

now told next week's schedule will include 30 hours of debate on judges. Actually, there won't be any business before the Senate to debate; it will just be an opportunity for the majority party to ruminate for 30 hours about how unfair it has been that 4 nominees have not been approved by the Senate—4. Mr. President, 168 judicial nominees sent to us by the President have been confirmed by the Senate, and 4 have not been. Yet you would be led to believe by all of the information spewed out of this Chamber, from all of the political vents that exist here, that somehow the Senate has just been unwilling to approve judgeships.

We have the lowest vacancy rate on the Federal bench in 15 years. Why? Because this Senate has been cooperative with this President with respect to judgeships. He has nominated and we have confirmed 168. If next week they want to spend time, in a moment when it is urgent to finish our work on appropriations bills, instead to talk about the 4 judges who were not confirmed by the Senate, I want to come to spend some time talking about the 168 judges, including 2 from my State, both Republicans, both of whom I supported and was pleased to do so—I want to talk about the 168 judges we did confirm. I want the American people to understand what our record is with judges.

My colleague from West Virginia knows about the Constitution, perhaps more than anyone in this Chamber. He has studied it, he has lived it, and he carries it in his pocket every day. His copy of the Constitution is one I enjoy seeing when he pulls it out of his pocket during debate on the floor of the Senate, because he describes it in vivid detail and gives life to this fabric of American Government. The Constitution does not say the President has a right to put a man or woman on the Federal bench for the rest of their lives. That is not what the Constitution says. The Constitution says we will provide lifetime appointments to the judiciary in the following manner: The President shall nominate, and the Senate shall give its advice and consent. So there are two steps: The President shall nominate and the Senate shall decide yes or no.

There are circumstances where a President might say: I want to put someone on a very important Federal bench who is way outside the norm in terms of behavior, thought, or experience, or whatever; and the Senate has a right to say in that circumstance we are sorry, that is a person we are simply not going to confirm, Mr. President.

That is not terribly unusual. George Washington failed to get one of his nominees confirmed—America's first President. So it is not unusual for the Senate to say, no, this is not a candidate we agree should be put on the Federal bench for a lifetime.

In most cases, the President has sent us nominees we are satisfied with, and

168 of them have been approved; 4 have not been. In the middle of this time, when time is so critical and the appropriations bills are so urgently needed to be completed, the majority wants to ruminate and vent for 30 hours in the middle of next week about the 4 who have not been approved.

I say, as my colleague from Nevada has, I make no excuses for deciding not to support the nomination of Mr. Estrada. I make no excuses for that. Mr. Estrada wouldn't answer the questions when asked by the Senate Judiciary Committee. How do I know that? Because the same day that he was a witness before that committee, the same day his nomination was considered by that committee, a nominee for a judgeship in North Dakota was there before the committee. That candidate from North Dakota, whom I supported—and, incidentally, is a Republican—is a fine judge. I was pleased to support him. He answered the very questions put to him by that committee that Mr. Estrada refused to answer.

Mr. Estrada refused to answer questions. He and the administration refused to release information that was requested. I have no reason to make any excuses for deciding to vote against Mr. Estrada. I wouldn't have voted for him and didn't vote for him. I am not apologetic about that.

If next week in the middle of all of this urgency we are going to take 30 hours and decide just to have the majority party ventilate about the four who did not get approved by the Senate, then I say—my colleague from Nevada is here—I would like to be part of a process that talks about the 168 Federal judges we did approve, all Republican incidentally—168 of them we did approve. We will get some pictures and get their story. I will talk about a few of them. I hope my colleagues will as well because the American people need to understand the story, and the story is not of the four who didn't get approved by the Senate.

The story is the lowest vacancy rate in 15 years on the Federal bench because the Senate has moved forward on judgeships and because we have confirmed judges sent to us by this President and because we have succeeded in that effort. That is the story next week. If we are going to have 30 hours for the other side to ventilate about the 4 who didn't make it, I want 60 hours to talk about the 168 we did confirm.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, I wish to take a couple of moments to do a few items cleared on both sides.

#### UNANIMOUS CONSENT AGREEMENT—H.R. 2799

Mr. McCONNELL. Mr. President, I ask unanimous consent that at 1 p.m., Monday, November 10, the Senate pro-

ceed to the consideration of the Commerce-Justice-State appropriations bill.

Mr. REID. Mr. President, reserving the right to object, it is my understanding that the distinguished majority whip is going to announce there will be no more rollcall votes.

Mr. McCONNELL. I say to my friend, just as soon as he clears this.

