

Over 50 percent of the population in Iraq is under age 15. What is said about that? This Chamber is silent—silent. When it is possibly only days before we send thousands of our own citizens to face unimagined horrors of chemical and biological warfare, this Chamber is silent. The rafters should ring. The press galleries should be filled. Senators should be at their seats listening to questions being asked about this war, questions to which the American people out there have a right to expect answers. The American people are longing for information and they are not getting it. This Chamber is silent. On the eve of what could possibly be a vicious terrorist attack in retaliation for our attack on Iraq, it is business as usual here in the Senate, and business as usual means it is pretty quiet. There is not much going on in the Senate. Business as usual.

Oh, I know it may be scare talk to talk about what may happen in the event of a terrorist attack. But when the Twin Towers fell, it wasn't scare talk. When hundreds of local firefighters and police officers, law enforcement officers died as the walls of the Twin Towers came tumbling down, it wasn't scare talk. It wasn't scare talk.

We are truly sleepwalking through history. In my heart of hearts I pray that this great Nation and its good and trusting citizens are not in for a rudest of awakenings. To engage in war is always to pick a wild card. And war must always be a last resort, not a first choice.

But I truly must question the judgment of any President who can say that a massive unprovoked military attack on a nation which is over 50 percent children is in the highest moral traditions of our country. This war is not necessary at this time. Pressure appears to be having a good result in Iraq. Our mistake was to put ourselves in a corner so quickly. Our challenge is now to find a graceful way out of a box of our own making. Perhaps—just perhaps—there is still a way, if we allow more time.

Madam President, I yield the floor. I suggest the absence of a quorum—I withdraw that suggestion.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH. Madam President, I believe Senator SCHUMER is scheduled to speak. I understand he is not now going to claim his time. If I may, I would like to speak about Miguel Estrada. I appreciate the Senator from West Virginia and his effort to present his perspective. I find myself wanting not to be silent, though, in response. He has a perspective that is not one I share with respect to President Bush and the job he is doing as our Commander in Chief and as the leader of the free world. So before I speak about Miguel Estrada, I would like to remain not silent.

When I was elected to this body in 1996 I was given membership on the Senate Budget Committee. Being given

membership on that committee, I remember President Clinton presented his first budget. We were coming through a period of great deficits and President Clinton projected deficits for as far as the eye could see. But something happened to our economy, something entirely unrelated to Government, something entirely unrelated to the Clinton administration. We saw what has happened periodically in the great civilizations, and that is a speculative bubble, irrational exuberance, and we saw the stock market surge with stock values wholly unrelated to their book values.

We began to witness a great bubble. That is when Alan Greenspan and others said there is irrational exuberance. We have a problem. They began pulling back on the money supply, and by the time George W. Bush took his oath of office, this country was in a full blown recession. He inherited this. For a colleague to suggest that this President has run this economy into the ground is belied by the facts and it is belied by the common sense of the American people who do not blame this President for the condition of this economy that he inherited and they, in fact, appreciate the fact that he is doing something about it and trying to do what the Federal Government can, with the levers available to it, to help put people back to work, to grow the economy, to say to the country, to say to the Congress: You know, the economy is tough. When the economy is tough, families have to tighten their belts, and Congress should do the same with the Government budget so we can leave more money at home so people can spend it to pursue their dreams, to balance their economies because when they do that, we are more likely to see employers reemploying people.

I must tell you, like my friend from Wisconsin, before I came to this body I was in the business of meeting a payroll. It was always a source of frustration to me to hear politicians from mighty places say that they were responsible for creating jobs, that they were somehow responsible for the condition of the private sector economy. We are citizens of a nation that has a free market economy, not centrally planned. I have always been upset, whether from Republican or Democratic politicians, when there is the claim that somehow we in the public sector create jobs.

It is false. It is a lie. So when I hear speeches saying that President Clinton is to blame for it, or President Bush is to blame for it, I say baloney because, as long as I have been in public life, I have seen us do various things with the levers available to us to try to help the economy, to take credit for it. But you know what. We can't. And may we never be able to because if we do, we will have adopted the ways of western socialist societies, of Western Europe, and these are failing models. These are not models designed to reemploy people and to give them opportunity and hope.

