

Senator Sessions asked Richard Paez: "In your opinion what is the greatest Supreme Court decision in American history?" Judge Paez did not refuse to answer, or claim that he could not give an answer because he had not been present at oral arguments. Instead, he simply named *Brown v. Board of Education*.

Senator Sessions then asked: "What is the worst Supreme Court decision?" Judge Paez answered: "Dred Scott." This is the decision where the Supreme Court ruled, essentially, "once a slave, always a slave."

Miguel Estrada, on the other hand, would not answer these types of questions.

Senator Schumer asked him to name any Supreme Court case he thought was wrongly decided.

He did not simply say he thinks *Plessy v. Ferguson* was wrongly decided. That is the case that upheld the concept of separate but equal. And even the Supreme Court has since overturned it. I know of few people who would claim *Plessy* was correctly decided. But Miguel Estrada apparently thinks he could not say so without having heard the oral arguments. He did not say he disagreed with the Dred Scott decision, which upheld slavery. He did not say he believed *Korematsu*, which upheld the right of the United States to put American citizens of Japanese descent into internment camps. He named none of these cases. He simply said he could not answer the question.

This is in direct contrast to a recent experience with Jeffrey Sutton during his hearing less than 2 weeks ago. Mr. Sutton is also a controversial nominee, but he answered every question put to him. We got a good sense of how he would think and act as a judge. I, myself, who was concerned about him initially, felt he was a strong advocate, but he knew the difference. He could separate himself from the positions of advocacy and become a fair and impartial judge. So I have given my proxy right now to be carried out to vote yes for Judge Sutton. Mr. Estrada, on the other hand, did his best to keep from putting himself on record on any issue of real substance.

Quite frankly, there are options. One, return this nominee to the Judiciary Committee for answers. The Senate deserves the answers. Democratic nominees were asked by distinguished Republican Senators to answer questions such as this, and they did. Even of those, many had judicial records. Many had prolific writings. Many had speeches so that there were tools we could go to to understand what their thinking was. But in this case we have no speeches. We have no writings. We have no record. Therefore, the answers to the questions become extraordinarily dispositive. They also become meaningful to any Senator who wants to cast an informed vote.

It is that simple. That is what this debate is about. We cannot possibly fulfill our constitutional duty to advise and consent to nominees if we are not given the necessary information about the nominee.

In a case where you have a critical circuit such as the DC Circuit, not only the plumbing grounds for the U.S. Supreme Court, but handling environmental appeals, Superfund appeals, wetlands appeals, OSHA appeals, all kinds of administrative case law appeals, how this court is tilted becomes important to us, particularly if we take this job of confirmation of nominees seriously.

There is another option. That option is appoint Miguel Estrada to a district court. Give him an opportunity to gain that record. He is 41 years old. He is younger than my daughter. Give him an opportunity to gain that record. Remember, this is a man who will serve for 30, 40, possibly even 50 years. It is a lifetime appointment. We are entitled to answers to these questions.

In Miguel Estrada's questionnaire, he admitted to having written no books, articles, or reports of any kind, save one Law Review article in law school. That was titled "The Policies Behind Lending Limits." He wrote that in 1985. At Miguel Estrada's hearing, he would not comment on whether any case had ever been wrongly decided, even cases that have been overturned. He would not name any single judge he would want to emulate on the bench in any way. He would not answer written questions put to him that would help us learn more about how he thinks about cases and how he would judge them. He would not even try to convince the Justice Department to turn over some of the memos he wrote for the Solicitor General's Office, nor would he himself turn them over.

If this nominee is confirmed, we believe we would be sending a signal that stonewalling the Judiciary Committee and the full Senate is the way to succeed on the way to a judgeship. That is the wrong signal and the wrong message.

In effect, we would be abdicating our constitutional role, our constitutional duty to advise and consent to nominees, because we would never again be able to learn enough about a nominee to make reasoned decisions.

Nominees could become increasingly young, increasingly ideological, and increasingly silent. The courts would soon be packed with judges of unknown disposition, unknown temperament, and unknown propclivities to judge fairly and impartially.

We should take our constitutional duties more seriously than that. We simply are determined not to let that happen.

I would like to read the concluding sentence from the editorial in today's New York Times: 6

The White House can call this politics or obstruction. But in fact it is Senators doing their jobs.

I yield the floor.

Mr. REID. Madam President, the reason I am not going to give a statement is because we have Members here on the Senate floor today who could give a long statement on the misfortune of Miguel Estrada. But we have been asked by the two leaders to try to get some votes lined up for tomorrow. We have a manager of the bill who has been waiting. We have a Senator from New York who has been waiting.

I just simply say before we go to the Senator from Ohio and the Senator from New York, who have amendments to offer, that we have debated Miguel Estrada a lot. I don't know how many votes we have had—10 or 12—and not a single vote was changed.

We can debate this ad infinitum. The fact is, Miguel Estrada didn't respond to questions that we thought appropriate and didn't divulge information in the form of memos from the Solicitor's Office. The reason he is different than some others who worked in that same office is because we got the full information.

For example, we reviewed Judge Roberts off and on for more than 10 years. So he and Miguel Estrada are totally different.

The real victim in all of this is Miguel Estrada. I acknowledge that by virtue of the fact that the White House had the theory they were not going to allow questions nor submit information from the Solicitor's Office.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004—Continued

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, my colleague from New York and other Members who are on the Senate floor have several amendments that I ask unanimous consent to have set aside. I anticipate speaking probably for about 10 minutes.

Mr. SPECTER. Madam President, will the Senator from Ohio yield for an announcement?

Mr. DEWINE. I yield.

Mr. FRIST. Madam President, just for the information of our colleagues, we will have no more rollcall votes tonight. The plan at this juncture is that most likely we will have two stacked rollcall votes in the morning. That is subject to change. People should stay in touch with the cloakrooms. But for tonight, there will be no more rollcall votes.

We will continue with amendments, and I ask Members to come to the floor so we can prepare for tomorrow. We will have stacked votes in the morning.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 1561 TO AMENDMENT NO. 1542

Mr. DEWINE. Madam President, I call up my amendment numbered 1561.

The PRESIDING OFFICER. Without objection, the pending amendments will be set aside and the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE] proposes an amendment numbered 1561 to amendment No. 1542.

