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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 14, 2003, at 2 p.m.

Senate

FRIDAY, FEBRUARY 14, 2003

The Senate met at 10 a.m. and was called to order by the Honorable LINDSEY GRAHAM, a Senator from the State of South Carolina.

PRAYER

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

Providential Lord of History, we prepare for the forthcoming Presidents' weekend by expressing our gratitude for the way You have raised up great Presidents to lead us in each stage of our progress as a Nation. Today we remember the faith in You that produced the greatness of Washington and Lincoln. Reverently, we recall Washington's confession of faith, ''Providence has at all times been my only dependence,'' he said, ''for all other sources seem to have failed us.'' And we call to mind Lincoln's declaration of dependence, ''I have been driven many times to my knees by the overwhelming conviction that I had nowhere else to go.'' The same affirmation of trust in You has been sounded by dynamic Presidents throughout our Nation's history.

Thank You for Your hand upon President George W. Bush. Bless him as he expresses his trust in You in these strategic days of his Presidency. We praise You for the integrity of authentic faith expressed by the women and men of this Senate. It is with gratitude that we will say ''one Nation under God, indivisible.'' On this day of duct tape, dithers and panic, we turn to You for peace. This is a Nation You have blessed; we will rejoice and be glad to serve in it! Amen.

PLEDGE OF ALLEGIANCE

The Honorable LINDSEY GRAHAM 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 14, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LINDSEY GRAHAM, a Senator from the State of South Carolina, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. GRAHAM thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The distinguished acting majority leader, the Senator from Utah, is recognized.

SCHEDULE

Mr. BENNETT. Mr. President, this morning the Senate will resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit. Again, if Senators desire an opportunity to speak on the nomination, they are, of course, encouraged to do so. As announced last night by the majority leader, there will be no rollcall votes during today's session.

When the Senate completes its business today, it will stand adjourned for the Presidents Day recess until Monday, February 24. Members should expect the next rollcall vote to occur at 5:30 in the afternoon on Monday, February 24. The majority leader will have more to say regarding the schedule later today prior to today's closing.

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. Under the previous order, the Senate will now go into executive session and resume 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.

The ACTING PRESIDENT pro tempore. The distinguished acting majority leader.

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

Mr. BENNETT. Mr. President, like every Senator, I am sure, I have had the experience this last week and a half of listening to the arguments both for and against Miguel Estrada as we have gone through the first filibuster of this particular session. When we come back on February 24, we will undoubtedly be back into the filibuster. At that time, I would expect the focus perhaps to shift from a discussion of Miguel Estrada's shortcomings or qualifications to a discussion of the obstruction of the business of the Senate by members of the minority.

As I have listened to this debate, I have realized something in what I would consider a larger context than the fight over Miguel Estrada. There is something going on about which, as Members of this institution, we need to stop and think. It is something that is quite significant and potentially a major sea change in the way the Senate does its business—and I hope I am not overdramatizing it—perhaps a major sea change in the institution itself. Like most major changes, it has crept up on us. It is not something that anyone sat down, thought through, proposed, and adopted.

Going back in the Senate's history, I will outline what I see happening. I hope I can put it in context. There was a time—and it was not that long ago—when nominees, be they to executive positions or to the bench, were almost automatically approved by the Senate unless, in the course of the confirmation hearings, something truly disabling was discovered.

The President has the right to nominate. The Senate has the right to consent, or advise and consent, in the language of the Constitution. That meant, historically, that the Senate automatically would approve the nominee unless they found something significantly disabling. Along the way—and I cannot put my finger on who started it or when it started or which party was involved—the idea came: Well, maybe there is nothing disqualifying about this nominee, but for one reason or another—usually partisan considerations or ideological ideas—we just do not like him. So let's start to use our power to examine his record in the confirmation process as a means to blacken his record, as a means to denigrate this individual, in the hope that we can change some votes and perhaps deny this President the opportunity to put in place the people he wants.

As one party would do it and then the power in the Senate would shift with the next election, the other party would say: Well, let's do it, too. Let's do what we can to make this individual look far less qualified. Even though we know he is qualified, let's find something we can argue about, let's find something we can quibble over, and maybe in the process, even though it is damaging to him personally, we can succeed in preventing this President from being able to have his nominee confirmed.

It reached such a point in the nomination of Robert Bork to the Supreme Court that a new verb entered the political vocabulary. There are not very many political leaders who have verbs named after them. One of them is Joe McCarthy, and we now have the phrase ''McCarthyism.'' Everybody knows what it means, even if they have never heard of Joe McCarthy.

When I was an intern in the Senate in the early 1950s, I used to follow Senator McCarthy around. That was my assignment, to follow him around. I would take notes and see how he was really performing as opposed to how the press reported his performance.

I attended every session of the Governmental Affairs Committee, then known as the Government Operations Committee, where Senator McCarthy was presiding as chairman and paid attention to his methods as a chairman. I reported back to my Senator that Senator McCarthy is smarter than the press gives him credit for; he is, when he is not on the issue of communism, a competent chairman, and runs his committee in a legitimate kind of a way.

My Senator wanted to get that flavor because he knew McCarthy personally in other ways but he was not a member of the committee and he just wanted some eyes and ears in the committee to see what was going on.

I have that view of Senator McCarthy, but if I use the term ''McCarthyism'' now, everyone knows what I mean. Senator McCarthy's methods with respect to communism became so extreme that his name entered the world as part of the political lexicon.

Robert Bork, like Senator McCarthy, has been forgotten by anyone who does not have experience with him or with the circumstance, but the word ''Bork'' has entered the political lexicon as a verb. It comes from those who were opposed to Robert Bork's appointment to the Supreme Court, who then said, after they had savaged his reputation, savaged him and his privacy to the point where we actually have what is known as the Bork law, which makes it illegal to check out one's record at a video store. In other words, it is now against the law because of the Bork law to monitor which videos one might check out at Blockbuster video because it is considered an invasion of your privacy. Prior to the Bork law, those who ''Borked'' Robert Bork went so far into his life as to determine which videos he checked out and then made those public and said that any man who would watch these particular videos is obviously not qualified to sit on the Supreme Court.

