

with the Supreme Court relative to this issue.

I want to comment on the more fundamental issue, which is the value of diversity in a university and whether it is conceivable in this country that we will say to universities that they can give additional points for geography, which many universities do, including the University of Michigan. In other words, they can reach out to students in different parts of their State who have been underrepresented and try to get better representation from those underrepresented parts. They can give additional points for that. They can give additional points for gender. If the law school has not had women students, they can give additional points for that in order to overcome the problems which were created when women were discriminated against. They can have an affirmative action program for that. They can give additional points to alumni, kids—and they all do—and athletes—and they all do—and the children of public officials—and many of them do.

Geography alone, which George Washington talked about—I went to a college out east which I know for a fact reached out geographically in this country to try to have good representation from various parts of the country. I come from the Midwest. My SAT scores were not as high as some of the kids' in the East, but the college I went to decided it was important to those kids from the East that they have kids from the Midwest, kids from the Far West, kids from the South, kids from the Southwest, kids from Alaska, kids from Hawaii, kids from Africa—it is important to the education of our students that they go to school with a diverse group of students. So they gave out geographic points. I got points. I do not think I would have gotten into my college, my beloved college, Swarthmore, but for the fact that I came from the Midwest and I was given some additional points. I do not know for sure, but that is my belief, and that is the likelihood, I have no doubt. I know they have geographical affirmative action. Is it conceivable that points can be given for everything but race to achieve diversity, that race is singled out as the one area where we cannot reach out to achieve diversity in our universities? Is it possible that is what we are going to come to in this country, that the equal protection clause will be turned right on its head? The 14th amendment, which was designed, at least in significant measure, to end the scourge of the remnants of slavery, is going to be used to prevent diversity from being achieved in one area where it is most important that we have a diverse university, and that is the area of race. It is the one area where we have had the most difficulty in overcoming the kind of prejudices and obstacles President Washington talked about and for which he said a university was the most suited, other than going to war together.

Our military has done a spectacular job in terms of diversity. It has been a huge factor in the promotion of democracy in this country. Hopefully, we do not have to go to war to promote coming together and learning to overcome prejudices and differences. Hopefully, our universities can be allowed to reach out, as they are with geography, to overcome the fact that some parts of our States are totally underrepresented in our educational institutions, to say, yes, we are going to reach out to that part of the State and we are going to try to get more students from there; they may not have done quite as well on their SATs, because of various historic factors or whatever, but they are highly qualified students, so we are going to give some additional points to those students. But not race? Race would be singled out for not being permitted to be given additional consideration to achieve diversity which is so valuable in education? That would be an unthinkable, unconscionable result, and a distortion of the very purpose of the equal protection clause.

Of all the areas where we have the most hurdles to overcome, most barriers to overcome, more attitudes to overcome, more prejudices to overcome, with all the progress we have made—and we have made a lot—we have a long way to go in the area of race. The idea that somehow or another all that other diversity, all those other additional points can be given—alumni kids, you can get 10 points; athletes, you can be given 20 points; gender, you can be given points; economic, you can be given points—but not race, that would be, it seems to me, singling out race for discriminatory treatment when it comes to promoting diversity at a university.

The law school's current policies have been upheld by the Sixth Circuit as being consistent with Bakke. The Sixth Circuit has explicitly rejected the plaintiff's contention that the system used by the University of Michigan was the functional equivalent of a quota. The Sixth Circuit found that the law school's admissions program is "virtually indistinguishable" from the Harvard man, which Justice Powell held out in the Bakke decision as the appropriate model.

In the University of Michigan's undergraduate admissions program, 110 points out of 150 are given for academic factors, including grades, test scores, and curriculum. The greatest weight, up to 80 points, goes to high school grade point average. Applicants can earn up to 12 points for SAT or ACT scores, up to 10 points for attending a competitive high school, 8 points for taking the most challenging curriculum, and 3 points for SAT quality. Other factors can be considered, including geography, athletics, relationship to alumnus, economic disadvantage. Points can be added for students from various parts of the State which have been underrepresented at the university. Students who have athletic schol-

arships get additional points, children of alumni get additional points, students from economically disadvantaged backgrounds get additional points. And at the University of Michigan, students from an underrepresented racial or ethnic minority or attending a high school serving a predominantly minority population can receive additional points. And the provost can award additional points to applicants at his or her discretion.