Mr. DEWINE. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide funds to support graduate medical education programs in children's hospitals)

On page 61, between lines 14 and 15, insert the following:

SEC. _____. (a) IN GENERAL.—To carry out programs to support graduate medical education programs in children's hospitals under section 340E of the Public Health Service Act (42 U.S.C. 256c et seq.), there are appropriated a total of \$305,000,000, including amounts otherwise made available in this Act for such programs.

(b) OFFSET.—Amounts appropriated under title III under the heading "Program Administration" shall be reduced by \$15,000,000.

Mr. DEWINE. Madam President, this amendment would increase the amount of pediatric graduate medical education funding to \$305 million—up from the \$290 million currently in the bill.

I remind my colleagues that a sense-of-the-Senate amendment was attached to this year's budget resolution which indicated that children's graduate medical education should be funded at \$305 million.

This amendment would mirror the sense-of-the-Senate resolution which we have already adopted. That is all it would do. But I believe it is important that we provide these additional dollars.

This funding for pediatric graduate medical education is truly a vital part of our efforts to protect children's health in this country.

To date, children's hospitals, though they represent only 1 percent of all hospitals in the country, train 30 percent of all pediatricians and 50 percent of all pediatric specialists. They also provide hospital care to almost 50 percent of all seriously ill children in this country.

Furthermore, children's hospitals serve as the health care safety net for low-income children in their respective communities and are often the sole regional providers of many critical pediatric services.

These children's hospitals are often the only source of many pediatric specialty services, and it is their graduate training programs that make these services possible. Funding for pediatric graduate medical education helps provide our Nation with highly qualified pediatricians, pediatricians who can properly treat and care for our children when they are sick.

Clearly, funding for GME in children's hospitals is a sound investment in children's health and provides stability for the future of the pediatric workforce. I urge my colleagues to join me in providing this additional \$15 million in funding for graduate medical education in children's hospitals.

Anyone who has had the occasion to take their child to a children's hospital, as I have, and to see the magical work these children's hospitals do, I think can appreciate the need for this amendment. To see the specialists descend on your child when you are concerned about that child's safety, maybe that child's life, is just something you really cannot describe.

The children's hospitals will tell you that this graduate medical education money has been a lifesaver for them. It is essential that we provide this money through the appropriations process, frankly, because of a quirk in the law. It is a quirk in the law that we have to do it through the appropriations process because they do not automatically get the money through the entitlement process because, obviously, they do not serve many Medicare patients. So it does not come to them automatically, as it does all the other hospitals in the country. So every year we have to go through this process.

I am simply asking that the funds be increased to \$305 million. It is the right thing to do. It is the proper thing to do. I ask my colleagues to support this very simple amendment.

Madam President, I ask unanimous consent that this amendment be set aside for the time being.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

AMENDMENT NO. 1560 TO AMENDMENT NO. 1542

Mr. DEWINE. Madam President, I now call up amendment No. 1560.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE] proposes an amendment numbered 1560 to amendment No. 1542.

Mr. DEWINE. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide funds to support poison control centers)

On page 61, between lines 14 and 15, insert the following:

SEC. _____. (a) IN GENERAL.—To provide funding for poison control centers under the Poison Control Enhancement and Awareness Act (42 U.S.C. 14801 et seq.), there are appropriated a total of \$27,600,000, including amounts otherwise made available in this Act for such centers.

(b) OFFSET.—Amounts appropriated under title III under the heading "Program Administration" for building alterations and related expenses for relocation shall be reduced by \$5,300,000.

Mr. DEWINE. Madam President, the amendment I am now offering would fully fund poison control centers at \$27.6 million. That is an increase of \$5 million from what the bill currently funds at \$22.3 million.

Members of the Senate, there are currently over 70 poison control centers nationwide. These centers have fielded over 1 million phone calls since January 2002, answering questions about poisonings, drug abuse, product contents, substance identification interactions, and adverse reactions. They can answer questions and concerns about what would typically be called poison products—things such as cleaners, bleaches, anything you would find in your home, any emergency a family might face. This is the most common poison exposure for children, children who typically ingest household products such as cosmetics and personal care products, cleaning substances, pain relievers, foreign bodies, and plants.

Our Nation's poison control centers handle an average of one poison call every 15 seconds. Clearly, these centers provide a vital service to the parents and family members.

The money we provide in this bill will go toward the continuation of the centers' work, as well as the maintenance of the toll-free nationwide poison control hotline. That number, of course, is 1-800-222-1222. Let me repeat that: 1-800-222-1222. That is a number that anybody in this country now can call. Wherever you are, if you are on vacation, if you are in your own home, if you are visiting someone, you can pick up the phone and call that number, and you will go onto a poison control hotline.

I have used it. My daughter has used it for her children. It is something that

is so very valuable for a parent, anyone who has children. And certainly it is not just for somebody with children. It is for anybody who is in a position to be around someone who has ingested something and they don't know what it is.

As anyone who has visited poison control centers can tell you, it is also now particularly important in a day and age when we worry about terrorism. Poison control centers have a particular meaning for us today.

With the funding in the bill, and with the additional funding that would be provided by my amendment, we are not just making an investment in poison control; rather, we are making it easier to keep our children, our friends, and ourselves safe and healthier.

I therefore urge my colleagues to support this very modest investment in our health. And I might say, the Federal Government is only a small partner in the poison control centers. When you go and visit the poison control centers around the country, what you will find is that they are funded many times by the local hospitals that pay for them themselves. They are funded by State and local government units. The money we provide is a small part of the overall money, but it is a very crucial and very important part of that contribution to keep these poison control centers going.

This is a very modest amendment, but it is a very important amendment. I urge my colleagues to support it when we do, in fact, vote on the amendment.

Madam President, I ask unanimous consent that this amendment be set aside.

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

AMENDMENT NO. 1555 TO AMENDMENT NO. 1542

Mr. DEWINE. Madam President, I call up amendment No. 1555.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE] proposes an amendment numbered 1555 to amendment No. 1542.

