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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 11, 2003, at 12:30 p.m.

Senate

MONDAY, FEBRUARY 10, 2003

The Senate met at 11 a.m. and was called to order by the Honorable NORM COLEMAN, a Senator from the State of Minnesota.

PRAYER

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

Gracious God, who knows our needs before we ask You for Your help, and has plans for us and our Nation ready to reveal to leaders who humble themselves and seek Your guidance, we praise You for the privilege of being alive and the delight of serving You.

Give us a positive attitude for the challenges and problems of this day. Help us utilize Your divinely inspired gift of imagination to energize our vision of Your very best for the individuals, concerns, and complicated issues we must creatively confront today. Empower us to prayerfully picture Your solutions and direction and speak with the tone of Your articulated inspiration in our souls. Help us not to go it alone today on our own limited resources but draw on the inspiration of the vivid images You play on the screen of our inner eye of vision.

Today we pray for all in the Senate family who are ill or recovering from surgery. Especially we pray for Senators ROBERT GRAHAM and MITCH MCCONNELL, two distinguished Senators who are recovering from heart surgeries and procedures. Infuse Your healing power into their bodies and give them strength and renewed resiliency. We thank You for these two great leaders.

We expect great things from You today, dear God, and we will attempt

great things for You throughout this new week. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable NORM COLEMAN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS.)

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 10, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable NORM COLEMAN, a Senator from the State of Minnesota, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. COLEMAN thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit.

On Thursday we attempted to reach a consent agreement which would have allowed for a vote on that nomination during today's session. Unfortunately, that consent was not granted last Thursday. However, it is still my hope to work with my colleagues on the other side of the aisle to set a time certain for a vote on the confirmation of this important nomination. I know there are additional Members who want to speak on the nomination, and I hope they do so today, that they take advantage of the opportunity, beginning in a few minutes, over the course of today.

I do want to express our willingness to go as long as necessary tonight to allow for that open discussion, that open debate, so colleagues do have the opportunity to express their wishes.

I do want to make sure my colleagues understand it is our intent to finish this nomination and vote on this nomination as early as possible this week. I would love to have that opportunity to do so either later tonight or tomorrow—again recognizing that it is important people have the opportunity to speak. Again, we are perfectly happy to stay here as long as necessary tonight.

In addition, three district court judges were reported by the Judiciary Committee on Thursday. We are working towards an agreement for a vote on one of those nominations this evening,

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



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or possibly all three nominations this evening. We will report shortly after discussion with the leadership on both sides of the aisle, but we expect the first vote to be at 5:15 this afternoon.

Also, as a reminder, the current continuing resolution is set to expire on Friday of this week. We are still hoping the appropriators will complete their work on the conference report and therefore the Senate would consider the conference report later this week, as soon as it becomes available.

We are also attempting to clear several important items that are on the Legislative Calendar. Each may require a short period of debate this week and a rollcall vote. Thus, we have a very full week over the next 5 days. Senators should expect a busy session this week and, indeed, as I mentioned earlier, late nights are possible. It is likely that there will be several late nights this week, including tonight if people will take advantage of that, in terms of discussing and bringing their views to the floor.

The ACTING PRESIDENT pro tempore. The Democratic whip.

Mr. REID. If I could, while the majority leader is in the Chamber, first, on the vote on the judges, the ranking member of the committee, Senator LEAHY, has said he is aware of the three judges and he would like a rollcall vote on each of the three and that you and Senator DASCHLE can work on the time of when at least the first will occur this evening.

Mr. FRIST. Let me remind the Senator, I would like to do all three this evening. We can plan on having the first vote at 5:15 and then we can discuss about the other two. I think it would be our intent to have all three tonight.

Mr. REID. Fine.

I also say to the distinguished Senator from Tennessee, the majority leader, last week there were a number of problems, as the leader is aware. There were memorial services—it was difficult to have people speak. Also, it was difficult to get some Democrats to speak because the distinguished chairman took a lot of time speaking. It was hard to work in other people.

With that in mind, and with the distinguished chairman of the committee in the Chamber, what I would like to do is arrange some times for people to speak today so we do not have people waiting around and so the chairman of the committee and ranking member know who is planning on coming. If it is appropriate, I will give those times to both the leader and to the chairman. The ranking member, Senator LEAHY, is here and he is available all of the day, of course, if necessary.

But from 1 to 2, Senator FEINSTEIN would like to be able to speak; from 2 to 2:45, Senator KENNEDY would like to speak; from 3 to 4 o'clock, Senator SCHUMER would like to speak; and Senator LEVIN would like to speak after that until the vote. And then Senator FEINGOLD would like to speak at 5:30. They may not use all this time.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Let me say, first, I appreciate the assistant Democratic leader outlining that. It is very important that we hear from people who have very important things to say. It is really a matter of time management at this juncture, so I very much appreciate it. If we could just have a gentleman's agreement for those times without locking it in, and then allowing the chairman and ranking member to determine the specifics of those times, but it sounds agreeable to me.