When we had other nominations come up, those who savaged Robert Bork's reputation used his name as a verb and spoke prospectively of these nominees and said ''we will Bork him'' or ''we will Bork her,'' and everyone knew what they meant. We saw that in the confirmation process of Clarence Thomas.

I suggest to all of my colleagues they read the biography of our colleague from Pennsylvania, Senator SPECTER. He played a pivotal role in both the confirmation fight over Robert Bork and the confirmation fight over Clarence Thomas. He was against Mr. Bork. He was for Justice Thomas. He describes in his book the reasons why. Once you read his book, you find that his reasons for voting against Robert Bork had nothing to do with any videos that Mr. Bork may have checked out, nothing to do with the character assassination campaign that was raised against him, but a genuine concern on the part of Senator SPECTER as to what kind of a Justice Robert Bork would make. When it came to Clarence Thomas, Senator SPECTER applied the same standard and came to the conclusion that Clarence Thomas was qualified to sit on the Supreme Court.

I hope I don't embarrass my colleague from Pennsylvania when I quote one of the lines out of his book, the White House called him and asked him how he felt about Clarence Thomas, and he said: Well, he is no Brandeis, but he will do. And he has subsequently said in his writing—he, Senator SPECTER—that he is satisfied with the job Clarence Thomas is doing on the Supreme Court and feels that Clarence Thomas has grown as a Supreme Court Justice and has a clear understanding of the law and is performing more than adequately in his present assignment.

Clarence Thomas used a phrase that may have been forgotten now but that struck me with great power at the time. He referred to the way he was being treated as a ''high-tech lynching.'' That was very emotional language for many people who come out of the portion of the country where lynchings regrettably used to be a part of the culture. He said this is a high-tech lynching because he was being ''Borked'' on television, he was being ''Borked'' on the cable channels, he was being ''Borked'' on National Public Radio by those journalists who decided because, we do not like his ideology, we will destroy his reputation, besmirch his integrity and turn him into a caricature of the man he really is. An escalation, if you will, once again, of this trend that moved from the old attitude, if he is not incompetent we will automatically vote to confirm him, to the new attitude, if we disagree with him, we will savage him in some way.

After the Clarence Thomas affair, things continued to go forward and escalate. I remember in my campaign when I spoke out against this tendency to savage people. Republicans would come up to me and say we agree with you. You are right. We are going to elect you to the Senate because that is the way you stand on it. And then one Republican said to me, what if Governor Clinton is elected and you are in the Senate and he nominates Mario Cuomo to the Supreme Court, what will you do? This was a question asked of four of us who were running for the Republican nomination. The other three all said: I will fight Mario Cuomo

to the last ounce of my strength. I will use every sinew in my body to see that Mario Cuomo does not get on the Court. I said: I am sorry, I just told you that I deplore this process of savaging individuals. Mario Cuomo is not the person I would appoint to the Supreme Court if I were to be President. Mario Cuomo does not represent the judicial philosophy that I think is right for a member of the Supreme Court, but Mario Cuomo is qualified to be a Supreme Court Justice and if Bill Clinton is elected President and he nominates Mario Cuomo, unless something comes out in the hearings that we do not know, I would vote to confirm him.

Many of my conservative friends were horrified I would say that. But I said: Look, we have to do something to get back to the historic pattern of civility and trust and acceptance of difference of opinions and get away from the process of Borking people, be they Republicans or Democrats.

I was very interested to have an individual come up to me and say: I don't agree with you on a whole series of things but I am going to vote for you for one reason only. And I said: Well, that is fine, I am always glad to get your vote; what's the reason? He said: You are consistent. Your answer, with respect to Mario Cuomo, convinced me that even if I don't agree with you, I can depend on you to do what you will say, even if it is not for your political benefit.

Fortunately in my view, President Clinton never nominated Mario Cuomo for the Supreme Court. But if he had, unless something disqualifying had come out in the confirmation process, I would have voted for him.

We were in a very close Senate, 50–50, with the Vice President breaking the tie with what the voters left us with in the last Senate. Now it is 51–48–1, which is what the voters have left us with in this Senate, a barely workable majority.

We were in the last years of President Clinton's Presidency; in the weekly policy luncheons that we Republicans hold during the same time the Democrats are in their weekly policy lunches, members of our conference would stand up and rail at ORRIN HATCH and say you've got to stop this judge or that judge from going forward. We have to make sure this person doesn't go on the bench.

And ORRIN said:

> I can't hold him up any longer. Fairness requires that they get a hearing and that they get a vote.

Well let's filibuster them. If they get on the floor we can prevent them from passing, we can prevent them from getting 60 votes.

To his credit, Senator HATCH said:

> Let's not even think of going there. Let us not escalate this process to the point where 60 votes are routinely required to put anybody on the bench.

Senator LOTT, the majority leader, said exactly the same thing when Bill Clinton was President, and some of those, perhaps a little more passionate in their ideological purity than the rest of us, were demanding a Republican filibuster against some Democratic judges. ''No,'' said Senator HATCH, the chairman of the Judiciary Committee; ''no,'' said Senator LOTT, the majority leader, ''we will not get there. We should not escalate this to that point.''

Now the decision has been made to escalate it to that point. Miguel Estrada is fully qualified by the standards of everybody who has examined him, from an objective point of view.

We hear that one of his past supervisors has written a letter: I think he was something of an ideologue—no. I made the point before and repeat it here. If that is what he thought, why did he continue to employ him and why did he leave a paper trail of glowing recommendations?

I have been the CEO of a company. I have done annual performance appraisals. I know what you put down on paper, in writing, as to the performance appraisal of that individual is what you have to live with. You better be honest in that appraisal because if you decide to puff that appraisal up and put that in writing just so you don't offend somebody, and then later on you say he is not qualified and you are going to fire him, the lawyer who represents that somebody is going to pull out the file and the record and say:

> If he really wasn't any good, why did you put this down on paper at the time he had his appraisal? You are the one who is not honest, not him, if that is what you have done.

I have that same attitude towards—I believe it is Professor Bender, who now is saying Miguel Estrada is not qualified; that when he had the responsibility, not in a political setting, to lay down Miguel Estrada's qualifications and performance, he in writing said he was absolutely outstanding in every way. So I have little or no sympathy for the current verbal statements of Professor Bender.