I sit on this side of the aisle for, frankly, one major reason. I believe in free enterprise. I do not believe in creeping socialism. I believe if you are interested in social justice you will pursue those policies that leave more money at home and give people a chance to reemploy folks and to produce products, to provide services that other people want to buy.

So when I hear a statement like I have just heard, with all due respect to a great man in this Chamber, I think it simply disregards the nature of the economic system we are in. I say that as a businessman before I was a Senator. So I thank President Clinton for doing the best job he could. I thank President Bush for doing the best job he could. But in the middle of the administration there was a stock market bubble that neither of them created for which we are now trying to deal with the consequences of the bursting of that bubble.

IRAQ

Madam President, on the issue of Iraq, I think every American feels disquiet about the fact that we are actually contemplating going on the offense because we are trying to provide for the defense of the American people.

I don't think President Bush relishes going to war. But I will tell you that I am glad he does not check our national security with the French or the Chinese or some international body which is, at the core, anti-American and anti-Semitic. I am grateful we have a President who goes to such bodies and makes America's case and stays engaged but never loses sight of the fact that America's interests are best determined by Americans.

I have never believed there was a sharp line of coordination between all the Islamic terrorist groups and Islamic states. But I am not so naive to believe that this is not a loose confederation of terrorism—a loose confederacy that has as its purpose the murder of Jews and Americans and other minorities who do not share their religious faith.

It takes foolish people to look at all the money moving around and all of the ammunition being bought and all of the murder being committed to say we just have to wait for them to hit us again.

I thank God for a President who is willing to say: I am going to protect the American people, and I am going to go where the facts lead us. And even if it says we have to play defense by going on offense we are going to do that.

I don't believe we are going to Iraq out of reasons of oil. I believe we are going there for the security of the American people. Who can like the situation in the Middle East now? Perhaps there is a prospect of a better future. Perhaps there is a prospect of democracy that takes root in the middle of Arabia on the border of Persia that may ultimately figure out how to find

peace with their Jewish neighbors. We have no prospect of that in the current arrangement.

When I hear motives described of this President that his response to 9/11 is somehow failed, I think maybe they are going to different briefings than I am. Maybe they are seeing different facts than I see. I don't understand the charges that were just made here. The charge was made that we are being silenced. I diverted from my Miguel Estrada speech because, frankly, I don't want to be silent if that is what people actually believe here because it is wrong. I want to make clear my opposition to it.

Madam President, when I came to this body, I promised the people of Oregon that while I have values I refuse to check at the door, I would not have a single-issue litmus test when it came to judicial nominees.

I remember very vividly our phones ringing off the hook with calls from conservative people in my State who were very upset at all the Clinton nominees for whom I voted. But I wanted to keep my word that I would not have a single-issue litmus test. I was going to focus on whether President Clinton's nominees were qualified and for some reason not disqualified by personal conduct or ethics.

So with that, I can think of only one exception when a nomination was defeated on the floor of this body at the request of the two Senators of that State.

I voted time and time again for President Clinton's nominees who probably in most cases had different views than I did. I remember specifically the nomination of Richard Paez of California which the Republicans held up for some time. But some of us pushed on this side to get him confirmed.

I remember the nomination of Marsha Berzon, another Ninth Circuit nominee. The conservatives couldn't stand her. Some of us pushed through and got her confirmed and voted for her because we didn't want to happen in this place what is happening now in the case of Miguel Estrada.

I was trained in the law. As a lawyer, I have to tell you that I am envious of the credentials of Miguel Estrada. I will bet in all the time I serve here, few nominees will come to this place who are better prepared and better credentialed than Miguel Estrada. Yet it has come to this? A filibuster? Not for the Supreme Court but for an appeals court—an important one for sure but not even the highest court. We are in the midst of a filibuster.