Mr. DEWINE. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To express the sense of the Senate concerning the Pediatric Research Initiative)

On page 61, between lines 14 and 15, insert the following:

SEC. _____. To demonstrate the appreciation that the Senate has for, and to further encourage, the efforts of the Director of the National Institutes of Health in implementing the Pediatric Research Initiative under section 409D of the Public Health Service Act, it is the sense of the Senate that—

(1) the Director should continue the Initiative and emphasize the importance of pediatric research, particularly translational research; and

(2) not later than January of 2004, the Director should continue to report to the Committee on Health, Education, Labor, and

Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives on the status of the Pediatric Research Initiative, including—

(A) the extent of the total funds obligated to conduct or support pediatric research across the National Institutes of Health, including the specific support and research awards allocated by the Office of the Director through the Initiative;

(B) the activities of the cross-institute committee on pediatric research in assisting the Director in considering requests for new or expanded pediatric research to be funded through the Initiative;

(C) how the Director plans to budget dollars toward the Initiative for fiscal year 2004;

(D) the amount the Director has expended to implement the Initiative since the enactment of the Initiative;

(E) the status of any research conducted as a result of the Initiative;

(F) whether that research is translational research or clinical research;

(G) how the Initiative interfaces with the Off-Patent research fund of the National Institutes of Health; and

(H) any recommended modifications that Congress should consider in the authority or structure of the Initiative within the National Institutes of Health for the optimal operation and success of the Initiative.

AMENDMENT NO. 1555, AS MODIFIED

Mr. DEWINE. Madam President, further, I ask unanimous consent that the amendment be modified on page 2, line 8, to include the Senate and House Appropriations Committees.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 61, between lines 14 and 15, insert the following:

SEC. _____. To demonstrate the appreciation that the Senate has for, and to further encourage, the efforts of the Director of the National Institutes of Health in implementing the Pediatric Research Initiative under section 409D of the Public Health Service Act, it is the sense of the Senate that—

(1) the Director should continue the Initiative and emphasize the importance of pediatric research, particularly translational research; and

(2) not later than January of 2004, the Director should continue to report to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Energy and Commerce of the House of Representatives, the Senate Committee on Appropriations and the House Committee on Appropriations on the status of the Pediatric Research Initiative, including—

(A) the extent of the total funds obligated to conduct or support pediatric research across the National Institutes of Health, including the specific support and research awards allocated by the Office of the Director through the Initiative;

(B) the activities of the cross-institute committee on pediatric research in assisting the Director in considering requests for new or expanded pediatric research to be funded through the Initiative;

(C) how the Director plans to budget dollars toward the Initiative for fiscal year 2004;

(D) the amount the Director has expended to implement the Initiative since the enactment of the Initiative;

(E) the status of any research conducted as a result of the Initiative;

(F) whether that research is translational research or clinical research;

(G) how the Initiative interfaces with the Off-Patent research fund of the National Institutes of Health; and

(H) any recommended modifications that Congress should consider in the authority or structure of the Initiative within the National Institutes of Health for the optimal operation and success of the Initiative.

Mr. DEWINE. Madam President, this amendment is a sense-of-the-Senate amendment expressing the importance of pediatric research at NIH. Specifically, this amendment says we should continue the work of the Pediatric Research Initiative. This is an effort I worked on with several of my colleagues and was included in the Children's Public Health Act of the year 2000.

This initiative helps ensure that more funds can be dedicated to children's health research within the National Institutes of Health.

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

Mr. DEWINE. I yield.

Mr. SPECTER. Will the Senator from Ohio be willing to take a voice vote, at this point, accepting this amendment?

Mr. DEWINE. I would be more than happy to do that.

Mr. SPECTER. Madam President, I urge adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, without objection, the amendment, as modified, is adopted.

The amendment (No. 1555), as modified, was agreed to.

Mr. SPECTER. I thank my distinguished colleague from Ohio and I thank the Chair.

AMENDMENT NO. 1578 TO AMENDMENT NO. 1542

Mr. DEWINE. Madam President, at this point I call up amendment No. 1578.

The PRESIDING OFFICER. Without objection, the clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE], for himself, Mr. ALEXANDER, Ms. STABENOW, Mr. GRASSLEY, and Mr. VOINOVICH, proposes an amendment numbered 1578 to amendment No. 1542.

Mr. DEWINE. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide funding for the Underground Railroad Education and Cultural Program)

On page 74, line 1, strike “\$409,863,000, of which \$13,644,000” and insert “\$406,863,000, of which \$10,644,000”.

On page 76, between lines 11 and 12, insert the following:

SEC. _____. For necessary expenses for the Underground Railroad Education and Cultural Program, there are appropriated \$3,000,000.

Mr. DEWINE. Madam President, the amendment I offer now, along with Senators ALEXANDER, STABENOW, GRASSLEY, and VOINOVICH, will provide \$3 million in funding for the Under-

ground Railroad Education and Cultural Act, a 1998 law that Senator COLLINS and I wrote together. The Underground Railroad Education and Cultural Act was designed to assist in establishing programs to research, display, interpret, and collect artifacts and other items relating to the history of the underground railroad. The bill before us now has unfortunately zero-funded this program. I believe we must correct that.

Our amendment would provide \$3 million for this program. As my colleagues know, the history of the underground railroad is a vital part of the history of our great country. In the 20 years or so prior to the Civil War, it is estimated—of course, no one will ever know what the true figure is—that more than 40,000 slaves used this underground railroad, as we refer to it, as a pathway to their ultimate freedom. It is a great story in the history of our country. It is a great story every schoolchild in America should know about.

More than 150 underground railroad sites have been identified in my State of Ohio alone. But Ohio is not unique. All the States that border along the Ohio River and were actually considered to be border States have sites on the underground railroad. There were people all along on both sides who helped slaves escape. African Americans helped slaves escape. White Americans helped slaves escape. There were so many heroes.

Their stories need to be told. There are many more other sites out there that frankly need to be identified, and their stories need to be told as well. These sites symbolize freedom for thousands and thousands of enslaved Americans. When I visit these sites, as I have with my family—in fact, I had the opportunity this August during our recess to visit several of them—it makes me pause and think about the sacrifice that was made by so many people. It reminds us of the history of this country. It reminds us of the horror of slavery, a part of our history that simply has to be told. But it also reminds us of the good part of that history; that is, the sacrifice made by so many people so others could be free.

This program is very important. I urge my colleagues to join me in support of this funding request. This funding request will enable this story to be told and told in a better way.

Madam President, I ask unanimous consent at this point that the amendment be set aside.

