change course?

I don't know. It's impossible to know for sure unless we try. I say the odds, frankly, are stacked against us, and would have been stacked against us even if we hadn't wasted the last 2 years.

Pyongyang says it wants to resolve all of the United States' security concerns, including the "nuclear issue," and will do so if the United States formally assures the DPRK of nonaggression. Is this price too high? Can the North be counted on to fulfill its side of the bargain?

Prior to his departure for Pyongyang in 1994, President Carter was briefed by the State Department on the current situation in North Korea—its economy, military capabilities, diplomatic initiatives. He kept coming back to one question, "What does North Korea want?"

He answered the question himself with one word: RESPECT. The underlying cause of the 1994 crisis and the current one are the same.

North Korea is weak, isolated, and incapable of rescuing itself. Largely cut off from Chinese and Russian support, the DPRK is profoundly insecure. South Korea's economy has made possible a revolution in military affairs, and U.S. military prowess has been proved repeatedly in the Gulf, the Balkans, and most recently in Afghanistan. By contrast the North's conventional military forces are obsolete, its training budget minuscule.

The North is one of the obvious targets of a new so-called "preemptive" military doctrine, and it is witnessing a military buildup in the Persian Gulf designed to oust Saddam Hussein from power in the very near future.

The message to Pyongyang could not be more clear: "Be afraid. Be very afraid."

Fine, Deterrence works, up to a point, and I am not against reminding North Korea of our military prowess.

But only comprehensive negotiations have a chance to move Pyongyang back from the precipice it is approaching.

The administration should overcome its distaste for dealing with Kim Chong-il and engage the North in serious, high level, bilateral discussions to end the North's nuclear program once and for all.

Demanding that Pyongyang unconditionally surrender before the United States will engage in talks is a nice fantasy policy, but it has absolutely no hope in the real world.

We should instead adopt a posture of "more for more." The President is right when he resists "paying" North Korea to abide by the agreements it has already signed. But that is not what I'm talking about. The agreed framework left too much undone. Our objective should not be to restore the status quo ante.

Rather, we need to seek the removal of all of the spent fuel rods from the Yongbyon nuclear reactor. We need verifiably to dismantle the North's highly enriched uranium program. We need to account for the 8-9 kilograms of plutonium "missing" since 1994, and do so sooner, rather than later. We need to get North Korea back inside the Nuclear Non-proliferation Treaty and return the inspectors to monitor the North's conduct.

Long term, we need to address the North's development and export of ballistic missiles and its abominable human rights records.

To get there, we must bring something to the table other than threats and insults.

The North isn't looking for money from us. That can come from South Korea, Japan, our allies, in the form of trade, aid, investment, and war reparations.

The North is looking for respect and security. These are precious commodities. The North must earn them. But in the end, it seems a small price to pay if the outcome is a denuclearized Peninsula with North and South living in peace.

If you have a piece of plutonium that has a base bigger in circumference than the bottom of the jar I am holding up and about as half as thick and you have the right instrument, the right rifling effect—you know how a bullet that has gunpowder in it and a piece of metal at the end of it, the stuff that goes through your body, the bullet has to be directed some way; it has to be, in effect, ignited some way.

What happens is you have a rifle with a firing pin. It has a long tube. You hit the back of it, and it explodes the gunpowder, fires this projectile through the rifle, through the long muzzle, and it goes certain distances based on its configuration.

That is what happens when you have these two pieces of plutonium, if you

can get your hands on them, and you put it in a nuclear device they call a rifle device. If you can smash those two pieces of plutonium together at the appropriate speed in the appropriate sphere, you can have, with just those two small pieces, a 1-kiloton bomb. A nuclear chain reaction starts when those pieces collide in the right circumstances.

If one of those weapons is home-made—it does not have to be put in a missile. Because it is classified, I am not able to tell you, but I know my friend knows because he has full access, as I do. If we put that so-called rifle device which is, like that old saying, bigger than a bread box but smaller than a Mack truck—it is somewhere in between—if you put that in place in a stationary position and detonate it, you would have been able to take down the World Trade Towers in, I believe it was 3 seconds—do not hold me to that, but very few seconds—and kill about 100,000 people according to our experts. Because this material is highly undetectable and moveable, it is of considerable concern.

What does this have to do with anything? Why am I standing here when we may be able to go to war in Iraq if Saddam does not make the right choice? Why am I talking about this?