Mr. REID. No objection.

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

Mr. McCONNELL. I, therefore, mention there will be no more rollcall votes today.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. McCONNELL. Mr. President, there are a couple of items on the Executive Calendar cleared. I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's calendar: Calendar No. 61 and 362. I further ask unanimous consent that the nominations be confirmed; that the motion to reconsider be laid upon the table; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

#### FEDERAL ENERGY REGULATORY COMMISSION

Joseph Timothy Kelliher, of the District of Columbia, to be a Member of the Federal Energy Regulatory Commission for the term expiring June 30, 2007.

Suedeen G. Kelly, of New Mexico, to be a Member of Federal Energy Regulatory Commission for the remainder of the term expiring June 30, 2004.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. McCONNELL. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the Pastore rule run its course for the day?

The PRESIDING OFFICER. It has not.

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order for such time as I may require.

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

#### AN INFINITE MIRAGE AND A BOUNDLESS FACADE

Mr. BYRD. Mr. President, through its shortsighted actions, this administration perpetuates an infinite mirage and a boundless facade. This administration hopes to fool the American people into swallowing its wrongheaded policies with no questions asked. These

policies have a superficial appearance of reality, but they are beyond comprehension—beyond grasp. They hover like a mirage on the horizon. We are lulled into believing that if we just stay the course, we will eventually reach some sweet, glorious watering hole. However, the truth is that there is nothing tangible, nothing solid, nothing with form or substance on the horizon.

Regardless of whether it is Iraq or an energy bill, one need only connect the dots to see that the same questionable tactics are readily apparent. When the President announced to the world, "Either you are with us or against us," he alienated many potential allies abroad. The administration uses the same posturing in terms of an energy bill. It is either the administration's way or no way, as it opposes any alternative approaches that do not fit into its little black box.

There was a horrible rush to pass the Iraqi resolution in this body last year. This administration is using the same tactics to dictate the terms of a very bad energy bill this year. This facade is all too obvious as the White House's only goal is to pass a bill seemingly regardless of its substance or lack thereof.

The administration's national energy policy plan will do about as much to improve the Nation's energy security as the administration's invasion of Iraq has done to stem the tide of global terrorism. In the past, the administration attempted to make a case that linked September 11 and Saddam Hussein. These links have failed to materialize, but the administration is still trying to make that link. Not one Iraqi was among the hijackers of airplanes on September 11—not one. So it must be a matter of great chagrin to the administration that it has been unable to bring forth the evidence of that linkage.

Predictably, the administration is now attempting to make the same connections between its national energy policy and a comprehensive energy strategy. This link will also be proven groundless in the not too distant future.

For many years, the Middle East has been a hotbed for a number of reasons, especially because of the Israeli-Palestinian conflict and the continuing U.S. military presence in the region, but an underlying reason for our continued presence in the region is for the protection of our oil lifeline. We likely would not have such close ties to the Middle East if it were not so important to our economic base. Because of this tethering, we are being pressured into passing an energy bill. Unfortunately, even if this Congress passes the administration's prescribed energy bill, that will do little, if anything, to reduce our dependence on foreign oil.

Instead of striving to disentangle ourselves from this foreign oil dependency, the Bush administration seems intent on sinking our military and energy fortunes deeper and deeper into the hot sands of the Middle East.

I have spoken on this floor before regarding my concern for this Nation's energy future. I have also addressed the Bush administration's lipservice and corporate coddling, which is the sum total virtually of its energy policy. As a recent report from the General Accounting Office concludes, the Vice President's national energy policy development group did not solicit a broad range of views. That group never sought to project future energy demand or engage future sources of supply. There was no plan with specific goals and objectives designed to ensure energy diversity. But the Bush administration insists it has an energy policy.

A lot of energy went into producing it, and it has expended much energy to get its bill passed. In fact, just before the lights went out in Manhattan, Cleveland, and Detroit, Vice President CHENEY was quietly working with the Republican leadership to void key electricity provisions that this body was about to pass.

I say to my colleagues, all is not lost. Help is on the way. While this Nation's citizens were stranded and sweltering in darkened subway tunnels in New York and without drinking water in Cleveland and Detroit, more rewards were being handed out. Yes, while the citizens of those cities suffered, the administration was very busy. While our electricity system was in a shambles, the Bush administration was eagerly handing out hundreds of millions of dollars in sole-source contracts to Halliburton—have my colleagues heard of that name before?—and Bechtel to rebuild Iraq's water and electricity infrastructure. Oh, the irony.