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

INTERNATIONAL HIV INITIATIVE

Mr. DEWINE. Madam President, I will at some point, as I indicated this morning, be coming to the floor and offering an amendment concerning President Bush's International Mother and Child Prevention of HIV initiative. As I indicated this morning, unfortunately the bill before us does fall short by \$60 million what the President requested.

The President requested \$150 million in regard to the amount of money to be provided for this initiative. I will be talking about this later and will be offering an amendment concerning it. This is the most cost-effective way to save lives.

A number of my colleagues went with Senator BILL FRIST to Africa. We returned just last week. We saw firsthand the good this program is already doing. For as little as \$3, a pregnant woman can be given the help, the drugs she needs to ensure that her child will not be born HIV positive.

The statistics are staggering. For a mother who is HIV positive, the odds are approximately 30 percent that she, untreated, will give birth to a child who will be HIV positive. We all know what that means, what horrible tragedy that is. In countries we visited such as Namibia and South Africa, there are now ongoing programs. Many of them, because of the initiative of President Bush and this Congress, are good people working, reaching out to these pregnant mothers who are HIV positive. They have reduced that percentage now down to 5 or 10 percent. If that mother can be given a drug prior to the birth of that child—as I said, it now costs as little as \$2, \$3, maybe \$4—we can reduce the odds from 30 percent to giving birth to a child who is HIV positive down to as little as 10 percent and possibly as low as 5 percent.

That is why it is so very important that we restore the funding in this bill to the \$150 million requested by President Bush. I will be coming to the floor later on as we debate this bill and offering an amendment to restore the funding to the level President Bush requested. I will be back on the floor later on to do so.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Madam President, I commend and thank my colleague from Ohio who is always looking out for the children. This has been a mission of his, year in and year out. I thank him for the amendments he has just discussed because every one of them concerns the well-being of our children. I look forward to supporting these amendments. I particularly thank the Senator for amendment 1561 to restore the money for pediatric graduate medical education.

AMENDMENT NO. 1565 TO AMENDMENT NO. 1542

Mrs. CLINTON. Madam President, I ask unanimous consent that amendment 1565 be called up.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mrs. CLINTON] proposes an amendment numbered 1565 to amendment No. 1542.

Mrs. CLINTON. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide additional funding to ensure an adequate bioterrorism preparedness workforce)

On page 36, line 16, strike the period at the end and insert “: *Provided further*, That the amount \$6,252,256,000 under the heading ‘Health Resources and Services’ shall be deemed to be \$6,272,256,000 of which the additional \$20,000,000 shall be available for carrying out sections 765 and 767 of the Public Health Service Act: *Provided further*, That the amount \$4,588,671,000 under the heading ‘Disease Control, Research, and Training’ shall be deemed to be \$4,631,871,000: *Provided further*, That the amount \$1,726,846,000 under the heading ‘Public Health and Social Services Emergency Fund’ shall be deemed to be \$1,756,846,000: *Provided further*, That the amount \$1,116,156,000 under the heading ‘Public Health and Social Services Emergency Fund’ shall be deemed to be \$1,146,156,000 *Provided further*, That the amount \$6,895,199,000 in section 305(a)(1) of this Act shall be deemed to be \$6,988,399,000: *Provided further*, That the amount \$6,783,301,000 in section 305(a)(2) of this Act shall be deemed to be \$6,690,101,000: *Provided further*, That of the funds appropriated in this Act for the National Institutes of Health, \$93,200,000 shall not be available for obligation until September 30, 2004.

Mrs. CLINTON. Madam President, this amendment is intended to provide the money that is needed to ensure that at the Federal, State, and local levels, we have an adequate bioterrorism workforce. In order to do that, we have to fund the pipeline.

This summer the Partnership for Public Service issued a report stating that 50 percent of our experts trained to respond to a biological or chemical attack will retire over the next 5 years. That puts our country and our public health at risk.

Obviously, every one of us in this body is committed to making our country safer and providing the bioterrorism funding we have fought for since 9/11. And I appreciate the great support the Senate has given to increasing dollars to combat the threat of bioterrorism. But, unfortunately, our frontline defenders, who are our health professionals, are decreasing in number when we need them more than ever.

According to the Office of Personnel Management, more than 2,600 public health professionals in the Federal Government are eligible to retire in 2008, and that number could soar to more than 8,000 in just the next few years.

Unfortunately, the shortage in personnel is not just Federal. It is already being felt at the State and county levels. In county after county in the public health departments, I have been given reports that so many of the staff members are being stretched thin and they are unable to do the work that is required.

If we don't find ways to provide the resources to attract and pay for these professionals, we are going to be in a terrible dilemma not only if a horrible event or some kind of biological or chemical attack were to occur, but even with the outbreak of something like SARS, or something unpre-

dictable that we may have never encountered before.

The Bioterrorism Preparedness and Response Act that we passed in 2002 does help with workforce training, recruitment and development. But with respect to what has occurred since 2002, we already know we have had increased demands on our public health system, and we have insufficient resources to expand personnel or, as these recent reports I have referenced indicate, keep pace at current levels.

The CDC and other agencies need to do strategic planning. My amendment includes \$5 million to fund an annual needs assessment, with a report to Congress, of Federal, State, and local bioterrorism personnel, conducted by the Institute of Medicine or another competent and independent authority.

But even while we are looking longer term, we have immediate public health needs right now. I know that, for example, in New York, two Centers for Public Health Preparedness are located at SUNY Albany and Columbia University. They have already trained 10,000 people each year in bioterrorism preparedness. Many regions don't have these centers of excellence, and we have to figure out how we can get the resources and personnel to every part of our country.

According to the Association of Schools of Public Health Preparedness and Prevention, the 19 nationwide Centers of Public Health Preparedness have asked the administration for \$50 million—nearly double what the President's budget proposes. I think we should meet those requests, and my amendment would provide the funds to do that.

My amendment also provides funds, in accordance with the recommendation of CDC's own National Advisory Committee on Children and Terrorism, to double the number of outbreak specialists in the Epidemic Intelligence Service. These EIS specialists are dispatched to respond to epidemics and bioterrorism.

The resident expertise that we need in State and local public health departments is also crucial. My amendment would provide \$25 million to the Epidemiology Program Office, the National Center for Infectious Diseases, and the Public Health Practice Program Office of the CDC to recruit and train 1,600 epidemiologists, 800 laboratory personnel, 800 public health nurses, and 800 other public health professionals to work in State and local public health departments nationwide.