What happened is, the North Koreans, who are trying to blackmail us and the world, who are the bad guys, who are doing the wrong thing and are doing it on their own—I am not suggesting anything we did produced that or made them do that—they are saying: We are going forward, and we just turned the light switch on in our 5-megawatt nuclear reactor that will only produce more spent rods—follow me?—the stuff from which you get plutonium, but we have 8,000 of these spent rods sitting in another location. But all we have to do is take these spent rods or the new ones we get and take them over to that reprocessing plant. We have not clicked the light switch on in that plant yet, but we promised you we would not switch the light on in our nuclear powerplant, and we are saying: No, we are out; we are out of the arms control regime; we are going ahead and switching the light on, and if you do not talk to us—basically, blackmail—we are going ahead and switching the light on in the reprocessing facility.

That puts the President in a very difficult position, and I am not suggesting this is an easy call. At the end of December, the administration indicated that it intended to take a careful and deliberative approach to the emerging crisis on the peninsula.

The emerging crisis occurred when they blocked the cameras of the IAEA, kicked the inspectors out, and they went dark; we did not know what they were doing. Fortunately, we have COMINT and HUMINT, my friend knows, a fancy way of saying human intelligence on the ground and satellites above, that give us a pretty

good idea what they are doing because we know where the reprocessing plant and nuclear plant are.

I think the administration took a fairly reasoned approach. They declared:

We have months to watch this unfold and see what happens.

Other administration officials, including the President, conveyed the importance of patience in assessing and responding to North Korean threats. Were North Korea 3 to 5 years away from acquiring additional nuclear weapons, this patience in diplomacy would be very appropriate. However, there are 8,000 spent-fuel rods in North Korea, which may now be moving out of storage, that can yield enough fissile material for five or six additional nuclear weapons.

The time line for reprocessing this spent fuel is a mere 5 to 6 months, but it gets worse. The North Koreans are likely to reprocess plutonium from spent-fuel rods in small batches. They do not have to take the 8,000 spent-fuel rods and start to reprocess them, meaning that the plutonium emerges a few grams at a time. Enough plutonium to produce one nuclear weapon can be ready in less than 5 weeks, according to our intelligence people and our scientists at the laboratories, after the initial spent fuel—those 8,000 rods—enter the reprocessing plant, not 8,000 of them but some of them.

The clock is already ticking, and I think it is important that the administration's assessment of the recent reports that North Korea has begun removing some or all of those 8,000 spent-fuel rods from those storage facilities—tell us how this development will impact on the overall policy of the administration in terms of patience.

Just restarting this reactor could produce another 6 kilograms of plutonium, in addition to those that are sitting in these rods right now. If Pyongyang completes construction of two unfinished, but much larger nuclear reactors, it could produce as much as 275 kilograms of weapons-grade plutonium each year.

When the administration says North Korea's reprocessing, if they started, is not a crisis, it seems to me it makes a very unhealthy suggestion, and that is that the only use of this reprocessed plutonium, the stuff that can go right into a bomb, a nuclear weapon, that the only use they will use it for is to make another six or eight nuclear weapons.

They have, we think, one or two nuclear bombs now, from the time we shut down the process. We worked out an agreement that they shut down the process, and everybody agrees it was shut down in 1994.

I would have to agree with the administration because I think deterrence works. They seem to have a dual standard here. They say the reason we have to build a national missile defense is if deterrence does not work, and now they tell us basically: Do not worry, it

does not materially change the situation on the peninsula if they get another three, four, five, or eight nuclear weapons. I think it does. Apparently they agree deterrence does work somehow or they would be much more worried about it.

I then ask the question, What happens if they do not take this spent fuel? What happens if they do not take it and put it in a weapon? What happens if they take this plutonium from the spent fuel and put it in a little canister? I am told by my staff who is expert on Korea that their total trade surplus is about \$400 million a year.

If they have this spent fuel, I cannot imagine they would not be able to find buyers where they could pick up maybe \$200 million for this. What would Iran pay for this spent fuel? They are trying to now generate the ability to reprocess their own fissile material.

What about al-Qaida, who I might note is alive and well, unfortunately? Damaged but well, damaged but in business. Remember when we saw those pictures as we took Kandahar, when we invaded Afghanistan with the multilateral force? Remember a reporter—I forget which news organization it was, but I think it was one of the weekly magazines. I will not say which one. I remember clearly, and everyone else will remember when I say it, they went into a safe house, I believe it was in Kandahar, and came out with a diagram—a safe house meaning a house occupied by al-Qaida—of an attempt at what looked like how to produce a nuclear weapon. Then we got further information saying there was clear evidence that al-Qaida had been talking to two Pakistani nuclear scientists who know how to and have made nuclear weapons. So obviously these boys are trying to figure out how to make a homemade nuclear device.