I don't know why the Democrats have decided to escalate this historic fight, that has been escalating all these years, to the new level of saying it will now take 60 votes to confirm any judge. They could have picked somebody, I think, a little more sympathetic to their cause as their poster child for this particular decision. But for whatever reason, they have decided they are going to escalate the whole process, set a new standard and a new requirement for the Senate on the issue of Miguel Estrada.

Senators have stood here and held up the copy of the Constitution and told us how much they revere and admire it, and have taken an oath to uphold and defend the Constitution, and they say we are only doing our constitutional duty. The Senate has a constitutional duty which we would abrogate if we do not filibuster this nomination.

There is nothing in the Constitution with respect to a filibuster. The filibuster comes out of the Senate rules, not the Constitution. Furthermore, the Constitution does clearly and specifically assume some circumstances so important that they do, in fact, require a supermajority. The Constitution clearly and specifically says you cannot consent to a treaty without 67 votes. The Constitution clearly and directly says you cannot convict a Federal official, be it the President or a Federal judge who has been impeached by the House, unless you have 67 votes. The Constitution very clearly lays out those areas that are so important that what we refer to as a supermajority is required. Confirming a judge is clearly and specifically not one of those situations. To argue that we have a constitutional duty to change the rules with respect to judges is, in my view, to misunderstand the Constitution. In my view, the Founding Fathers clearly intended the Senate to consent to the President's choices on a majority vote.

I hope over this recess, as we go out and meet our constituents, we discover that they have issues on their mind other than the Senate rules; they are concerned with something different than supermajorities and cloture votes and filibusters. We are going to hear today what the inspectors will say after their latest trip to Iraq. We don't know absolutely what they will say but the preliminary press reports tell us that the inspectors are going to tell us that Iraq remains in material breach of the United Nations resolution and continues to violate all of the instructions the United Nations have given.

Our President has told us on this issue that time is running out. The papers are suggesting that military action in Iraq is not months but perhaps only weeks or maybe even days away. Our constituents are concerned about al-Qaida and the possibility of attacks from the terrorist organization to which the Iraqis have given refuge and significant aid. They are concerned about what will happen to their sons, their daughters, their wives, their nieces and nephews who are in uniform.

When we come back on the 24th of February, I hope we can look at this whole fight over Miguel Estrada in the historical context I have tried to lay down here this morning and say to ourselves it is time to step back a little from what President Clinton called the politics of personal destruction. It is time to step back a little from the escalation that has been going on in both parties for decades over the confirmation fight. It is time, in my view, to accept the historic pattern that somehow got this country through the first 200 years of its existence, that says the Senate does not require a supermajority to confirm a circuit judge and, under those circumstances, be in a more sober and efficient situation that allows us to focus on the concerns on which our constituents and the rest of the world are focused.

I hope after a week of reflection and experience with our constituents, we come to that conclusion and see this

nomination brought to a vote, and those who feel he was not responsive in his answers exercise their constitutional duty and vote against him, and those who think that they should, exercise your constitutional duty and vote for him, and the matter should be resolved in the manner that our Founding Fathers intended, which is by a majority vote on the floor of the Senate and not in the manner that has come as a result of the escalating partisanship of the past few decades.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to be recognized to speak as if in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, first, let me say to my colleague from Utah, Senator BENNETT, whom I respect and work with closely on a number of items, I thought he came to the floor of the Senate this week and made a valuable suggestion. He came to the floor of the Senate and said: Let's break this impasse over Mr. Estrada. If he will produce the legal documents, which Miguel Estrada has written as a member of staff of the Department of Justice, if he will produce those and if he will answer the questions, we can finally bring this to a vote.

He challenged me personally on the floor. He said: What will you do if we produce these documents? My response to him was as honest as could be. If he is honest and cooperate in producing the information and answering the questions, he deserves a vote. That is my personal feeling. I don't speak for any other Senator.

Within hours of that exchange on the floor of the Senate, the White House sent a lengthy letter refusing to disclose any of the legal memoranda of Miguel Estrada saying that, frankly, it was privileged information and that Members of the Senate should not read this man's writings about the law. I was sorry to see that happen.

I thought Senator BENNETT was on to something very good that would have broken what appears to be a partisan impasse and finally put the information before the Senate and before the American people so Miguel Estrada would have moved to a vote.

Incidentally, having said on the floor what I thought about it, I went to a number of Democrats and said: Do you feel as I do? If he will disclose his legal memoranda, and if he will answer the questions that might arise from that, and perhaps a few that he avoided in the course of the hearing, would you vote to give him a vote? The answer was affirmative to a person; because, frankly, then we would know for whom we are voting.

But what we are dealing with here is a pattern of concealment by this nominee. He is not the first. In fact, it has become almost a tradition that judicial nominees come before the Senate—and maybe it harkens back to the Senator's earlier reference to Robert Bork. They are afraid if they tell people what they think and who they are they will get into trouble.

Mr. BENNETT. Mr. President, will the Senator yield for a question?

Mr. DURBIN. I am happy to yield for a question.

Mr. BENNETT. Going back to what happened the other night, as the Senator from Illinois understands, I am not burdened with a legal education. So when I made my suggestion, it was in the spirit of a former CEO trying to resolve a controversy with one of his competitors or suppliers. But I understand, and ask the Senator from Illinois if he could confirm this understanding, I understand that Miguel Estrada is perfectly willing to allow that set of memoranda to which we have referred be made public. But he acted as an attorney advising a client, and it is the client in this case that says for the client's reasons—in this case the Department of Justice—we will not allow the memoranda to come forward.

My question is, Under those circumstances, isn't it appropriate that the attorney is bound not to release the memoranda by himself?

Mr. DURBIN. Let me say, in response to the Senator from Utah, that I don't apologize for not being a lawyer. I am proud to be one. But when the Senator came to the floor with a commonsense solution to this impasse, there is a question about Miguel Estrada and what he believes, who he is, and what his values are, for goodness' sake, let us put that information before the Senate and give the man a vote, which he deserves, that is a commonsense response from everyone—I think lawyer or otherwise. Then the lawyers got involved. And as the Senator mentioned, Miguel Estrada said, I will turn over all of this information, and go ahead, read it; there is nothing I want to hide here. Then the Department of Justice and the White House stepped in and said: No, no, no. We will not release it. This is privileged as attorney-client communication, which is one of the privileges under the law as I recall from law school.