The Council of State and Territorial Epidemiologists estimates that State and local public health departments need to hire 1,600 epidemiologists over the next 10 years to prevent worsening shortages of State and local epidemiologists. It costs about \$60,000 to train a public health professional. This proposal would spread that investment over 10 years.

Finally, the amendment also provides \$20 million for carrying out sections 765 through 769 of the Public

Health Service Act to title VII to encourage personnel to enter epidemiology and bioterrorism detection careers.

Title VII has been decimated each of the last 3 years. It has been a struggle to keep it even flat-funded from year to year. Unfortunately, the pipeline for epidemiologists and bioterrorism experts has suffered as a result.

I hope to be able to work this out without the manager of the bill. I understand completely the many competing considerations he has to balance, but it is imperative that we start to meet these needs. If we pass this amendment today and get the money in the pipeline, we can begin to train and hire the doctors, nurses, and other public health professionals who are going to be necessary for us to deal with whatever we face in the future.

Unfortunately, terrorists or epidemics like SARS don't wait while the retirement notices are stacking up. I don't think we should either. This \$93 million would be money well spent that would make us better prepared to deal with the incredible challenges that we confront as we try to ensure that our vigilance and our concern is matched by the expertise we need to actually deal with any problem that we may confront.

Madam President, I ask that this amendment be supported, but I ask, too, that we look for a way to deal with this pipeline problem that is so critical to actually putting teeth into the pre-

paredness that we have passed in this body and funded since September 11.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Madam President, there is no doubt of the tremendous need for preparation for bioterrorism. During the recess month, I spent most of it traveling through my State visiting first responders—essentially fire departments, in conjunction with police departments and other county organizations that are being set up for response to potential bioterrorist attacks.

When 9/11 struck, obviously, the U.S. was totally unprepared. I think the ranking member will recall that we had to have the hearing in the bowels of this building because we were kicked out of the other hearing rooms. We brought in the Centers for Disease Control and insisted that they give us an itemization of the various types of biological attack, what resources were currently available, and what additional resources we would need.

We had a very tough time getting information from the Centers for Disease Control by the time they went through the alphabet soup. They had to get permission from HHS, and then Health and Human Services had to get permission from the Office of Management and Budget. Finally, we got the information informally. We could not get it formally. We got it informally.

I have just been handed talking points and information and facts by my

staff. The way the Senate functions is that these amendments come without any significant advanced notice. The Senator from New York was halfway through her argument before I got a copy of her amendment. I challenge anybody to read the amendment and follow it.

Well, people can't hear me on C-SPAN because my microphone wasn't on.

The point was that we did get a supplemental appropriations bill for approximately \$3 billion. We had quite an extended discussion in the living quarters of the White House—something I probably ought not to talk about. But the President invited a group of us over and we got into a long discussion. There were those in the administration, according to an article published a day after Thanksgiving, that wanted to put it in next year's budget. They wanted to wait until 2002 to put it in 2003.

Talking directly to the President, a number of us prevailed and put \$3 billion into the budget at that time.

We now have a very extensive itemization of funding. The CDC has \$940 million for State and local preparedness. Upgrading CDC capacity: \$143,700,000. Pharmaceutical stockpile: \$300 million. Smallpox vaccine—and it goes down to a full page. I ask unanimous consent that list be printed in the RECORD so I need not read it all.

Activity	FY03 Enacted	.65% ATB	Transfers to DHS	FY 2003 Comparable	FY 2004 Request	FY 2004 Senate
CDC						
State and Local Preparedness	\$940,000	\$6,110	.....	\$933,890	\$940,000	\$940,000
Upgrading CDC Capacity	143,700	934	—584	142,182	143,700	143,700
Pharmaceutical Stockpile	300,000	1,950	—298,050	0		
Smallpox Vaccine	100,000	650	—99,350	0		
Anthrax Vaccine Research	18,040	117	.....	17,923	18,040	18,040
Planning for Preparedness Resp.	10,700	70	.....	10,630	10,416	10,416
Deterrence	4,000	26	.....	3,974	4,000	4,000
Public Health Preparedness Centers	5,000	33	.....	4,968	0	0
Health Alert Network	0	0	.....	0	0	0
CDC Security PHSSEF	20,000	130	.....	19,870	0	0
CDC Security (B&B non-add)	0	0	.....	0	0	0
Independent Studies	2,000	13	.....	1,987	0	0
Subtotal, CDC	1,543,440	10,032	—397,984	1,135,424	1,116,156	1,116,156
HRSA						
Hospital Preparedness	518,000	3,367	.....	514,633	518,052	518,052
Education Incentives for Medical School Curriculum	28,000	182	.....	27,818	60,012	60,012
EMS for Children	0	0	.....	0	18,943	0
Poison Control	0	0	.....	0	21,166	0
Subtotal, HRSA	546,000	3,549	.....	542,451	618,173	578,064
OFFICE OF THE SECRETARY						
Transfers to DHS	88,420	575	—87,845	0	0	0
Medical Research Corps	10,000	65	.....	9,935	10,000	10,000
Preparedness Planning	6,800	44	.....	6,756	6,800	6,800
Operations	12,720	83	.....	12,637	12,720	12,720
Advanced Research	5,000	33	.....	4,968	5,000	5,000
Command and Control	0	0	.....	0	0	0
National Security Early Warning	9,500	62	.....	9,438	9,500	9,500
Secretary's Emergency Response Team	3,000	20	.....	2,981	3,000	3,000
Media/Public Information	4,800	31	.....	4,769	4,800	4,800
Commissioned Corps Revitalization	2,000	13	.....	1,987	0	0
CyberSecurity	10,000	65	.....	9,935	10,000	10,000
Subtotal, OS	152,240	990	—87,845	63,405	61,820	61,820
CDC—Supplemental .....	.....	.....	.....	142,000	0	0
SAMHSA	0	0	.....	0	0	0
AHRQ	5,000	33	.....	4,968	0	0
Pandemic Flu	0	0	.....	0	100,000	100,000
Subtotal, Bioterrorism—PHSSEF	2,246,680	14,603	—485,829	1,888,247	1,896,149	1,896,040

Mr. SPECTER. Madam President, then the Department of Homeland Security bill was passed by this body

with some \$29 million, which covers a great deal more funding.