The idea it is all right for colleges and universities to give special consideration to all the other groups—children of alumni, large donors' children—how is that one? It is OK to give special consideration to the children of large donors for whatever university purpose that serves—but it is not OK to give additional points to underrepresented minorities for the obvious university purpose that serves, which is a diverse student population, which our first President, the Father of our Country, pointed out in this letter is absolutely essential if this country is going to be one, if this country is going to be unified.

Indeed, he saw that 200-plus years ago. I hope the Supreme Court will have the wisdom of reading that letter and seeing how important it is that President Washington's dream to bring people from different parts of the country, that people of different backgrounds, which is the University of Michigan program, can, in fact, be realized. That is what some of the stakes are in the University of Michigan case.

Since we are talking judicial matters this evening, I wanted to raise that issue, as well.

Mr. SESSIONS. Is the Senator going to another subject for long?

Mr. LEVIN. It will be lengthy.

Mr. SESSIONS. I would like to speak on the Estrada nomination.

Mr. LEVIN. You can talk for quite some time on that. You have talked longer, I believe, than I have on this evening.

Mr. SESSIONS. Not as long as some of the other Members over there.

Mr. LEVIN. Let me try to limit this to about 10 minutes.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

NATIONAL SECURITY

Mr. LEVIN. I will keep the floor and try to keep this down to 10 minutes.

Earlier today we had a hearing in the Armed Services Committee where we received testimony from the intelligence community on worldwide threats to our national security. I gave an opening statement at that hearing, parts of which I want to share with the Senate tonight because of the importance of the subject of Iraq. We have a lot of work ahead of us. We have threats of all kinds, threats which are more immediate, more personal, more imminent, than Iraq, particularly the al-Qaida terrorist network, even though that network has been weakened, it has been deprived of its safe haven in Afghanistan.

It has, just over the last few months, attacked innocent civilians in Bali and Tunisia and has attacked United States service members and civilians in Kuwait and Jordan.

Last month, the United States and coalition forces fought the biggest battle in Afghanistan since Operation Anacosta last spring. Even though our intelligence and our law enforcement agencies are working with allied countries to thwart further attacks in the United States and abroad, the fact is we remain highly vulnerable to al-Qaida, to other terrorist groups. As a matter of fact, the United States is at alert orange now—that is the second highest level of alert in our military forces—and also at heightened force protection levels worldwide. We remain vulnerable. We remain vulnerable not just to conventional explosives but now, we believe, more and more vulnerable to weapons of mass destruction.

Earlier this week, Federal officials even suggested the public should make preparations for a terrorist attack involving chemical, biological, or radiological weapons. While we are placing such a huge focus on Iraq, North Korea, a country that possesses weapons of mass destruction and has ejected the international nuclear inspectors, has declared it is resuming operation of its plutonium-related nuclear facility.

North Korea is not just a country which proclaims it is engaged in a nuclear program as it now has with the enriched uranium program. North Korea is probably the world's worst proliferator of ballistic missile and missile technology. It is on the brink of becoming an undisputed nuclear power. The administration has refused to open a direct dialog with North Korea. That has serious ramifications. Our ally which lives next to North Korea, which surely has got at least as much at stake as we do in the whole matter—and, I think, obviously a lot more since they are the ones nearest the threat—our ally, South Korea, wants us to open a direct dialog with North Korea. They have openly expressed the wish that this country have a direct dialog of the highest levels with North Korea.

The administration has decided not to do that, and all of a sudden, what is obviously a crisis to most of us and most of the world, is not even described as a crisis by the administration. Even though the failure to have contact, the linking it to the axis of evil and the announcement we will have a preemptive policy using military force, could lead to additional provocative and irreversible action on their part because it is stoking the paranoia which exists in North Korea.

On top of that, Iran has admitted now it is mining uranium. That surely must underscore our concern that its nuclear energy program is intended for nuclear weapons, not just for the promotion of nuclear energy. Iraq is the focus and Iraq continues to flout the international community. It is not as-

sisting U.S. weapons inspectors to find or account for chemical or biological weapons programs. Disagreement on how to address the Iraqi threat has divided the U.N. Security Council.

Surely there can be little doubt Osama bin Laden would like to see the United States and Britain attack Iraq without the authority of the world community acting through the United Nations. Keeping the world community together through the U.N. Security Council is exactly what Osama bin Laden does not want to see. He does not want to see a United Nations. He wants to be able to say it is the United States, it is Britain, and it is a few of their personal, close allies. It is not the world that is going after Iraq, it is the United States and Britain that are doing it. He does not want, it is obvious, the world community to be united against the Iraqi threat. He wants to be able, as does Iraq, to characterize the effort as an American/British-led unilateral, not having U.N. authority type of effort.