But let me show you this chart.

Mr. BENNETT. If I might pursue just a moment——

Mr. DURBIN. I yield for a question.

Mr. BENNETT. Is it not true that Miguel Estrada is under a professional requirement in those circumstances not to release this information; even though he may want to, his professional ethics prevent him from doing so? And, if I may, the second question is, If that is, indeed, the case, is it fair to attack him for not being responsive when all he is doing is upholding his professional responsibilities?

Mr. DURBIN. In response to the question, let me say that it may be arguable as to whether or not there is an attorney-client privilege which makes this a confidential communication—these legal memoranda that he can't give to the public because his client is not giving approval—that may be the case. But let us argue for a moment that it is the case. Let's say, forget whether or not it is a questionable position. Let's assume it is right; that is, what you say is correct. Under the law, the client can always waive the privilege. If I have hired an attorney to represent me, and that attorney has written legal memoranda inserting a point of law, and then someone asks for that legal memoranda, that client or the attorney says, sorry my client, DURBIN, hasn't given a waiver of this privilege, this is privileged communication between the attorney and client, but I, the attorney, say, will you waive that privilege, will you disclose it, and if I say, yes, I affirmatively waive the privilege, at that point it becomes public.

The obvious question here is, Who was Miguel Estrada's client when these legal memoranda were written? His client was the Department of Justice. His client was the White House. His client was, in fact, the group that has now nominated him to this DC Circuit Court.

And so here you have a curious situation. Miguel Estrada says, I would love to let you see this, but my client won't allow me and won't waive the privilege, and, therefore, I can't.

The client—the White House—is saying, go ahead and approve this man. There is nothing to worry about. But we will not let you see what he has written. He was our attorney. He wrote for us. We will not let you see what he has written.

Would that raise a question in the Senator's mind, in all honesty and good faith? If the Department of Justice won't waive this privilege so we can read these documents, does it raise a question in the Senator's mind as to whether there is something in there that bothers them and worries them?

Mr. BENNETT. If I might respond to my friend from Illinois, it would raise the question that the Senator is concerned about, if indeed the papers were written just for this White House. But the historic fact is that the papers were written for the first Bush administration and for the Clinton administration—specifically for the Solicitors General in those two administrations. The specific Solicitors General who were involved, Democrat as well as Republican, said, don't allow the memoranda to come forward.

So it is not a case of George W. Bush's administration having hired this fellow and gotten information from him and then sent him up here while refusing to allow anything he told them to be made public. It is a different fact situation.

I am persuaded by the fact that every living Solicitor General—Republican or

Democrat, old or young, liberal or conservative, everyone who is still breathing—has said, don't allow this information to come forward. Under those circumstances, I find it difficult to hold Estrada to task for his failure to let this come forward when, in fact, the decision has been made and unanimously supported by every living person who has ever sat in the position of his client.

Mr. DURBIN. Let me respond in this way. If the Senator accepts what the Senator has just argued—that every time we elect a new President every lawsuit filed by the U.S. States Government would have to be refiled because there is a new President, there is a new Attorney General, there is a new Solicitor General—that isn't the case. There is a continuity of government. Presidents come and Presidents go. Senators come and Senators go. Attorneys General come and go. But the U.S. Government continues. For Miguel Estrada to argue that because President Bush's father did not waive the privilege then he can't waive the privilege today, I think is just plain wrong. I think the continuity of government argues otherwise.

Let me show you this chart that might be helpful in understanding what is being asked for is not unusual.

Look at this chart. The Bush administration claims that the request for Mr. Estrada's legal writings is unprecedented, it has never happened, it is a matter of privilege. But the Department of Justice has provided memos by attorneys during the following nominations: When William Bradford Reynolds was nominated to be Associate Attorney General, his legal memoranda were produced by the same Department of Justice which now argues they cannot do it. Robert Bork was nominated to be a Supreme Court Justice, and his legal memoranda were produced by the same Department of Justice which now says we cannot read Miguel Estrada's memoranda.

For Benjamin Civiletti, when he was nominated to be Attorney General, the same ruled applied. The Department of Justice said: Read those so you understand who he is. Now they say: You cannot read what Miguel Estrada wrote when he worked for us. We also have Stephen Trott, for the Court of Appeals for the Ninth Circuit; and Justice William Rehnquist, the Chief Justice of the Supreme Court.

So for the Department of Justice to argue this just is never done, here are five specific examples where the Department of Justice has waived the privilege and produced the writings.

It comes down to the basic point and question before us, What is my responsibility, what is your responsibility, and the responsibility of the Senate when a person seeks a lifetime appointment to the second highest court of the land? Do we have a responsibility to just nod approval, to stamp ''approved'' on them, and move them through or do we have a responsibility to ask basic questions?

Some of them are obvious: Is this person a person of good character? Does this person have a good legal education? Does this person have a good mind and a good temperament?

I would tell you, in each and every one of those categories, I think the answer is affirmative when it comes to Miguel Estrada. This is an impressive man. What he has done with this life, what he has overcome by way of personal challenge and adversity is really inspiring. I say that having met him and sat down with him and read his story. All those things are true.

But we also have a responsibility to ask: What is in your mind? What are your values? What principles will you bring to this job—not next year but 10 years from now if you are still sitting there as a Federal circuit court judge? How will you be motivated to make a decision?

I am not going to ask any judicial nominee to tell me how they will decide a specific case. That is not fair; that is not right. But to ask a judicial nominee basic questions you would ask of a district court judge in Utah and I would in Illinois, that is not unreasonable because we want to try to create a mental picture of who this person is and what they bring to the job.

Miguel Estrada did so well—straight A's—on all the things I mentioned before: honesty, character, personal background, academic achievement, legal achievement as well. All these things, straight A's.

Then we came to the basic question of: In your mind, who are you? How do you view the law? And that is where he failed. That is why his nomination is stopped on the floor of the Senate.