So I would like to think, and I agree the probability is North Korea is not likely to sell this—I should not say not likely—may not sell this plutonium. They may use it all for their own purposes.

What if we are wrong and the ability to account for this material is virtually nonexistent, because it is so difficult to discern and determine where it is? The reason why our intelligence service, even after the agreed framework, is saying we think they have enough fuel, enough fissile material, plutonium from the past to have made one or two nuclear bombs by 1994, we do not know that. So what happens if we do not resolve this crisis, draw some red lines, make it clear what our intention is and talk with these guys? What happens if 6 months down the road they have started up the reprocessing plant and we know they have enough plutonium for 6 new nuclear weapons, and then we get an agreement? They are going to say we did not really produce X amount, we produced Y amount, or X minus whatever. Are we ever going to know where this material is? This is dangerous stuff.

As I understand it, the Bush administration says—which is the preferred course—we do not want to be blackmailed. We have to put this into a multilateral context. Again, I find it interesting they never wanted to do anything multilateral but now with regard to Korea they want to be multilateral, which is a good idea. They say China, Russia, South Korea, and Japan have as much at stake as we do, even more.

So what we are going to do—and it is correct if we can get it done—we are going to say we will negotiate or talk with North Korea only under the umbrella of a multilateral meeting called by the community I just named, where we are one of the parties.

What are the North Koreans saying? They are saying it does not matter what the rest of these guys think. We want to know what you think. We know if we do not get a nonaggression agreement in some form from you, our legitimacy continues to be at stake.

Do we want to legitimize this illegitimate regime? No. But here is the horns of the dilemma. If we do not talk to them about what it is we insist on in order to suggest we get a nonaggression pact or some version of it, if we do not let it be known, we will never know whether there could have been an agreement, and we almost certainly know that in the near term there will be plutonium that is unaccounted for coming out of that country.

My colleagues might say, oh, that is not true, Joe. All we have to do is we can take out those reprocessing plants—and we can, by the way. We can take them out in a heartbeat. We have the capacity. We know where they are. We can blow them up with our missiles, our jets, our standoff bombers.

Guess what. There are roughly 8,000 pieces of artillery they have sitting within range of Seoul. One of our South Korean friends told us, we do not support you using force against the North.

How can we go to war with the North when the South will not support us? Kind of fascinating, isn't it?

China says they are prepared to talk with North Korea but you should not waste any more time. Talk to them. South Korea is saying you should talk to them. In a sense, the President is put on the horns of another dilemma. One says we should talk multilateral because that is the best way to deal with this, and all our multilateral partners whom we say should be part of the discussion say, no, you talk, which is unfair because China will not step up to its obligations and its own interest, in my humble opinion. So much is at stake for South Korea in terms of the potential carnage that would occur to South Koreans, in addition to the 37,000 American forces on the peninsula. They are saying, whoa, we are not for you taking out those reactors. We are not ready to have you call the bluff of the North.

So what does the President do? Imagine being President of the United

States and having to make the decision between shutting down a reactor you believe to be inimicable to your security interests, and knowing if you do, you may very well be in a position of starting a war—justified in literal terms, in my view—that would cause such overwhelming damage to the—and we would win the war, by the way, but it would cause such overwhelming damage to the very people we went to Korea in the first place to protect, the South Koreans.

What do we do? I suggest the members of this administration have the answer if they listen to the people who are now in their administration. The Bush administration claims the ball is in North Korea's court. North Korea says the ball is in our court. From where I sit, the ball is stuck somewhere in the net, or not even in the net. You know how once in awhile when you were a kid you would fake a jumpshot from the corner and it would get wedged between the back corner and the rim? That is where the ball is right now. Somebody has to jump up and put the ball back in play.

How does the ball get put back in play? There was a report written not long ago called The Armitage Report. He happens to be the No. 2 guy at the State Department now. In that report, Mr. Armitage and others—including the following people: Paul Wolfowitz, the No. 2 guy at Defense; the former Deputy Assistant Secretary of Defense, Peter Brookes; current Assistant Secretary of Intelligence and Research, Carl Ford, among others. They are all part of this Armitage Report filed before President Bush became President—called for a policy of hardheaded engagement, developing close coordination with our allies and backed by a credible threat of military force. Their prescription was remarkably close to that offered by former Secretary of Defense Perry, but has the tremendous political advantage of having been embraced by so many leading figures on the Bush foreign policy team, the people running the show now.

What did Armitage advocate? Here are the key recommendations.

First, regain the diplomatic initiative. U.S. policy toward North Korea has “become largely reactive and predictable with U.S. diplomacy characterized by a cycle of North Korea provocation or demand and an American response.”