But consider what an Horatio Alger story is Miguel Estrada when it comes to American law. This man came to this country, from Honduras, at the age of 17, speaking little English. He went to Columbia University. He graduated there magna cum laude. Then he went to Harvard Law School and he graduated there as the editor in chief of the Harvard Law Review, Order of

the Coif. Then he went on to clerkship for United States Supreme Court Justice Anthony Kennedy.

You cannot get better credentials than this.

He then served as Assistant Solicitor General of the United States under both the Bush and Clinton administrations, earning high praise from colleagues, including President Clinton's Solicitor General, Seth Waxman, under whom he served.

By the way, I also note that he argued the Government's case against the abortion clinic demonstrators. He upheld the law.

He has the unanimous high rating by the American Bar Association as "very well-qualified"—its highest rating. That used to be the gold standard for the Democratic conference for people coming through the Judiciary Committee to this floor.

He enjoys broad support from Hispanic communities, including the U.S. Hispanic Chamber of Commerce, the Hispanic National Bar Association, and the Washington Post, of all papers, which editorialized that this confirmation should be an "easy call". But it is not. It is all bollyxed up. Charges have been raised against Miguel Estrada that he is way out of the mainstream. When you ask for evidence of that, I find none forthcoming. They say he has no judicial experience. Well, I have told you what his legal training is, as well as his legal practice at Gibson, Dunn & Crutcher, a great law firm in California.

I would note that five of the eight current judges on the District of Columbia Circuit had no prior judicial experience before they served on it. But, clearly, that doesn't cut it.

I noted before that he has the highest rating of the American Bar Association. Some have said: Well, but he defended antigang laws. These are known as antiloitering laws. But I would point out that he did that when he was hired by Chicago's Solicitor, at the request of Democratic Mayor Richard Daley, to defend their constitutionality. There is no partisan conspiracy in this. They wanted a good lawyer to defend it. This is a man who has argued 15 cases before the U.S. Supreme Court. No judicial experience? That doesn't hold up.

Some have said he didn't answer all the questions.

I can tell you I fear that what we are doing in this Chamber by the process that began with Robert Bork is setting a standard that if you provide the opposition with your views and your records, you give them ammunition to shoot you—at least politically speaking—in this place.

I come back to my belief that what this really is is the victory of single-issue politics. I regret that.

My friend from Nevada holds the same view I do on single issue. He is evidence that his party has had a big enough part to include people who may—I emphasize "may"—have a view as to the sanctity of life that is out of the mainstream, if you will.

You see, Miguel Estrada has never told us what his views are. Maybe that is what is wrong here. Maybe if he would come and pledge allegiance to *Roe v. Wade* all this opposition would go away. But I want to lament that our process has come down to single issue litmus tests. I do not think it should.

See, Miguel Estrada has said what should be said in the case of abortion, issues coming before appellate courts. He has said: I will follow the law. I understand *stare decisis*. And I am not going to be out there trying to make new law. That is what he should say.

What he has not said I think is feared on that side; and that is, coming from a Latin American part of our hemisphere, that he has a Catholic background, that he has a heritage, a tradition that sanctifies human life. And they are worried about that.

Yet I have to say I think a lot of the American people worry about that. I, for one, who describes myself as pro-life, understand completely that it is unlikely in our lifetime that early rights to choose will ever be abridged by this place or by the Court. But I think Americans generally are increasingly discomforted by late-term abortions.

You have but to see the General Electric advertisement about seeing this couple looking at their unborn child in utero and the inexpressible joy they feel at the anticipation of the child's birth. And to think: Well, this unborn child is of no consequence—it is of enormous consequence.

I think there is a fear there that Miguel Estrada may have some of those beliefs. We do not know that. And, frankly, I think he has said what is right and that is: I will enforce the law.

Madam President, I, for one, say, without reservation, Miguel Estrada has my vote. And I think for the good of our institutions, some of our colleagues on the other side ought to remember that some of us pushed through a lot of President Clinton's nominees with whom we had differences because we were fearful of going down the road of single issue litmus tests for judicial nominees, because if we go there, we are ratcheting up to a different level, and it will be to the lament of this country and its judicial processes because we will leave too many places and seats vacant on the bench, and that will mean justice delayed. And justice delayed means justice denied. I urge his confirmation.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Wisconsin.