I appreciate the initiative taken by the Senator from New York and her diligence in coming up with this

amendment in an area which, beyond any question, is of overwhelming importance, critical importance. I, frankly, do not know how to evaluate her request for \$93 million additional in the context of all of the programs which are in existence.

I think it is fair to state, and I think the Senator from New York has an abundance of experience in the executive branch, that the executive branch has better planning capabilities in integrating these items in the overall program. Not that the \$93 million might not be well placed, well positioned and critical. It might be, I just cannot say. But I do know there has been extensive consideration by the executive branch, and I also know that the \$93 million is not within the 302(b) allocation.

I come back to this again and again on items which I concede are important, but we do not have the funds within the budget resolution and within the allocation.

I know the Senator from New York will not be surprised that there will be opposition to it. We will raise a point of order. But I do think the amendment serves a very useful function in identifying what the Senator from New York thinks are critical points that ought to be funded.

I commit this to the Senator from New York—to have a hearing on the subject and to include the precise items which she has raised so that we will take them into account in our funding stream as we move into the next fiscal year.

Mrs. CLINTON. Madam President, will the Senator from Pennsylvania yield?

Mr. SPECTER. I do.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Madam President, I wish to express my appreciation to the chairman for that offer. Perhaps even before the bill is totally wrapped up we could take a look at some of those categories of funding because what I am concerned about, as the Senator rightly referenced, is in all of the funding categories, these requests I have put in this amendment are coming from constituent agencies, such as CDC, that at least believe at this point in time that the money available for bioterrorism has not been sufficiently targeted to this personnel issue.

I appreciate not only the kind offer of a hearing, because I think this is an issue that is going to go on for quite some time—it is not going to be resolved one way or another even if this amendment were successful—but also perhaps in the next several days if our staffs can look to see if there is a better opportunity to better target some of this funding to deal with this pipeline professional problem that is not only at the Federal Government level, but State and local as well.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I would be delighted to follow the sug-

gestion made by the Senator from New York to take a look at them regardless of the outcome of the vote. It may be that the executive branch can learn from what the Senator from New York has found on her inquiries and can redirect some of the existing funds, or it is possible we could find some accommodation to this in the course of the conference.

We will look very closely at the suggestions which the Senator from New York has made and see if we can find a way to accommodate them.

AMENDMENT NOS. 1561, 1560, AND 1578

Mr. SPECTER. Madam President, I wish to turn for a few moments to the amendments offered by the Senator from Ohio. I did not take time to respond before the Senator from New York offered her amendment. She was very patient in waiting while the Senator from Ohio went through quite a long list of his amendments.

He has offered three amendments which are well directed and I think meritorious when he talks about the historical impact of the underground railroad. That is a matter of importance in education and it comes right into Pennsylvania where currently the development project in Lancaster has found remnants of the underground railroad. The House of Representatives has put in \$2,235 million.

When the Senator from Ohio talks about poison control centers for \$5 million, again he is on a good point. And when he talks about graduate medical education, he is not bringing it up to last year's level, he is adding money. This is an item which this Senator spent a lot of time on, as did Senator HARKIN. There was no funding for this in 1999, and in the year 2000, to start, it was slightly under \$40 million, and then when I chaired the subcommittee, with the concurrence of Senator HARKIN, we made an enormous increase to \$234 million for fiscal year 2001.

We then added \$50 million in 2002 to \$284 million, and it was at \$290 million in 2003. The administration made a request for slightly under \$200 million, and in a tough way we found \$90 million more.

When you take them out of administration, there are going to be a lot of people unemployed, and I do not know that we can direct that unemployment solely to Ohio—I wish the Senator from Ohio were here—if it would be possible to target that unemployment to the Senator's State. But if you take out \$22 million from administration—that is a nice fat target to say take it out from administration. But there are very substantial impacts when that money is taken out.

I am going to confer with the Secretary of the Department of Education to see exactly what will happen, how many people will be affected, specifying perhaps how many people from Ohio will be affected.

When the Senator from Ohio wants to add \$60 million to the mother-to-child transmission, I think that is a

very important item, but the fact is we now have a grand total in the Labor-HHS bill directed toward AIDS in excess of \$14 billion. When the statement is made we are just going to bring it back up to the President's request, in fiscal year 2003, this was a \$40 million item. The President asked for \$150 million for this year, and we found \$90 million to accommodate.

Bear in mind that we do this in a context where the administration has come in on many items far under what they were last year. For example, graduate medical education, to which the Senator from Ohio wants to add \$15 million, we added \$90 million over what the President requested. So perhaps the Senator from Ohio would like us to go back to the President's request on graduate medical education, and we would have ample money to put in \$60 million more to bring it up to the President's request on the mother-to-child transmission.

I say that only by way of demonstrating that it is just not so easy to come up to the President's request on a given item when many times the President's request was far under what we are at the present time. The idea of level funding is very important in the appropriations process so you do not make drastic changes. People can live with what they got last year without accounting for inflation, but if you want to drop, as the President's budget did on graduate medical education, from \$290 million to \$199 million, that is going to be very tough to absorb. We took that into account.

The Constitution places the appropriations process in the Congress. That is something which is frequently overlooked.

The President obviously has an important role because he has to sign the bill, or we have to pass them without his signature, if we can do that.

This bill is very carefully crafted. Perhaps it is easy to see that I have to oppose the amendments by the Senator from Ohio. Perhaps there can be some accommodation to some of the smaller amounts but that, too, is difficult. Although the Senator from Wisconsin said a million dollars was not very much money, quoting Everett Dirksen, a million here and million there—maybe Everett Dirksen said a billion here or a billion there, but if for Dirksen it was a billion here and a billion there, then make it ARLEN SPECTER, a million here and a million there, it all adds up.

I yield to my colleague from Iowa.

Mr. HARKIN. I thank my chairman, friend and able leader on this appropriations bill. I think we all wish we had a little bit more 302(b) allocation but that is for another time and place.

Earlier today I spoke about offering an amendment that would basically prohibit the administration from moving ahead on implementing a proposed rule that would basically undermine and do away with the 40-hour work-week that we have had in the Fair

Labor Standards Act since 1938. Earlier this spring, the administration proposed some rule changes. Not one hearing was held on it.