I asked him a question. It is written down here, and I will not recount it because I have already put it in the RECORD. Think about this question for a minute. I said to him: Can you identify any Federal judge, living or dead, whom you admire, whom you would like to emulate if you were appointed to the Federal judiciary? End of question. Not a trick question, no. He said: I would not want to answer that question. I would not want to name a single Federal judge whom I admire or would emulate from the bench.

That troubles me.

Mr. BENNETT. Mr. President, will the Senator yield for one final comment?

Mr. DURBIN. I am happy to yield.

Mr. BENNETT. I promise I will not interrupt the Senator further.

Mr. DURBIN. No, I am happy to yield.

Mr. BENNETT. But before we get too far away from the items on his chart, I simply want to come back again to the fundamental point I am trying to make.

The Senator from Illinois has, indeed, precedent on his side that there are circumstances where the client is willing to waive the privilege. Just because the client has been willing to waive the privilege in other circumstances does not mean the present client is required to waive the privilege in the present circumstance.

Each one of those circumstances is different. They are tied together by the fact that they are nominations and that the Justice Department is involved, but the fact situation in every one of them would be different from the fact situation here. The fact situation here is that Miguel Estrada worked for the Solicitor General, and every single living Solicitor General has said, regardless of what happened with William Rehnquist or Robert Bork, in this circumstance the memoranda should not be disclosed.

Miguel Estrada has a professional responsibility not to disclose, and he is being attacked for his decision to abide by his professional responsibility. If the White House and the Justice Department should be attacked for their refusal to grant the waiver, go to it, but do not take it out on the lawyer who is standing on the basis of his ethics.

That is the only point I wish to make. I shall not belabor it, and I shall not interrupt the Senator from Illinois further. I thank him for his courtesy.

Mr. DURBIN. No. I am happy to have the statement from the Senator from Utah. I do not consider it an interruption.

Let me say as an aside, I think it is healthy for us to have this kind of dialog on the Senate floor, and I have made it a policy both in the House and in the Senate to always yield for questions. I think if this is truly a deliberative body, then opposing points should be expressed on the floor, and there isn't enough of it, there isn't enough real debate on the floor.

I thank the Senator from Utah for coming here in good faith and stating his position. I may disagree with it, but for the sake of the RECORD and for the sake of public debate, I am glad that he is here. I am glad that he asked the question. And I know he feels as I do, he opens himself to questions when he comes to the floor. And I think that is part of our responsibility.

I have been advised by my staff—I did not realize this—that when White House Counsel Alberto Gonzales replied to our request about the documents related to Miguel Estrada, they did not claim a privilege, which surprises me; I thought that was what they would say, that there was some legal privilege here or some executive privilege. Instead, the White House Counsel's Office insists that we already have enough information about this nominee, that they don't need to provide this.

So we had a nice discussion about privilege and whether or not that applies. It appears the White House has said: We are not going to argue that—because they know they have produced this kind of information in the past.

But let me go on for a moment and try to get to the heart of why this is an important debate. This goes way beyond any particular nominee. As I said

earlier, I have no personal animus against this man, Miguel Estrada. I admire him personally. He was an immigrant to the United States. My mother was an immigrant to the United States. I think immigrants bring a great deal to this country. They bring an energy and creativity and a courage that really makes this a great nation.

Miguel Estrada fits that category. He came here as a teenager from Honduras. He learned the English language, went on to be accepted, I believe, at Columbia University, where he distinguished himself as a student. And that is no mean feat for a person who is new to the English language. Then he went on to Harvard Law School, where again he distinguished himself as a law student. So in each and every one of these categories, this is a man whom you would move toward as a good potential nominee for the Federal court.

But despite all of this knowledge and all of this experience, when it came time to ask him who he was, legally what he believed, he just refused to answer. And the question is, at that point, Should the Senate have said: Well, I guess we tried our best; let's put him on the bench for life; let's hope for the best?

We cannot do that. And I will tell you why we cannot do that. Because under the Constitution, which we have sworn to uphold, and which we take very seriously, in article II, section 2, it says:

> The President. . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for. . . .

This tells those who are watching that what is at stake here is not just a discretionary decision by the Senate as to whether or not we will investigate a judicial nominee. We have a constitutional obligation. And if we believe in that investigation that a nominee is wanting, might not be a person suited to serve in the Federal judiciary, I think we are duty bound to vote against him.

Let's look at the record with George W. Bush, a Republican President, and the Senate, which for 16 or 17 months was under Democratic control. What happened? Did the Democratic Senate say to the White House: You cannot have Federal judges? We are Democrats. You are a Republican. Stop sending us Republican nominees? No. No. That did not happen.

In the course of that period of time, 100 judges, nominated by President Bush—Republican nominees—were approved by the Democratic Senate Judiciary Committee. I sat on that committee. I voted on virtually every one of those nominees in committee and on the floor. Those nominees were approved, knowing full well that the President had his right as the President to name his judges.

How many were rejected? If 100 nominees of the Bush White House were approved, how many were rejected by the Democrats when they were in charge of the Judiciary Committee? Two. One hundred approved; two disapproved—Judge Pickering of Mississippi and Judge Owens of Texas. Of the 100 that were approved, trust me, overwhelmingly, these were people of a conservative political philosophy, people who reflected the President's political philosophy and probably his legal philosophy. We knew it going in. That is the name of the game. The President has that authority. We asked the basic questions, were satisfied with the answers; the nominee moves forward. Two were rejected.

Now Miguel Estrada comes before us. Last Monday three more of President Bush's nominees were approved unanimously by the Senate, but Miguel Estrada still is on the calendar.

The question that has been raised on the Republican side is, why are you asking these difficult questions of Miguel Estrada? It is interesting to look at statements made by Republican Senators who are now arguing on behalf of Miguel Estrada. The first, of course, comes from Senator ORRIN HATCH, a friend of mine, my colleague in the Senate, chairman of the committee. When he led the fight to oppose a Hispanic nominee, Rosemary Barkett, this is what he said:

> I led the fight to oppose [Judge Rosemary Barkett's] confirmation because . . . [her] judicial records indicated that she would be an activist who would legislate from the bench.