Mr. DORGAN. Will the Senator from Wisconsin yield for a unanimous consent request?

Mr. KOHL. I will.

Mr. DORGAN. I ask unanimous consent that I be recognized following the presentation by the Senator from Wisconsin.

THE PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KOHL. Madam President, I rise today to express my concerns about the nomination of Miguel Estrada. Once a nominee is confirmed by the Senate, these men and women serve lifetime appointments, unanswerable to Congress, the President, or the people. They become the guardians of our liberties, of our Constitution, and of our civil rights. Our duty to advise and consent is the only check we will ever have on the qualifications and fitness of those chosen to serve as Federal judges.

In considering judicial nominees, we can review their credentials, their professional record, their writings, and the recommendations of their colleagues. But to truly evaluate a nominee's fitness, especially one with no judicial record, we are dependent on the nominee to candidly share with us their opinions, their judicial philosophy, and their approach to interpreting the Constitution during the give and take of a confirmation hearing.

The need for forthright testimony is especially crucial in the case of Mr. Estrada, given the minimal public record we have to evaluate him. He has never served as a judge and, therefore, unlike many appellate court nominees, has no judicial opinions to review. He has virtually no professional writings for us to read. And although he has argued before the Supreme Court, he has rebutted any attempt we made to attach his personal views to the positions he advocated in those cases. Therefore, we were dependent on his testimony from his confirmation hearing. But this testimony gave us precious little on which to evaluate him.

Instead, we have been told that Mr. Estrada is bright, capable, and qualified. His proponents say "trust us, he will make a good judge." Trust is not enough; trust leaves too much to doubt. When considering a nominee, we do not owe the benefit of the doubt to the nominee but, rather, to the courts, the Constitution, and to our civil liberties.

A judicial confirmation hearing is not an intrusive exercise. We do not ask nominees to comment on pending cases or to speculate on unlikely facts. Rather, we only ask them to help us reach a level of comfort with them as potential judges. Without candid and honest testimony by the nominee our advice and consent process is meaningless.

Unfortunately, at his confirmation hearing, Miguel Estrada refused to answer question after question regarding his views and judicial philosophy. Mr. Estrada even went so far as to refuse, when asked by Senator SCHUMER, to name a single Supreme Court decision of which he was critical in the last 40 years. I myself have asked that very same question of many nominees, and every one had an answer—until now. This is not an isolated example. Senator FEINSTEIN asked him to state whether he believed *Roe v. Wade* was

correctly decided, and Mr. Estrada refused to do so.

He refused to provide responsive information to my own questions on a variety of topics, ranging from his views on two recent Federal court opinions striking down the Federal death penalty, to the Government's role in protecting the environment, and to the use of "protective orders" mandating court secrecy in products liability cases. This pattern of evasiveness and avoidance falls far short of what we need to evaluate a candidate's fitness to serve a lifetime appointment on the DC Circuit Court of Appeals.

The importance of the court to which Mr. Estrada has been nominated makes his efforts to hide his views from us all the more serious. The DC Circuit, a court second in importance only to the Supreme Court, is unique among the Federal courts of appeals as the court that reviews decisions of the executive branch and the independent agencies. The rules and regulations reviewed by this court are felt by all Americans every single day. If you work, your safety is protected by rules issued by the Occupational Safety and Health Administration. When we drink water and breathe the air, we are protected by rules issued by the Environmental Protection Agency. When we shop and watch advertisements, we are protected from fraud and deceit by the Federal Trade Commission. And when we see our cable, phone, and internet bills, we can be sure that the Federal Commerce Commission played an important role. The decisions of the D.C. Circuit on these and many other subjects have a real and immediate impact on the lives of all Americans.

My decision to oppose this nomination in the Judiciary Committee was not taken lightly. I have done so only six times in my more than 14 years of service in the Senate, and I do so reluctantly in the case of Mr. Estrada. We recognize that Mr. Estrada is a talented attorney who has compiled an impressive record of achievement, and that he is to be commended for devoting a substantial portion of his professional career to public service.