As we looked through these proposed rules this summer and dug into them, it would drastically undermine the ability of working families, working men and women in America, to get justly compensated for overtime work in the future.

I was talking to one of my colleagues today about this, and he said to me, I have not really had a big clamor in my State for these changes. I got to thinking about it. I got to thinking I really have not had anybody in the past year or 2 years ago, or earlier this year—I have seen no real groundswell or anything about the fact that these rules as they exist now need to be changed. I do not know where this comes from. All of a sudden they are proposing this massive change in the way people's work is defined in this country and whether they are exempted from overtime pay or not.

So I have an amendment that I drafted that basically is just very simple. It says:

None of the funds provided under this Act shall be used to promulgate or implement any regulation that exempts from the requirements of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) any employee who is not otherwise exempted pursuant to regulations under section 13 of such act (29 U.S.C. 213) that were in effect as of September 3, 2003.

So this is an amendment that I will be laying down sometime tomorrow. I mention again that this proposed rule change could affect up to 8 million workers, but the first wave of people that will be affected by this rule change will be women who are working in salaried positions that today would be paid overtime if they worked more than 40 hours a week. These would be women who work as bookkeepers, accountants, secretaries, nurses, nurse's aides, a whole host of different occupations. I say women because the way that the workforce is structured, where the salary level is, they will fall in that lower spectrum of salary level where it will be above the minimum but it will be in the range where they will now be exempted from overtime work. That will be the first wave. That is just the first people who would be affected by it.

After that, there would be many other people affected by it—police officers, firefighters, first responders, and others.

There is no carve-out in the proposed rules and regulations for police, firefighters, and emergency personnel. They are thrown in with everybody else. So somehow I keep hearing this kind of a rumor or statement that keeps floating around that, oh, police officers will not be affected.

Well, would someone show me in the proposed rules where it says that police officers will not be affected? It is nowhere in there. So I do not know what they are talking about. They are thrown in with everybody else.

Again, I do not want to take too much more time. I will lay down the amendment tomorrow morning at the appropriate time. For the life of me, though, I cannot understand why the administration is proposing this drastic change when there has been no big groundswell for the change.

I have heard some people in this room say we have to change it because it has not been changed since 1938. That is nonsense. We have changed the Fair Labor Standards Act several times since 1938. In fact, a number of times this has been changed without taking away overtime for people in our country. So to say it has not been changed since 1938 is simply erroneous. A number of times we have addressed ourselves to new types of work, new definitions, new people in the workforce, by changing some of the definitions. In every case in which these definitions were changed they were changed to make it easier, to include more people in the overtime provisions, not to exclude people.

For example, the Department of Labor revised the overtime regulations in 1940, 1949, 1954, 1958, 1959, 1961, 1963, 1967, 1970, 1973, 1975, and 1981. In not one of those instances was the framework narrowed to exclude more people from overtime protections. These changes were made basically to enlarge, enhance, and to better define who was covered, and that is why it never really invoked much debate or consternation because we recognized that we wanted to protect people for overtime pay.

The minimum salary threshold has been raised seven times since 1938. So to say that somehow we have never touched this since 1938 is absolutely wrong. What is correct is that since 1938 we have not circumscribed, we have not narrowed, the definitional framework to exclude more people from overtime pay.

That is what these proposed regulations would do, and that is why the Senate has to speak strongly, I hope next week sometime, in supporting this amendment that would basically prohibit them from moving ahead with this kind of a regulation.

I would point out that the House of Representatives narrowly defeated this 213 to 210, with a number of Republicans supporting not allowing the administration to proceed with these changes in rules. So, again, I hope next week we can have a further debate. I intend either tomorrow or Monday to again point out the people who are going to be affected, what it means for their families and their income. What it basically means is that we are going to have people working longer hours but they are not going to be compensated for it.

As I said, many of them are women who are now paying for childcare. Well, now they have to pay to keep their children in daycare maybe longer but they do not get any extra pay for that.

So that is why this proposed change in rules and regulations is one that we

have to say no to. We have to make sure we continue to protect and enhance the 40-hour workweek and make sure people who work over 40 hours, if they want to work over 40 hours or if they are compelled to work over 40 hours, are justly compensated with it for time and a half over 40 hours.

I yield the floor.

Mrs. FEINSTEIN. Madam President, I plan to offer an amendment to the fiscal year 2004 Labor-HHS appropriations bill that seeks to offer States an alternative Medicaid FMAP formula while allowing States to remain in the current formula structure if they choose. This amendment is vital to providing some relief to States who have been shortchanged by hundreds of millions of dollars under the current FMAP formula for the cost of providing Medicaid services. The amendment will not penalize any State who wishes to remain under the current formula. It simply allows States to opt into a new formula that better reflects States' need. This new FMAP is only for Medicaid expenditures in excess of fiscal year 2003 Medicaid expenditure levels.

For States who opt to go with the new formula, per capita income is replaced with a ratio of the most recent 3-year averages of total taxable resources, TTR, as determined by the U.S. Department of the Treasury, and persons below the poverty level. The multiplier is also lowered from 0.45, used in the current FMAP formula, to 0.40. For the period 2004-2013, the new formula has a maximum increase of one percentage point per fiscal year above the current FMAP formula for the prior year. Once a State opts to go with the new formula, they will not be able to switch back to the current FMAP formula. However, they will be held harmless at the FMAP rate they would have gotten under the current formula, prior to the Jobs and Growth Tax Relief Reconciliation Act of 2003, for the current year. States opting for the new formula will have Medicaid expenditures, up to the fiscal 2003 levels, matched at the current FMAP formula and with expenditures above the fiscal 2003 levels matched at the new formula FMAP.

In a study released in July 2003, GAO found that the formula used to calculate the portion of each State's Medicaid expenditures that the Federal Government will pay—the FMAP—often widens the gap between individual States and the national average. Under the current formula, 21 States move farther from the average State's funding ability after the Federal match is added. In fact, 4 of the 21 States—California, Florida, Hawaii, and New York—have below-average funding ability before Federal matching is added and move farther below the average after Federal matching aid is added.

Since Medicaid was enacted in 1965, the Federal match rate has been determined by a State's per capita income. In its study, GAO found that per capita

income is a poor proxy for determining both State resources and the low-income population. The Feinstein amendment will give States the option to choose a formula that is based on a combination of the State's total taxable resources and population below the poverty level.