Mr. REID. That sounds like a good idea.

Mr. FRIST. Again, it is not our side of the aisle I think at this point that will do the majority of talking. We have a number of Members who want to speak as well. But our goal is to have an up-or-down vote on this important nomination after sufficient time as judged by the other side of the aisle and our side of the aisle.

I encourage, once again, the Senator to continue scheduling just as he has done, which I appreciate, but to go as long today as he is comfortable doing because we want to make sure he has that opportunity. But it is my intention to bring this matter to a vote as soon as practical as we go forward.

Mr. REID. I also say to the distinguished majority leader and the distinguished Chair of the committee that one of the things we are concerned about—and we know there has been very little time used on the debate so far, as the Senator knows, and as Senator DASCHLE stated publicly, the Democrats have not decided whether there is going to be a filibuster. That is something the majority leader and Senator DASCHLE can speak about later today. But I ask for the cooperation of the majority; that, in effect—and I don't mean this to be a derogatory term—no games be played. If somebody steps off the floor in the next few hours, I hope the question would not be called on this nomination until we get into a more—I want to use the right word. Until we get into a more competitive phase of this debate, I hope there would not be anything like that done.

Could I have the assurance of the chairman of the committee that in fact would be the case?

Mr. FRIST. Mr. President, I think for today, of course, we will agree to that. But again, I want to come back to the fact of whether it is competitive and the accusations of a filibuster going back and forth. That is going to sort of occur.

Let me just say on the part of the chairman and myself that as long as we are having good participation, it is important—not just listening to people because they want to get out and talk for an hour, which looks like a filibuster—to the American people that we work in good faith to come to what I hope will be a fair up-or-down vote in a reasonable period of time, and games

are not in order and are not to be played. At the end of the day, we expect no filibuster—again, that is a decision which will be made on your side—because the American people deserve better. If there is insistence on a filibuster, we will use everything within our power being in the majority under the Senate rules to bring this to an up-or-down vote.

Mr. REID. One last thing I would like to say is we are having, as the majority leader knows, a conference committee meeting of the Appropriations Committee at 6:30 this evening. There are still a number of open issues. We will hear from Senator STEVENS and others. But this thing has moved along significantly over the weekend.

Mr. FRIST. Mr. President, I will close.

We have the opportunity of a very productive and very useful week. When you look at the continuing resolution and completing the appropriations bills with the omnibus package and the three judges tonight, if we can finish the Estrada nomination early enough in the week, there are two other bills we are working on, including the Moscow treaty. There is other legislation that is to follow. We have the opportunity of a very productive week before going out on recess. We have to keep the train moving.

The reason why I mention that is, if members want to talk on the other for 30 minutes or 45 minutes each tonight, we want to make that opportunity available, and we hope the other side will seize that opportunity since we express that willingness.

Thank you, Mr. President.

Mr. LEAHY. Mr. President, will the Senator from Tennessee yield for just a moment, the distinguished majority leader?

Mr. FRIST. I yield to the Senator.

Mr. LEAHY. A couple of things should be mentioned.

As the distinguished senior Senator from Nevada has noted, we have a committee of conference on the appropriations this evening, which is a very significant one because of the level of appropriations bills being rolled into one. A number of us who might speak on the floor are also on that committee. Senior members of the Appropriations Committee have to be at the meeting. Some have said and others have commented about games-playing here. I don't think the distinguished majority leader or the distinguished acting Democratic leader would want to do that. I would suggest just for my friend—looking around the floor—having been here longer than anybody else on the floor right now, in the majority four or five times, and four or five times in the minority with very distinguished majority leaders, Senator Mansfield, Senator BYRD, Senator Baker, Senator LOTT, Senator DASCHLE, Senator Mitchell—

Mr. REID. Senator Dole.

Mr. LEAHY. And Senator Dole, and also having served as minority leader

back and forth—all of them realized that anyone can come down at any moment of inattention and, using the rules, gain a one-time advantage. With all the distinguished leaders, I never saw a single one of them do that, even when over and over again they had an opportunity to do it. Many times when I was chairman of the Agriculture Committee, when I was chairman of Judiciary Committee, when I was chairman of the Foreign Operations Committee, and when I was chairman of a number of others, we would have hotly contested issues and cases where the ranking Member, the only other person on the floor, had to leave the floor for a phone call or something like that. And, of course, I always protected their rights. That is something that has been done. It is the role of the majority leader, of course, to try to move legislation forward. It has always been my feeling, whether being in the majority or in the minority, that the majority leader should do that. I think we can. But I also think everybody should realize that last week was a rather extraordinary week with, first, the services in Houston, and then the services at the National Cathedral, and then the Republicans had a conference where they had to go on Friday. A lot was chopped into that week.