Senator HATCH is entitled to that decision whether she is Hispanic or not. But when we ask similar questions today about Miguel Estrada, we are being called unfair. He could ask questions and have doubts in his mind about whether this judicial nominee by President Clinton would be an activist. We are not allowed to ask the same questions about Miguel Estrada without being accused of being unfair to Hispanics. This is by any measure a double standard.

Let me give you another quote from Senator HATCH, who quoted Alexander Hamilton when he said:

> The Senate's task of advise and consent is to advise and to query—ask questions—on the judiciousness and character of nominees.

It isn't just the character, it is the judiciousness, the judicial judging of nominees. That is a reasonable thing to ask. I could see a person with the most outstanding legal credentials, academic credentials and personal integrity, bring a philosophy to the bench which I think would be damaging to the country and our Constitution. Should I ignore it? I can't. I am dutybound because I have sworn to uphold the Constitution, to put men and women on the bench who will uphold it as well, and make decisions which are consistent with our values. Senators may see those values differently, but at a minimum we should be able to ask the questions of the nominees: What do you believe? What is important to you? When we asked those questions of Miguel Estrada, he evaded them completely.

Senator SCHUMER from the State of New York, on the Judiciary Committee, asked him a question similar to the one I referred to earlier, when Miguel Estrada refused to name one single Federal judge living or dead who he admired or would try to emulate. Senator SCHUMER decided to take a different approach. He asked Miguel Estrada to name a Supreme Court decision with which he disagreed. First he asked within the last 40 years and then he said, just in general, any Supreme Court decision you would disagree with?

Miguel Estrada, having served as a law clerk at the Supreme Court, in the Solicitor General's Office in the Department of Justice, with all of his background, having argued cases 15 times before the Supreme Court, refused to name one case in the history of the Court with which he disagreed.

What springs to mind? You don't need to be a lawyer. The Dred Scott decision, decided by the Court in the 1850s, which institutionalized slavery and led to the Civil War. Was that a wrong decision by the Supreme Court? I don't know of anyone who argues it was not. Miguel Estrada, who wants to go to the second highest court in the land, wouldn't name Dred Scott as a wrong decision.

Let's take another, Plessy v. Ferguson. This was a case which said when it came to race relations in the United States, the standard would be separate but equal, leading to a pattern of segregation in America finally broken by Brown v. the Board of Education in the 1950s and the civil rights laws. I don't know of a single person, other than some of the strangest and most radical, who wouldn't argue that Plessy v. Ferguson was a bad decision by the Supreme Court. Miguel Estrada, despite all of his background, wouldn't name Plessy v. Ferguson as a bad decision.

So to those who say the Democrats are nitpicking, you are really holding this man to an impossible standard, think about that.

I failed to add this. The same question about Supreme Court decisions you disagree with is a common question asked of judicial nominees. In fact, Republican Senator SESSIONS of Alabama asked that exact question of a Hispanic nominee, Richard Paez, nominated by President Clinton. When he asked the question, Democrats didn't stand up and say, that is unfair, that is a foul ball, you can't ask that question. Not at all. Paez answered the question, and for his forthrightness and candor before the Republican-controlled Senate Judiciary Committee, his nomination was held up over 4 years before finally a cloture motion was filed and it was brought to the floor.

For those who are following this, the standard being applied to Miguel Estrada is one that has been time tested on both sides. His response, sadly,

does not meet the measure of what we should expect nominees for a lifetime appointment to the Federal bench.

Senator LARRY CRAIG has also commented about this process. He is a conservative Republican. He would be proud of that description. He said:

> Any notion that there is a rebuttable presumption on behalf of a nomination—that the Senate ought to be basically pliant in response to a nomination—is altogether unconstitutional, even anticonstitutional.

These were arguments made by Republican Senators when the nominees came from a Democratic White House. Now with this one nominee being questioned as to whether he is going to answer the basic queries, we are being told we are unfair. Senator CRAIG said to do otherwise is to avoid our constitutional responsibility.

What is this approach we are seeing by judicial nominees where they are unresponsive to questions? It is not new. If you followed the televised hearings involving Clarence Thomas, you can recall when he was asked and replied that he had no opinion on the issue of abortion. Clarence Thomas, no opinion on abortion, this man who had been a Catholic seminarian, who had been a law student when Roe v. Wade was decided, said he had no opinion. He was allowed to get away with that answer. I think we learned a lesson there. We have learned it over and over. If nominees won't be open and honest with us when it comes to their beliefs, it puts us at a disadvantage in terms of trying to understand what they will do on the bench. It was predictable what Clarence Thomas was likely to do on the Supreme Court as a Justice. We have seen that has been borne out in more cases than not. The fact he would say to the Judiciary Committee with a straight face, I have no opinion on the issue of abortion, raises in my mind a question of his candor and a question of the Judiciary Committee's meeting its responsibility.

This is a statement or a quote from the Legal Times newspaper last year. This was Larry Silberman, who is a DC Circuit Court judge. It says:

> President George W. Bush's judicial nominees received some very specific confirmation advice last week: Keep your mouth shut. Scalia called DC Circuit Judge Silberman at one point, the latter recalled, and told him he was about to be questioned about his views on Marbury v. Madison, the nearly 200-year-old case that established the principle of judicial review. ''I told him that as a matter of principle, he shouldn't answer that question either.''

When you start law school, if not the first day, the second day, we study Marbury v. Madison because unless you understand Marbury v. Madison, you don't understand why there is a Federal court system and why it has the power to review legislation passed by Congress. It is so basic. It is like saying, read the Constitution before you come to constitutional law class.

Here we have a man aspiring to sit on the Supreme Court who is being instructed, don't say a word about Marbury v. Madison, a 200-year-old court case. So it is a tactical strategy, used by nominees as often as they can get away with it, to say as little as possible.

Let me also go to the question of Hispanic nominees. Here we have a statement made on the floor that Mr. Estrada should be approved because he is of Hispanic origin. I am proud of the fact that, as a Senator from Illinois, I was able to appoint the second Hispanic district court judge in our district's history to the court in Chicago. He is from Puerto Rico. He has done a great job, and I am sure he will continue to. We have a growing Hispanic population in our Nation, and certainly in my home State. They bring great value to our country and to my State. I think it is reasonable—in fact, advisable—for us to bring to the bench men and women of diverse backgrounds so that when defendants and plaintiffs and their lawyers come before that bench, they see represented in the court the diversity of our Nation. I think that is a good thing to do.