Good idea. Now the Bush administration claims the ball is in their court, as I said.

The second recommendation was “a new approach must treat the agreed framework as the beginning of a policy toward North Korea, not as an end to the problem. It should clearly formulate answers to two key questions. First, what precisely do we want from North Korea and what price are we prepared to pay for it.”

I am quoting from the Armitage report that Wolfowitz signed off on and

Carl Ford signed off on, major players in this administration.

They said, “Are we prepared to take a different course if, after exhausting all reasonable diplomatic efforts, we conclude that no worthwhile court is possible?”

What diplomatic efforts have we exhausted? These are great questions, but the administration has yet to answer them. Indeed, the administration cannot seem to decide what it is about the north that bothers it the most. Is it human rights abuses or past support of terrorism, export of missiles, its military threat, or its nuclear program?

To me, the priority must be a verifiable ending of North Korea's weapons program, particularly nuclear weapons. Everything else must be put off for another day.

The third recommendation of the Armitage report: A U.S. point person should be designated by the President in consultation with congressional leaders and should report directly to the President.

We have a fine man named Kelly out of the State Department, but he has no direct access to the President. This has not been raised up to that level because we are being told—I don't know why—that this is not a crisis.

I think the American people and this Congress are fully capable of handling more than one crisis at a time. Iraq is a crisis. So we are told. Well, it is. But not in my view in terms of the immediate threat to the United States. Or the crisis could be in North Korea. Why can't we do both?

President Bush has downgraded the special envoy position, thereby assuring that we cannot gain access to Kim Chong-il, the only man in North Korea with whom we can get a deal, or at least figure out what he is about.

Fourth recommendation: Offer Pyongyang clear choices in regard to the future. On the one hand, economic benefits, security assurances, political legitimization. On the other hand, the certainty of enhanced military deterrence.

For the United States and its allies, the package, as a whole, means we are prepared, if Pyongyang meets our concerns, to accept North Korea as a legitimate actor up to and including full normalization of relations.

This is not JOE BIDEN writing this recommendation; it is Paul Wolfowitz. It is the Assistant Secretary of State, Mr. Armitage. What happened in a year and a half? What happened to change their mind?

The good idea of the administration almost seems ready to be embraced. The President has spoken about bold initiatives toward the north but talk of carrots still has been undermined by the Bush administration's insistence that incentives are the equivalent to appeasement.

Before my committee today, the Secretary of State says we have no intention to go to war with the north, et

cetera, et cetera. The right words, right phraseology. The Secretary of Defense walked out of a hearing yesterday with the House Armed Services Committee and said this is an evil empire, something much more provocative. Accurate but provocative.

The fifth recommendation by this committee that the notion of buying time works in our favor is increasingly dubious. Let me reiterate the fifth point of the report signed by Carl Ford, No. 2, over at CIA, Wolfowitz, No. 2 at Defense, Armitage, No. 2 at State: The notion that buying time works in our favor is increasingly dubious.

President Bush, please, even if you don't want to enunciate it, in your mind, treat this as a crisis because, if it is not contained now, our options are only diminished as time goes by, not increased.

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#### ADJOURNMENT UNTIL 11 A.M. MONDAY, FEBRUARY 10, 2003

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 11 a.m., Monday, February 10, 2003.

Thereupon, the Senate, at 1:15 p.m., adjourned until Monday, February 10, 2003, at 11 a.m.

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#### NOMINATIONS

Executive nominations received by the Senate February 6, 2003:

##### THE JUDICIARY

EDWARD C. PRADO, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT, VICE ROBERT M. PARKER, RETIRED.

ROBERT ALLEN WHERRY, JR., OF COLORADO, TO BE A JUDGE OF THE UNITED STATES TAX COURT FOR A TERM OF FIFTEEN YEARS, VICE LAURENCE J. WHALEN, TERM EXPIRED.

##### IN THE COAST GUARD

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT AS PERMANENT COMMISSIONED REGULAR OFFICER IN THE UNITED STATES COAST GUARD IN THE GRADE INDICATED UNDER SECTION 211, TITLE 14, U.S. CODE:

##### To be lieutenant

SCOTT ATEN, 0000

##### IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

##### To be brigadier general

COL. STEVEN J. HASHEM, 0000

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

##### To be brigadier general

COL. ALBERT A. RUBINO, 0000

##### IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

##### To be brigadier general

COL. JAMES L. WILLIAMS, 0000

##### IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

##### To be lieutenant commander

WAYMON J. JACKSON, 0000