Even more telling, in its statement of administration policy, the White House told energy conferees to trim the estimated \$50 billion-plus cost of the energy bill because the pricetag was excessive.

Let the American people hear this: We can cut taxes for the rich, we can spend \$21 billion just this year to rebuild Iraq's infrastructure, but the energy pricetag in the next decade at home is too expensive. The truth is, regardless of its costs, the Bush administration will never fully fund the programs in an energy bill as the White House is too distracted by other so-called priorities.

The Center for Responsive Politics reports that the energy industry gave more than \$2.65 million to the Bush-Cheney campaign in 2000. The oil and gas industry gave 68 percent of that total. Not surprisingly, media accounts are ripe—ripe, I say—with stories of the administration's contributors who have been tripping over themselves to curry favors for their particular energy interests.

What about other groups? Were the interests of the State and tribal interests, labor unions, consumer groups, and environmental organizations at the table?

A lack of consensus on energy legislation has rightfully raised concerns

that the final product will be but a patchwork of compromises that do not truly solve our urgent problems.

The Republican majority and the White House have put together what amounts to a "pig in a poke" energy bill that includes a number of items that remain enormously controversial and that have little to do with building the bipartisan consensus essential for the development of a national energy strategy. The legislation passed by this Senate last year and this year has been largely ignored.

Now the majority is preparing to ram this hodgepodge through the conference, and we are being forced to swallow it, hook, line, and sinker. This is no way to legislate and it certainly is no way to develop such an important national policy.

We cannot continue to conduct the Nation's business in this way. The stakes are too high. Partisanship alone is threatening enough to our ability to develop comprehensive solutions to our energy problems, but it is not just partisanship that is reason for worry. It is the utter contempt with which this Bush administration apparently views the role of the legislative branch.

As the General Accounting Office has learned, this administration simply will not tolerate legislative inquiry. This administration will not tolerate fact-finding. Requests for information are often simply denied. There is no room for debate, just dictums. We are not expected to stand on this floor and offer amendments. We are urged to sit quietly, we are expected to sit quietly, and wield the rubberstamp. The people of West Virginia did not send me here to be a rubberstamp. I am certainly not a rubberstamp.

Energy policy, in my estimation, drives so much of our economy and defines so much of our national prosperity and security that backroom bargaining can threaten our Nation's future.

The administration used numerous promises and assumptions to sell the Iraqi war to the American people. We were assured that the postwar construction would largely be paid for with Iraq oil revenues and the cooperation of other nations—nations that got the back of our hand. But the President now tells us we cannot count on that money in the short term and the American taxpayers will have to foot the bill.

We are hearing the same type of rhetoric now. We heard claims that the administration's energy bill would fix all of our energy problems. I hope the American people are smarter than that because this energy bill is no panacea, and it could very well turn out to be a Pandora's box.

We need a comprehensive approach to our energy policy. What do I mean by comprehensive? A comprehensive approach fully integrates four fundamental principles: energy security to encourage fuel diversity; fiscal soundness to increase economic growth and

the efficiency of production; consumer protections to guard against fraud, market manipulation, and abuse; and environmental sensitivity to minimize the impacts from wastes and emissions.

These are essential elements for any comprehensive energy policy. These elements must be fully integrated through a policy that is designed to maximize fuel diversity and efficiency of production while minimizing consumer abuse and environmental degradation. These elements could provide a complementary path forward, but this Energy bill is a significant detour.

With these guiding principles in mind, we must then begin to make the hard choices. We must develop a truly strategic plan. Planning requires that we decide how much, to what extent, and when actions must be taken. It requires the development of criteria so the progress can be measured.

For the past three decades, the United States has struggled to find and secure its energy future. Administrations since Richard Nixon have been trying to craft a sensible energy policy, with some small successes, but mostly with little significant progress to show. All too often, America's energy agenda has shifted—lurching first in one direction, then in another. The net effect has been that the Nation has grown more and more dependent on foreign oil, making America's energy security increasingly vulnerable to manipulation and terrorist attack.

This Nation has not had a serious, thoughtful energy strategy or a comprehensive set of energy policies for a long while. Too often, the Government has, instead, reacted to shortages, dislocations, and various energy crises. For example, the Government has tried to control oil and natural gas prices, which only served to exacerbate supply shortages. For a period of time, one administration tried to prohibit the use of natural gas and forced the use of coal for power generation. Two decades later, another administration discouraged the use of coal and Federal priorities shifted to the increased use of natural gas. Today, the Nation finds itself caught in what Federal Reserve Chairman Alan Greenspan calls "the gas trap."