When the White House has decided to act affirmatively to bring Hispanics to the Federal bench, I think they are doing the right thing. I applaud that. I think we should bring as much diversity as we can with qualified individuals to the bench. But the arguments being made that because we have questioned Miguel Estrada in whether or not he has been forthright in his answers has something to do with the Democrats' view of Hispanics' contribution to America doesn't hold up.

One of the Republican Senators said in the Dallas Morning News earlier this year:

> If we deny Estrada a position on the DC Circuit, it would be to shut the door on the American dream of Hispanic Americans everywhere.

But the reality is this. Until last week, Mr. Estrada was the only Latino nominated by President Bush to any of the 42 vacancies that have existed on the 13 courts of appeal. In contrast, President Clinton nominated 11 Latinos to our appellate courts. He nominated 21 Latinos to the district courts. Sadly, when the Republicans controlled the Judiciary Committee, and President Clinton was in the White House, they blocked several well-qualified Latinos from getting hearings, including Enrique Moreno, Jorge Rangel, and Christina Arguello.

I recall the Moreno nomination. Enrique Moreno was born in Juarez, Mexico, under the poorest of circumstances. His family emigrated to El Paso, TX, where they worked as blue-collar workers. He grew up under the toughest of circumstances, but he went on to great distinction in law school. And he was sent before the Judiciary Committee and wasn't even given the dignity of a hearing—without being given a hearing and, certainly, no vote. When asked on the floor, Senator HATCH said that is because the two Republican Senators from Texas didn't approve him. Well, that is their right. Under the blue slip process—an arcane, but important process we have followed in the past—they could stop him, and they did.

I don't recall the hue and cry then from any Republican leaders that somehow it was discriminatory against Hispanics that two Anglo Republican Senators from Texas would stop a well-qualified Hispanic nominee. But they did.

The same thing was true for Jorge Rangel, nominated to the circuit court of appeals, who finally, after waiting and not receiving the approval of the two Senators from Texas, said: I give up, I am throwing in the towel. This is all about politics, and no matter what I say or do, they are not going to approve me.

He walked away from that process. That is an unfortunate example of what can happen.

Mr. Estrada was given a hearing and an opportunity to answer questions, and he has been given repeated opportunities to provide legal writings so we can make a decision on him. I stand before the Senate today, as I have in the past, to say if he is open and honest and cooperative with the committee, he deserves a vote. If we receive the legal memoranda and writings and have a chance to ask questions related to those in some areas he has not answered in the past, and he gives open and honest answers, then his nomination should move forward.

I see my friend and colleague from Ohio, Senator DEWINE, in the Chamber. Not 2 or 3 weeks ago, several nominees from his State came before the Senate Judiciary Committee with Senator HATCH as chairman. Two of them were fairly controversial. The hearing, I am sure Senator DEWINE recalls, went on for 12 hours. It was one of the longest I have ever seen. One nominee, Mr. Sutton, was given a lot of questions by a lot of different members and he answered them. Though I didn't agree with his answers, I have to say in all candor that he didn't avoid the questions, as we have seen with Miguel Estrada under the circumstances. So I think that is an important difference to be made.

THE DANGER OF EPHEDRA

Mr. DURBIN. Mr. President, I want to touch on one other issue not related to the Estrada nomination before I yield the floor. It will take me about 15 minutes to complete the presentation I am about to make. Then I will be happy to yield the floor. It relates to a decision that was made this week by a county in New York, Suffolk County. They took a historic step to protect the residents of their county from harm, even the dangerous and deadly harm of dietary supplements. You know about these dietary supplements. You cannot walk into any drugstore or turn on the TV or go to a convenience store or a gas station that you don't see someone trying to sell us a pill to make us thin. These dietary supplements, I guess, help some people to lose

weight. Doctors argue back and forth about that.

It turns out that some of these dietary supplements contain a chemical—a naturally occurring chemical—called ephedra, which is dangerous. Suffolk County in Long Island banned the sale of ephedra products because the Suffolk County Department of Health Services determined that ''dietary supplements containing ephedra alkaloid are too dangerous to be sold within the county of Suffolk.''

Last year, the U.S. Army moved to protect service men and women and the employees who use the base by also banning the sale of ephedra products in commissaries across the United States.

Sadly, it would seem that despite these decisions by local and State governments and by some agencies of the Federal Government, our Federal Government, in general, and particularly our Department of Health and Human Services, has consistently refused to take the necessary action to protect America's families and children from products containing ephedra.

Since last August, I have repeatedly called on Secretary Tommy Thompson, and I renew the call today, to ban ephedra products in the United States. The Secretary has the authority to do so. There is no excuse for the delay. I have asked him to use his authority under DSHEA to declare ephedra an imminent hazard and take it off the market, in the same way as it was done in Suffolk County and other cities and counties, and in certain States it was done in our military posts. The Secretary has refused to respond. His responses have not been helpful.

As chairman of the Government Oversight Committee, last year, I held two hearings on this topic, challenging this administration to act. I am not the only one who has done so. Last year, the Canadian Government banned products containing ephedra. They said you cannot sell them there because they are too dangerous. They kill people.

What kind of products am I talking about? Are these weird, remote things you never run across? No. Metabolife—have you ever heard of it? They do a lot of advertising. Metabolife diet pills—an energy supplement, they call it, to help you lose weight. They do sell a product that contains ephedra. This is what I am talking about. These are the drugs that can be a danger to certain people. There are others. One is called Yellow Jackets. I will get to that in a moment because there is a sad and tragic story about these. It says ''built as an extreme energizer.''

I recently went to a junior high school in Springfield, IL, and I asked the boys and girls: How many have heard of Yellow Jackets? Half of the kids raised their hands. Do you know why. You don't need a prescription. You can walk into any convenience store or gas station and you can buy them two or three at a time.

Sadly, these pills taken by kids can kill them—kill them. I will tell you of a sad story where it occurred near my home. I have given this information to Secretary Thompson. He has ignored it. Nothing has happened. There are no excuses now for what we presently face. The best he can give us is, he says these products ought to have stronger warning labels.