My decision to support the need for a filibuster on this nomination is also not taken lightly. We take this step reluctantly, and with the full understanding that we are left with no other choice. Our constitutional responsibility to advise and consent has been compromised by a process that has provided us with no opportunity to learn anything about this nominee. If we permit Mr. Estrada's nomination to proceed, we have provided future nominees a roadmap to evade questions and hide who they are. This would be a disservice to the people we were elected to represent.

We cannot support Mr. Estrada's nomination to the DC Circuit in the face of his unwillingness to candidly share his views, his approach and his judicial philosophy. If no further information is provided about Mr. Estrada,

then I will be forced to oppose his nomination.

I thank the Chair.

The PRESIDING OFFICER (Mr. Smith). The Senator from North Dakota.

Mr. DORGAN. Mr. President, I listened to my colleague from Wisconsin, who serves on the Judiciary Committee, on the nomination of Mr. Estrada to the DC Circuit Court. I also listened to my colleague from Oregon and others who have spoken today.

Mr. Estrada has had his name submitted to the Senate by the President, acting under article II of the Constitution. And the President has the right to send nominations for lifetime appointments to the judiciary to the Senate for advice and consent. It is the Senate's responsibility to evaluate the President's nominees and determine whether to vote to confirm those nominees and provide someone a lifetime tenure on one of the Federal courts.

That advice and consent is not in any way subordinate to the President's right of sending a nomination. We both have constitutional obligations. One is for the President to select and send nominations to the Senate. The other is for the Senate to evaluate and provide its advice and consent.

The DC Circuit Court is the second highest court in the land. It is very important that for a lifetime appointment, we decide carefully whether we want to confirm a nominee sent to us by the President. Most of us would not know the nominees personally. That is certainly the case in this circumstance. I don't know Mr. Estrada personally.

I have been to one hearing where he appeared. I was there for only a brief period because a candidate for a Federal judgeship in North Dakota was being heard at that time. This was a nomination of President Bush's. I was pleased to be there to support President Bush's nomination and to support the candidate whose name had been sent to us. I went down to the hearing and supported Mr. Hovland's candidacy. I am proud to say he is now a Federal judge in the West District of North Dakota. He is going to be a credit to the bench. He will be a wonderful Federal judge. I was very pleased to support President Bush in sending this nomination to the Senate.

On that day when he was also testifying, Mr. Estrada was there. That is the only time I have seen him. I was there for only a couple questions, and I don't know a great deal about him but have read a lot about him since.

It is the case with respect to Mr. Estrada's appearance before the committee and also the interviews and discussions prior to his appearance before the Judiciary Committee, that Mr. Estrada decided he would not answer some basic questions put to him by Members of the Senate. Members of the committee were asking some pretty basic questions. Tell us a bit about your judicial philosophy, because you

don't have experience as a judge and you have not served as a judge at any level in the judiciary system. Tell us about how you see this job. Evaluate for us some of the decisions that have been made over time by the Supreme Court, and so on. Mr. Estrada essentially said, I don't care to do that.

Contrast that for a moment, for example, with Dan Hovland who is now a Federal judge in the West District of North Dakota. He was asked: What three U.S. Supreme Court cases can you identify that you disagree with? This is Mr. Hovland. He said: Well, *Behrens v. Peltier*, 1996; a 2002 case, *Thompson v. Western States Medical Center*; and then, of course, the case I suspect most would cite, *Korematsu v. the United States*. That is, of course, the case in which the Supreme Court affirmed the conviction of a person of Japanese ancestry for a violation of a curfew order solely because of the individual's ancestry.

I think now most would view that Supreme Court decision as a profound mistake. Mr. Hovland did. He was asked a simple question. He gave a straightforward answer. He said: Here is my notion of three Supreme Court decisions with which I would disagree. It gave Members a bit of an insight into who Mr. Hovland was, what he thinks. That was helpful.

