

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