The energy bill soon to be before this Congress is primarily another reactionary effort. While there may be some strong trees planted, it is by no means a healthy forest. From past energy efforts, only a few actions, such as creating the Strategic Petroleum Reserve and the Clean Coal Technology Program, have proven to be truly far-sighted. I fear that most of this energy bill will continue a business-as-usual approach.

Furthermore, we must, once and for all, realize that our energy and climate change policies are two sides of the same coin. Yet we are doing little, if anything, to address seriously these critical links. This energy bill includes nothing substantial to address either global climate change or advanced

clean energy technology exports. If these and other key provisions are not included, why should I support such a flawed, misguided energy conference bill?

Furthermore, the administration has been seeking my support for its so-called FutureGen project, claiming this purported \$1 billion, 10-year proposal would build one large powerplant as an experiment to address climate change. My support for this project is largely contingent on identifying the long-term resources for FutureGen and knowing that it will not erode other critical energy programs. So I have to say that, if the administration is expecting my support for FutureGen, then, in coming years I expect that the administration will support my climate change and international technology transfer provisions as well. If the administration is still around.

Global warming is an Achilles' heel for this White House—one among other Achilles' heels. The President has shown no desire to address this problem in an energy bill or anywhere else.

In the end, the President would dearly love a showy Rose Garden ceremony in which to sign an energy bill and thus have a 2004 campaign press release to tout its so-called success. But, given this administration's track record, an energy bill would simply be another empty soapbox for the President to stand on to announce a bankrupt deal.

I say, where have we seen that before? While the Congress has passed bills and supported the Bush administration's rhetoric, the necessary resources to carry all this out never materialize.

The American people deserve much better than this. As the blackout of August 14 vividly demonstrated, this Nation's energy system—which is the lifeline of our economy and national security—is on life support. As we struggle to define and implement a national energy policy needed to address these issues, we again find ourselves on a collision course.

We need a new framework based on a consistent and cohesive set of policies. But we must recognize that we must get to that critical juncture. This new framework must be designed to strengthen the law, not gut it. Most importantly, as we approach this crossroads, we must seek to fully integrate our energy and environmental policy goals and objectives in a complementary way.

We were told we had to rush into Iraq to contain Saddam's WMD programs. Now we are being told this energy bill will reduce our dependence on foreign oil, counteract increasing fuel prices, and do so many other things.

Americans should not be fooled. They will not. There are few, if any, benchmarks or yardsticks from which we can truly chart our progress. Sadly, such milestones are anathema to this administration. At the same time, we have squandered a huge opportunity. The bipartisan cooperation in the de-

velopment of this energy bill was purely superficial. Soon this Senate could be asked to vote on this legislation. There is pressure to cajole Members to swallow hard and pass it. Despite some solid provisions, why should I be a party to this boondoggle?

A cherry-picked energy plan based on soliciting big industry campaign contributions is a bankrupt policy. It takes this Nation nowhere, and it puts our Nation's future at risk. It is time that the dots were connected. The same pattern by this White House continues to repeat itself. That pattern is statements of policy that build on infinite mirages and boundless facades.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### MORNING BUSINESS

Mr. DEWINE. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators speaking for up to 10 minutes each.

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

#### HONORING OUR ARMED FORCES

Mr. DEWINE. Mr. President, I rise today, in the few days before Veterans Day, to pay tribute to one of America's and one of Ohio's fallen sons. Twenty-seven year-old Army Specialist James Christopher Wright, who served in the 4th Battalion, 42nd Field Artillery Regiment, of the 4th Infantry Division, passed away on September 18, 2003, while trying to secure a hostile area near Tikrit, Iraq.

James Wright—known as Jimmy by his family and friends—was from Delhi Township, OH. In the early 1990s, he graduated from Oak Hills High School and Diamond Oaks Vocational School.

Growing up, Jimmy was a fun-loving kid. Friends say he was always ready with a smile or a joke. He could make any situation seem comfortable.

He could put people at ease.

Christina Schwaller, who attended Oak Hills High School with Jimmy said that he was "very outgoing and lovable, very much the clown. He was always laughing—you never had a bad moment when he was around."

Jimmy also loved cars. It's a love he shared with his older brother, Eddie. When Jimmy was still in high school, and Eddie had just graduated, they bought low-riding pick-up trucks and spent hours upon hours outfitting them. In Iraq, Jimmy was the proud driver of a Humvee. Today, Eddie drives a Porsche with a memorial to his brother painted on the front hood.