The same question was asked, for example, of Freda Wolfson: What three U.S. Supreme Court cases can you identify that you disagree with. *Plessey v. Ferguson*, that would come to mind almost immediately for everyone. They held that the State statute requiring passenger railroads to provide separate but equal accommodations for African Americans and Caucasians did not violate the 13th or 14th amendments. It seems to me that is probably an obvious case one would disagree with.

Yet questions of that type were asked repeatedly of Mr. Estrada, and he said he just wouldn't offer an opinion, wouldn't answer the questions. So then the members of the committee said: Well, you served in the Solicitor's Office at the Justice Department. Could we be provided with the memoranda written there, the advice you were offering, to get some insight into how you feel about these issues, how you reason, how you think?

He said, no, those are confidential. Those should not be released.

Well, they have been released in the past. On other occasions candidates have indicated they wanted those papers released. They were released. It gave the committee, when making a lifetime appointment, some better judgment about how this person thinks, how this person reasons, what approach this person takes to dealing with some of these questions. Mr. Estrada said, no, he couldn't do that.

What has happened with this nomination, a circuit court nomination is that, both the President's administration and the candidate himself, Mr.

Estrada, have said: I don't intend to answer questions, and I don't intend to make the information available with respect to what I was doing as assistant in the Solicitor's Office.

If that is the case, Mr. Estrada is then a blank sheet. What are we to make of Mr. Estrada? Who is he? How does he think? How does he reason? Would he be a good judge? This is, after all, a lifetime appointment. This isn't an appointment for 5 years, 10 years, or 20 years. We are being asked by the President to take Mr. Estrada's nomination and say, yes, we will put him on this Circuit court forever, for his entire life, and we have no right to get answers to basic questions, to understand a bit about the philosophy of Mr. Estrada, a bit about his approach, his thinking. We have no right to that?

I have been astounded to hear some colleagues on the floor say: You have a responsibility to approve this nomination. No, we have a responsibility under the Constitution to advise and consent. The President has a responsibility to send us a nomination. We have a responsibility to evaluate it and make a decision. Is this someone who should be given a lifetime appointment or not? That is our judgment. That judgment doesn't rest with others. It rests with us.

I would like very much for Mr. Estrada to give us the information requested. My colleagues on the Judiciary Committee have repeatedly requested this information. I would like very much to see the information. It is entirely possible I would see all of this information, understand a bit more about Mr. Estrada, and decide to support his nomination. I don't know. I would like to see the information and make a judgment.

I believe I have voted for virtually all the nominations the President has sent to Congress with respect to judgeships. I would hope to be able to support this and others as well. But I don't intend to decide that we should force the Senate to vote for a lifetime appointment for a candidate on the DC Circuit Court who tells us nothing about himself.

He seems to suggest, I am here for a job interview, but I will not tell you anything about me. That would be a job interview that would last a very short time. It ought to last a very short time here. When Mr. Estrada and the administration provide the information that is requested, then, in my judgment, this Congress has a responsibility to consider it, and consider it with great seriousness because this is, after all, a Federal judgeship, not just a district judgeship, but a circuit court judgeship of DC, which is the second highest court in the land.

Judge Scalia once said—and I am not prone to quoting him often:

Indeed, even if it were possible to select judges who didn't have preconceived views on legal issues, it would hardly be desirable to do so.

What are the preconceived views on legal issues of Mr. Estrada? Does any-

one know? Does anyone who has spoken in support of this nomination know? Can you answer that question? The answer is no one in this Chamber knows; no one in the Chamber can answer the question because Mr. Estrada and the administration say you are not entitled to know.

They are wrong. The Constitution requires us to know. It says we are entitled to know. I don't believe we ought to vote on this nomination until we have received the information requested. When we do, I think we should vote on this nomination. But until then, in my judgment, this is not a problem of our making, this is not something someone from the other side should shoehorn over here. This is a problem the administration and Mr. Estrada created by deciding on a strategy that, if we allow to continue, would essentially say to the Senate, you consider us for lifetime appointments and we won't give you any information about ourselves as we ask for that consideration.