The PRESIDING OFFICER. The Senator from Alabama.

MIGUEL ESTRADA

Mr. SESSIONS. Madam President, it is a sad day for the Senate today. Miguel Estrada, after having been nominated by the President to the Court of Appeals of the DC Circuit, after having waited 28 months, almost 2½ years, felt it imperative that he get on about his private business, his law practice. He has asked the President to withdraw his name. It is with great sadness that occurred.

For many in this body, Miguel Estrada is one of the finest nominees to come before this Senate. The American Bar Association evaluated him. This is certainly no rightwing group. They evaluated him and unanimously concluded he was well qualified for the Court of Appeals. Indeed, he is.

The sad thing about it was the ground rules of Senate confirmation have been changed. Miguel Estrada was a victim of a sustained filibuster. It was for the first time in history that a sustained filibuster had defeated a circuit or district court judge. He was the first one subjected to a filibuster in this Congress. He is the first one to be forced to withdraw because he has to get on with his life. And he had 55 votes in the Senate for an up-or-down vote and a like number, I am sure, for confirmation.

For the first time, 45 Senators have blocked and defeated a nominee. This is an unprecedented change in our Senate policy. It is something that is not good for this Senate. It has diminished the independence of the judiciary. It has diminished the power of the executive branch to nominate and it has harmed the Senate when we change the historical rule from 50 votes to 60 votes for a confirmation. It is not good public policy.

I ask why it is that this Senate, for all these years since the founding of this Republic, has not had a filibuster for one of these nominees? The reason is pretty clear. The Senators believe the Constitution suggests confirmation should be by majority vote. For example, the Constitution says the Senate shall advise and consent on treaties provided two-thirds agree and shall advise and consent on certain nominees, including judges. From that implication it is clear that two-thirds were required for advice and consent on treaties but only a majority for the judicial nominees. That is what we have done until this year. This plan to block nominees was designed after President Bush was elected and the Democrat Senators had a retreat with a number

of liberal law professors, including Lawrence Tribe, Cass Sunstein, Marcia Greenberg. These liberal professors they talked of changing the ground rules for confirmation and Democrat Senators decided to change the historic rules of this Senate and block more nominees.

Of course, President Bush nominated nine judicial candidates when he took office. Two were Democrats. One was a renomination of a Clinton nominee, a Democrat, and the renominated Clinton nominee was promptly confirmed. Nine out of the 11 sat. The Democrats had the majority in the Senate and they refused to bring those candidates up for hearing in the Judiciary Committee.

Finally, when the election occurred and one of the issues in the election was the obstructionism in the Senate by the Democratic majority and a new majority was constituted with the Republicans in the majority, they moved some of these nominees forward. Estrada was moved out of committee, Priscilla Owen and others were moved forward. We then found ourselves facing for the first time in history a filibuster of Miguel Estrada.

Let me mention some things about this extraordinary nominee. He was born in Honduras and came here as a teenager. He struggled with the language. He was able to get himself into Columbia University where he finished and graduated with honors. He then went to Harvard Law School where he was an editor of the Harvard Law Review, one of the highest honors for any graduating law senior. He then clerked for the Court of Appeals, the same level court he was nominated to. He served as a law clerk to a Court of Appeals judge in New York, as I recall, and then clerked for the Supreme Court. Very few lawyers ever get selected to clerk for a Justice of the United States Supreme Court. What a great honor. He was selected by Justice Anthony Kennedy, one of the moderate swing justices in the Supreme Court, as he is viewed.

After that, he took a position with the Department of Justice and he was in the Solicitor General's Office of the Department of Justice. The Solicitor General's Office is where the Department of Justice has the top appellate lawyers arguing the position of the United States of America in circuit courts and in the United States Supreme Court. What a great position. Most lawyers say the Solicitor General of the United States is the greatest lawyer position in the world. Every day you go to court and represent the United States of America in the highest court in the land.

Miguel Estrada was there for 6 years. Every year he was there he got the highest possible rating the Department of Justice evaluators give to an employee. This is particularly important to note. In 5 of the 6 years he was in the Solicitor General's Office, it was in the Clinton Department of Justice. He

served by far the great majority of his time in the Clinton Department of Justice and was given each year the highest possible ratings. Since then, he has been highly successful in law practice. He has argued as many as 10 or 15 cases before the Supreme Court. Most lawyers in America will never argue a case before the United States Court of Appeals, much less have 15 cases before the Supreme Court. He was selected for those arguments because he was known to be an extraordinarily skilled appellate lawyer.

I saw his testimony. He was open and candid and brilliant in his answers. I remember one Senator tried to pin him down and said, you are a strict constructionist, aren't you? Mr. Estrada said, I am not sure I would call myself that. And he said, the President wants to nominate strict constructionists and President Bush has nominated you so you must be one. First, he said, the President didn't say anything to me about that, but I would call myself a fair constructionist. I believe we ought to fairly construe the law as it comes before us. I don't use the word strict constructionist. He was open and candid with the people asking questions.

Then there was constructed an event and a circumstance that put Mr. Estrada in a bad light. It was deliberate and premeditated and calculated, in my view. The Democrat said, well, you served on the staff of the Solicitor General and you wrote all kinds of memoranda that were relevant to important issues before America. We demand you produce every memoranda you wrote while you were in the Solicitor General's Office. And he answered this exactly correctly, but I am not sure the American people and the press and those who asked questions paid attention to his answer. His answer was, Senator, those are not my papers. I was a lawyer in a law firm of the Department of Justice. The papers I prepared belong to the Department of Justice. I do not have the power to reveal to the public such private, legal memorandum from my client, the United States of America.

So the question was, then, well, let's have the Department of Justice produce them. And the Department of Justice was absolutely correct in saying unequivocally, no, we are not going to produce those documents. The reason is that those are confidential, internal memoranda of the U.S. Government involving litigation in cases in the United States.

In fact, it outraged former Solicitors General of the United States of both parties. All four former Solicitors General of the United States who had served under Democrat administrations wrote a letter that the Department of Justice should not reveal those memoranda, that it was work product and would chill free debate by young lawyers who were asked to submit written memoranda. And every other Solicitor General I know of, who is alive, Republican and Democrat,