All of us want Saddam Hussein to be disarmed. The best way to accomplish the goal of disarming Saddam Hussein without war is if the United Nations speaks with one voice relative to Iraq. I want to repeat that, as I think there is so much concern about the possibility of war with Iraq that that particular point is frequently lost.

The best way to accomplish the goal of disarming Saddam Hussein without war is if the United Nations speaks with one voice relative to Iraq.

But if military force is going to be used, the best way of reducing the short-term risks, including risks to the U.S. coalition forces, and the long-term risks, including the risk of terrorist attacks on our interests throughout the world, is if the United Nations specifically authorizes the use of military force. That is the bottom line. The best way of increasing any chance for disarming Hussein without war, and of minimizing casualties in future attacks on the United States if war does ensue is if the United Nations acts relative to Iraq.

The next point, though, is essential as well. Supporting U.N. inspections is an absolutely essential step if we are going to keep the Security Council together. We are not going to have a chance of keeping the United Nations Security Council speaking with one voice unless we support United Nations inspections, which are and have been such an important part of the Security Council's position.

How do we support those U.N. inspections? First, by sharing the balance of the information that we have about suspect sites; No. 2, by quickly getting U-2 aircraft in the air over Iraq, with or without Saddam Hussein's approval, and by giving the inspectors the time they need to do their work as long as the inspections are unimpeded.

I disagree with those, including high officials in our government, who say that U.N. inspections are useless. We

heard before the inspections began from the highest level of this government that inspections were useless. We heard it from Dr. Rice at the White House last week. She said specifically that inspections are doomed to failure.

I am also astounded that some of our highest officials have gone so far as to refer in a derogatory way to the "so-called" U.N. inspectors. If these inspectors and inspections are useless without Iraqi assistance in pointing out where they have hidden or destroyed weapons of mass destruction, why are we sharing any intelligence at all with the inspectors; and why are we apparently finally implementing U-2 flights to support the inspectors?

It is one thing to be realistic about the limitations of the U.N. inspections and not have too high hopes about what they can produce. It is another thing to denigrate their value or pre-judge their value or to be dismissive and disdainful about the beliefs of others on the U.N. Security Council about their value, or to be cavalier about the facts relative to those inspections.

Referring to being cavalier about facts brings me to another point which has to do with the sharing of intelligence information in our possession with the U.N. inspectors. I have followed this issue very closely. I have asked the CIA for months to give us the precise information as to how many suspect sites there are, how many of those suspect sites are of great significance, for how many of the significant sites have we shared information that we have with the United Nations inspectors. They have given me the information in writing but, as it turns out, it is erroneous.

We just began sharing specific information in early January, according to Secretary Powell, who is quoted in the Washington Post on January 9. I can't go into those classified details in the open. I can't give the precise numbers, how many suspect sites we have information on, how many of those suspect sites that we have information on are of significance, and how many of those have we shared with the United Nations. The numbers themselves are classified.

I can say in an unclassified setting, in public, that as of a couple of weeks ago we had shared information on only a small percentage, a fraction of the suspect sites in Iraq, and we had not shared information on the majority of the suspect sites. That was confirmed by CIA staff.

Yet when I asked the Director of the CIA yesterday about this subject, he told us that we have now shared with the U.N. inspectors information about every site where we have credible evidence—all of a sudden, going from a fraction of the sites to we have now shared all the sites.

Then last night, in Director Tenet's presence and in the presence of Senator WARNER, his staff acknowledged that as a matter of fact we still have useful information that we have not shared

with the inspectors—which is the opposite of what Director Tenet told the Intelligence Committee yesterday in open session. If we have not yet shared all the useful information that we have with the U.N. inspectors, that would run counter to the administration's position that the time for inspections is over.

The same type of issue exists relative to the U-2s. The inspectors have asked for U-2 surveillance planes. These are planes which have a capability of tracking those suspicious vehicles on the ground that have been referred to by Secretary Powell in his speech, tracking the vehicles that are at a suspicious site and going to another site. They have the advantage of being able to loiter. Unlike a satellite, a U-2 can loiter and actually keep track of a vehicle as it moves from one suspicious place to another and can connect that information to inspectors in real time. They are intensely valuable to the inspectors. They have asked over and over again for the U-2 flights. Why haven't they been provided to the inspectors?