There are reciprocal obligations here—ours, the President's, and the nominee's. We will and should meet ours as soon as others have met theirs. The first test of that is to send the names of qualified people to the Senate for judgeships. Mr. Estrada may well be very well qualified. The ABA says he is well qualified. The second obligation on the part of those who send his nomination to us is for the candidate himself, or herself, to make themselves available to the Senate, answer questions, and allow us to evaluate whether this is the kind of person we want to provide a lifetime appointment to on the Federal bench. That hasn't been the case at this point.

With respect to this nominee, we are waiting; but we should not vote, and no one in this Chamber ought to pressure others to vote until we have the basic information we have requested. What is so secret about all of this? What is there we should not know? Is there anyone qualified to serve on the second highest court of the land who doesn't have some basic views on past Supreme Court decisions—especially some of the controversial ones—they might explore with us in order to give us some evaluation of how they think and reason, what kind of capability they have to sit on the bench? If such a nominee is sent to the Senate, that nominee ought not ever be confirmed.

I don't believe that is the case with Mr. Estrada. I think he has views on all of these issues. He certainly could tell us his views about Supreme Court decisions with which he would disagree and why, so we could develop some notion of his reasoning. He just refuses to do that. I don't know why. I assume if this is the case with this candidate and the Senate says that is fine, we will see future nominees refuse to answer anything; our advice and consent will become a rubberstamp; and we will not ask people to give us basic information. Then the next candidate will do

exactly the same thing and we won't have a constitutional responsibility at all here in the Senate. We will say, all right, whatever it is you decide to give us, we will take, or whatever you decide to withhold, we will accept.

I am not willing to do that. Why not the materials from the Solicitor's Office? It has been done in other nominations. Why not now? Why won't the candidate answer basic questions? Again, I come here not as a member of the committee and as someone who has a preconceived notion that Mr. Estrada would not do a good job. I don't know. And no one else in the Senate knows. There is nobody in the Senate who can stand up and say Mr. Estrada has answered these questions for us, because he has refused to answer the questions for all Senators. Some in the Senate might be perfectly comfortable deciding the constitutional role granted us in this process of lifetime appointments on the judiciary is not very important. But I am not among them.

THE STATE OF FOREIGN AND DOMESTIC POLICY

Mr. President, let me speak for a moment, while I have the floor, about a couple of other issues that are happening that I think are very important. I know others want to come and speak about the nomination. I want to talk for a moment about what has been happening in our country with respect to foreign policy and domestic policy.

In recent days, we have had the following occur: We wake up in the morning and turn on the television programs. The lead story is, as it has always been in recent weeks, days, and months, the war with Iraq. When is it going to happen? How is it going to happen? When is it going to start? Who is going to support it? Who is going to be involved? Every week, day, and month.

As a result, this economy of ours, which desperately needs certainty, predictability about the future—and this economy, in my judgment, is in a stall, serious trouble—is not going to come out of its problems unless we stop every day the lead news story being about war. I am not suggesting Iraq is not a problem; it is. Saddam Hussein is a bad guy. North Korea is a problem—a bigger problem than Iraq, I might say. Terrorism is a bigger problem than both of them. We have a situation in which we have to deal with all three. I understand that. But the other day we get an orange alert in the country, the second highest alert for terrorist activity in our country, the terrorist threat. Today, I understand we have hardware stores that are out of duct tape. Why? Because yesterday they said we are on orange alert, under the threat of terrorist attack, and we need people to go out and buy gas masks and plastic sheeting and duct tape. So the hardware stores in our country are being cleared out of duct tape. Why? People are concerned about the potential of a terrorist attack in our country.

North Korea. Apparently, we read in the news—I have not heard it in classi-

fied briefings because we have not had any—that trucks are leaving a facility in North Korea, potentially with spent fuel rods, which will, in the not-too-distant future, be turned into weapons-grade plutonium, probably sold to a terrorist; and it is not out of the question that 18 or 24 months from now a terrorist will have a nuclear weapon with which to hold hostage an American city.