I have already said the three judges which are on the Executive Calendar—those which were actually going to be put over by the Republicans initially in the executive markup—I said to the distinguished Senator from Utah, let us go ahead and vote them out so we can get them on the floor. But also the majority leader may not be aware of the fact—at least from some of his statements—that during 17 months we did get through 100 of President Bush's judges and got all of them confirmed on the floor. I know the distinguished Senator from Utah would like to come close to that record, a record that was not achieved when the Republicans were chairing that committee and when President Clinton was here. I know he would want to try for that now. Of course, I would be happy to go forward on those and vote those three out. There will be rollcall votes. I realize that last year sometimes we had 10 or 12 at a time by voice vote. I think that escaped the attention of the press, the White House, the Republican Senate campaign committee, and others.

I yield the floor.

RESERVATION OF LEADERSHIP TIME

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

EXECUTIVE SESSION

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

The ACTING PRESIDENT pro tempore. The Senate will now resume executive session and the consideration of Executive Calendar No. 21, which the clerk will report.

The legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. HATCH. Mr. President, of course, there are not going to be any games played. Nobody on this side wants to play games. This is important stuff. We understand there are those on the minority side who do not agree with this nomination. They have a right to not agree. But they have a right to vote against Miguel Estrada if that is what they really think is right.

On the other hand, should there be a filibuster it will be the first filibuster in history against an inferior court, the circuit court of appeals or the district court.

With regard to the 100 nominees that made it through in the last few years, that was a very good record, primarily just for judges. I am more interested in how many are left over. I am more interested in how we reduce the number of holdovers. Let us hope we can do that. I am going to do everything in my power to do it, and I hope I will have the cooperation of those on the minority side in trying to do what is really our job; that is, to put the President's—whoever the President is—nominees through. We always have someone on both sides who wants to slow the process down. We understand that. But hopefully we can get people of goodwill to not slow the process down and to not filibuster this wonderful Hispanic judge named Miguel Estrada.

Mr. President, in that regard, I ask unanimous consent that a Washington Post editorial entitled "Filibustering Judges" be printed in the RECORD.

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

[From the Washington Post, Feb. 5, 2003]

FILIBUSTERING JUDGES

"Tell Senators: Filibuster the Estrada Nomination!" cries the Web site of People for the American Way. The subject is President Bush's nomination of Miguel A. Estrada to a seat on the U.S. Court of Appeals for the DC Circuit. Democratic senators may not need much encouragement. With the Estrada nomination due to come to the Senate floor today, they are contemplating a dramatic escalation of the judicial nomination wars. They should stand down. Mr. Estrada, who is well qualified for the bench, should not be a tough case for confirmation. Democrats who disagree may vote against him. They should not deny him a vote.

Senators have on occasion staged filibusters on judicial nominees, but none has ever

prevented a lower-court nominee's confirmation, the White House says. And that's good. It's hard enough to get swift Judiciary Committee action and floor votes for judicial nominees. The possibility of a filibuster probably checks rash or overly partisan nominations; one can imagine candidates so wrong or offensive that the tactic would be justified. But a world in which filibusters serve as an active instrument of nomination politics is not the either party should want.

Mr. Estrada's nomination in no way justifies a filibuster. The case against him is that he is a conservative who was publicly criticized by a former supervisor in the Office of the Solicitor General, where he once worked. He was not forthcoming with the committee in its efforts to discern his personal views on controversial issues—as many nominees are not—and the administration has (rightly) declined to provide copies of his confidential memos from his service in government. Having failed to assemble a plausible case against him, Democrats are now arguing that this failure is itself grounds for his rejection—because it stems from his own and the administration's discourteous refusal to arm Democrats with examples of the extremism that would justify their opposition. Such circular logic should not stall Mr. Estrada's nomination any longer. It certainly doesn't warrant further escalating a war that long ago got out of hand.

Mr. HATCH. I would like to take a few moments this morning to respond to some of the allegations that Miguel Estrada lacks support in the Hispanic community. Nothing could be further from the truth.

Young men and women from Mexico, Central and South America, who come to the United States—sometimes with their parents, sometimes without—have helped to build this country. There is no question about it. They have mined our mines. They have built our railroads. They have worked on the roads. They have advanced themselves in education. They are now doctors, lawyers, and filling positions in virtually every walk of life in this country, and rightly so.

They struggled in a foreign country to make a better life, and the gifts they have brought to this Nation are what has made this Nation a great nation. And they still do today. The Hispanic community leaders I have worked with over the years consider Miguel's success as their success. And they know that all young Latinos across the country—whether they live in border town colonia, a barrio in Chicago, or Miami's Calle Ocho—need role models such as Miguel to emulate.

Miguel arrived in this country with his mother at age 14. He lived in a modest home, and his parents worked hard to send him to private schools. There is no crime in that. In fact, many Latino families work two and three jobs just to be able to send their children to private schools, which are usually Catholic schools. That is no crime. In fact, the Catholic schools are among the best schools in this country. I do not blame any parent for wanting to send their children to Catholic schools. They learn a lot of important things in Catholic schools. It is a sign of a Hispanic parent's love and dedication, and it is a manifestation of Latino values at their best.