Well, because Saddam Hussein says he can't guarantee the safety of the pilots. So instead of going to the U.N. and saying: Resolution whatever the number is, the United Nations authorizes these U-2 flights and if Saddam Hussein interferes with these flights that will be considered an act of war against the United Nations—instead of doing that, to give the inspectors this additional capability, at least until yesterday or perhaps today, Saddam Hussein has been given a veto by the U.N.—including us; we are part of the U.N.—over the use of surveillance planes, which would contribute to the likelihood that inspectors would catch him with the goods.

I hope that is over now. I don't know for sure that it is. I hope now there is an arrangement made to use the U-2 flights. But if we believe it is important, short term and long term, to both avoiding war, and if war comes, to reducing its risks, that we have a United Nations that is united, speaking with one voice against Iraq, we then must deal with the United Nations' key request that we have an inspection process which is complete and robust. And we must lead at the United Nations to help make it robust. And that includes the use of the U-2 planes.

We have made the suggestion, Senator CLINTON and myself, in a letter which we sent to Secretary Powell, that that kind of resolution be introduced at the United Nations which would provide that the U-2 planes be authorized by the United Nations, have the United Nations flag, and, if interfered with by Saddam Hussein, that would be considered an act of war against the United Nations and every

member would then be authorized to use military force in response.

When President Bush addressed the United Nations General Assembly on September 12 of last year, he said that:

We want the United Nations to be effective, and respectful, and successful.

We have some responsibility to help the United Nations achieve that. Saying to other countries, including allies, that if you don't see it our way you must have some ulterior motive, doesn't help us in leading the United Nations to a united front against Saddam Hussein. While a number of heads of State and Governments have called for the United Nations Security Council to take appropriate action, necessary action in response to the threat, and others have pledged to contribute military forces to that effect, others believe we should give strengthened inspections the time that they need to finish their job. But all of the groups agree on the necessity of disarming Iraq.

Rather than following a course that divides the United Nations and separates us from some of our closest allies, we should fairly consider courses of action that unite the world community against Iraq.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Pennsylvania be allowed 6 minutes without my losing the right to the floor and that I immediately be recognized thereafter.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have sought recognition to comment about the current procedures with respect to the selection of judges, and what is happening in the Senate today is a constitutional revolution.

The Constitution provides that the Senate will give advice and consent to the President. And the tradition of this country for 215 years has been that the President makes selections as he chooses, and advice can come from the Senate. Consent has been given without challenging the President to a partnership arrangement where the Senate has to consent to the nominee before the President can submit the nominee to the Senate with any chance for confirmation.

What the Democrats are doing here today is really seeking a constitutional revolution. What they want as the minority party in the Senate is a full partnership with the President on selecting Federal judges.

What we are doing with Miguel Estrada, and other nominees who are coming up for an executive session to-

morrow, is really a prelude to the nomination of the next Justice for the Supreme Court. The effort is being made by the Democrats to have their acceptable ideology without the traditional deference which has been paid to the President.

The Senate has been maneuvered into a position here, an institution with lines being drawn in the sand, and Republicans on one side and Democrats on the other being backed into a corner—sort of a macho-macho game where no one wants to play the chicken game. What we are really seeing is gridlocking this institution on a permanent basis, if no one yields.

The Judiciary Committee has three nominees on the Executive Calendar tomorrow, and the Democrats have served notice that they are going filibuster. If at least one Democrat does not vote to end the filibuster, nothing will happen there.

So we have a long litany of judges—some of whom have been held up for 2 years—and nothing is going to happen.

What we may be seeing here is the foundation laid for a grand political argument in the Presidential election of 2004. We are laying it right on the line. If the American people want judges confirmed, there are going to have to be 60 votes in the President's party.

Both sides have been at fault in the past, in my opinion. When President Clinton was in the White House and the Republicans controlled the Senate, we wouldn't confirm people. There were some breakthroughs but relatively few. When President Bush submitted nominees for 2 years, or a year and 7 months, the Democrats stopped the nomination process.

It is high time we had a protocol which both sides respected wherein so many days after a nomination, there is a hearing, so many days later, a vote in committee, and so many days later, a vote on the full floor.

But we are really heading for extraordinary deadly deadlock in this body. I think we ought to recognize it for what it is. There is a constitutional revolution underway here to change the fundamental way judges are selected.

If the Democrats insist on a full partnership with the President, if any party insists on a full partnership with the President of the opposite party, then it is going to take 60 votes. And we may be setting the stage for 60 votes in the 2004 election.

But it is my hope that cooler heads can prevail and we can sit down and work this out so that when the shoe is on the other foot, we don't have this kind of gridlock and this effort to really upset longstanding constitutional principles.

I thank the Chair. I yield the floor.