Is that a frightening thought? You bet your life it is. So what consumes our attention today? Iraq. Saddam Hussein. Oh, but today is a bit different in that Osama bin Laden also shows up. He is out there. The other day Osama "been forgotten" is what I called him, because you don't hear about him anymore from the administration. They cannot find him, don't know where he is. I have flown over those mountains; it was about a year ago. You can look down and see where the caves are, where Osama bin Laden and his band of murderers plotted the murder of innocent Americans, thousands of them. And so men and women wearing America's uniform went into Afghanistan, kicked the Taliban out, ran the al-Qaida up into the hills. But Osama bin Laden was not found. Al-Qaida still lives. The head of the CIA said a couple of months ago that the terrorist threat against this country is as serious now as it has ever been since September 11. What of terrorism? What do we make of North Korea? What about Bin Laden? And, yes, what about Iraq?

We have had a single track playing now for month after month about the country of Iraq. I want to see regime change in Iraq. I want to see Saddam Hussein displaced. My preference, by far, is that the free world in unison says to this man: You leave, you disarm, or you are going to be disarmed, and you are going to be replaced. I would hope very much the entire free world says that to Mr. Saddam Hussein, but I also hope that we understand in this country—the President and, yes, his key advisers understand—that there are more threats and, in my judgment, at this moment, more serious threats with respect to North Korea and the development of additional nuclear weapons that could possibly go into the hands of terrorists very quickly; more serious threats with respect to al-Qaida which still lives, and Osama bin Laden, who is still broadcasting to those who follow him, which is also a very serious threat to this country and to the free world.

We need to understand that we face very serious problems, and it is not just Iraq. Inattention to some parts of our foreign policy, in my judgment, have contributed to this. I understand North Korea has lied to us. I understand that. But deciding not to talk to them? It is not an option.

There are only two options dealing with a problem that serious. One is military. We are not going to do that. The second is diplomacy, and that means we talk. We talk and we talk

and we talk, and we try to work through these issues.

With respect to al-Qaida and terrorism, the fact we do not mention it, the fact no one will talk about it, the fact it is not something the Defense Department, the State Department, or others want to talk much about does not mean it has gone away. It is as serious today, perhaps more so, than ever, and we have a responsibility to deal with it. I worry a great deal about these terrorist issues and the terrorist threat against our country.

My point is not to say somehow the attention to Iraq is misplaced. It is to say that the sole attention to Iraq at the expense of, in my judgment, a more serious threat from North Korea, the sole attention to Iraq at the expense of attention to al-Qaida and the growth and the continuation of a very serious threat of terrorist attacks is unwise, in my judgment. It makes no sense.

We have a responsibility to protect the national interests of this country, and I will and always have supported our President as we proceed to do that, but I think it is important with respect to not only advice and consent on judgeships, but providing advice on issues as we perceive threats to this country, it is important for some of us to speak up to say: Mr. President, you are right, Saddam Hussein is a bad guy, but you are wrong to not pay attention to North Korea and the war on terrorism with equal vigor and equal strength.

Frankly, no one can take a look at what has happened in the last 6, 8, 10 months and judge there has been that kind of balance. My hope is that in the coming days we will see greater balance dealing with this terrorist threat and also the threat of North Korea producing more nuclear weapons and potentially moving those nuclear weapons into the hands of terrorists who the next time they threaten us will do so with a nuclear weapon.

God forbid we will face a world in which a nuclear weapon is used as an act of terrorism, not killing 3,000 people but 300,000 people or 1 million people.

If ever we wonder about these issues, we have a world in which there is somewhere, we think, around 30,000 nuclear weapons. We do not know exactly. With theater weapons, strategic weapons, somewhere around 25,000 to 30,000 nuclear weapons, one of which, just one, missing or in the hands of terrorists will cause chaos. The explosion of one will be devastating, and the genie will be out of the bottle.

Pakistan and India have nuclear weapons, and the other day they were shooting at each other over Kashmir. Dangerous? You bet your life that is dangerous.

We have a responsibility, especially in the shadow of the terrorist threat against this country, in the shadow of what is now happening in North Korea and the potential of the spread of nuclear weapons, we have a responsibility