What would a warning label say if it was honest about the product ephedra? It would have to say if you are going to take Metabolife, for example, which is known as a dietary supplement and classified as a food under our strange Federal laws, if you were going to take this product, here is the warning label you would have to put on it: Taking this food product will increase your risk of heart attack, stroke, seizure, and death.

Can one think of another food product sold in America where we identify on the label that it can be lethal if you take it? In most cases, in most civilized nations, we would not allow a product that could kill you to be sold as a food product in any circumstance.

Some people argue, you can take enough aspirin to kill you. This is all true, but when it comes to this product, they are selling it to children—this Yellow Jacket product and this product, Metabolife—to virtually anybody who can put money on the counter, with no warning as to the potential of harm.

In reality, how can the Secretary rely on warning labels for a product that is found to be so dangerous? Let me make it clear, the only reasonable step to take is to take these products off the market. If this administration, and particularly Secretary Thompson, continues to delay this decision, sadly he will have to answer the question of how he can account for the numerous people who continue to lose their lives because of these dangerous products.

The Secretary has the power under existing law to take these products off the market. He has failed and refused to do so. As the Department delays, terrible things occur.

I told you I would recount an incident involving this particular product, Yellow Jacket. Last September, in Lincoln, IL, a few miles from where I live, a young man 16 years old, a healthy, athletic, high school student named Sean Riggins was getting ready for a football game. He went to a local convenience store and bought Yellow Jackets, an extreme energizer. You will find them for sale. You are going to find them in North Dakota. You are going to find them as well in Rhode Island. You are going to find them in Ohio. They are everywhere.

This boy bought this product, grabbed a Mountain Dew, which contains caffeine, washed it down, and died. He bought them at a convenience store, washed them down, and died. It is incredible to think this could happen, and the autopsy confirmed this was the reason for his death.

When we say to Secretary Thompson, for God's sake, protect the children from this happening again, he waits, he fails to respond. He says he is thinking about it.

On September 6 last year, because of these Yellow Jackets, Sean Riggins, a healthy, athletic high school student had a massive heart attack and died. When you look around the Senate, you will see pages working on the floor in the Senate. It is a time-honored tradition. These are young men and women of high school age. When you look at them, you are looking at a person of the age of Sean Riggins who thought he was doing the right thing to get ready for a football game. Sadly, he was preparing for a funeral—his own.

He was the only child of Deb and Kevin Riggins from Lincoln, IL. His parents, thank God, have decided to go on a crusade to try to protect other kids. They turned their grief to positive action. They set up the Sean Riggins Foundation for Substance-Free Schools. I commend them for their courage. They are going to coaches, teachers, and parents saying: For goodness sake, talk to your kids about this. We know about marijuana; we know about cocaine; we know about heroin; we have to do our part in telling them how dangerous it can be. We know how dangerous tobacco and alcohol are. We are ignoring the obvious. These are for sale everywhere. They are cheap and kids are buying them. Let me be honest with you; some kids buy these pills and drink beer with them and think this is a brand new high and die as a result—Metabolife, Yellow Jackets, and a variety of other names.

The question before us now is, Should we act? And the answer is obviously yes. Mr. President, did you know the NCAA, the National Football League, and the International Olympic Committee have all moved to protect their athletes by banning ephedra? And yet, Secretary Thompson refuses to protect innocent children who buy this product.

The Rigginses are not alone in their grief. The Suffolk County, NY, ban I mentioned was imposed this week was also as a result of a young person's death. In 1996, Peter Schlendorf of Northport, Long Island, 20 years old, died from taking ephedra. His parents have joined the Rigginses in this sad alliance in the memory of their sons to try to warn parents.

The 7–Eleven stores—we see them all around—used to be one of the stores that sold ephedra products. They decided it is not safe. They will not carry ephedra products anymore.

Think about it; all this action is taking place without the Federal Government stepping in to protect us. That is hard to believe.

There are also lawsuits underway. The trial lawyers of America are convenient whipping boys. People blame them for a lot of things—too many frivolous lawsuits, high insurance rates, and the like. The fact is, if the trial lawyers of America were not suing this industry, changes would not

take place because this Government is not doing its job. This administration is not doing its job.

If we look at the situation, Metabolife is now peddling a product they say is free of ephedra. They want to make it clear you have a choice. They are trying to figure a way to back off the thousands and thousands of bottles of this product they have already sold.

In October, a Federal jury found Metabolife 356, this dietary supplement, containing ephedra that was ''unreasonably dangerous,'' although you can buy it over the counter without a prescription, and awarded four injured Americans $4.1 million to compensate them for their injuries and the wanton bad behavior of the Metabolife Company. Many other cases have been settled with large awards.

The action is in the courts because there is no action in Washington. Secretary Thompson and the Department of Health and Human Services refuses to respond, refuses to act. People die, and their survivors go to court holding these companies responsible. Why isn't this Government holding these companies responsible? Why aren't we banning the sale of these products now?

The medical evidence is overwhelming. In January of this year, researchers from Yale, the University of Texas at Houston, the University of Michigan, the University of Cincinnati, and Brown University reported in the journal Neurology that those taking one-third of the manufacturer's recommended daily dose of these ephedra products increase their risk of hemorrhagic stroke three times. In February, an article in the Annals of Internal Medicine showed that ephedra use associated with a greatly increased risk for adverse reactions compared with other herbs, and the authors suggested its use should be restricted.

This study found ephedra use resulted in a 720-times increase in adverse reactions compared to ginkgo biloba use and in hundredfold more adverse reactions compared to other herbs that were used which they think are safe. Secretary Thompson knows this. The medical evidence is there.

Metabolife, when they were asked to produce information for Congressman WAXMAN and myself, said in 1999, for example, they did not have any instance of anybody taking their pills and having a bad result. But when Congressman WAXMAN and I, as well as the trial lawyers, put them on the spot and made them produce all the information sent to them, we found 100 people before 1999 with serious adverse reactions, including heart attack and stroke.

These companies selling these products have been irresponsible in the marketing of this product. They sell them to children. They know they cause adverse health consequences, and they continue to do so because this Government will not step in and stop them. The burden is on Secretary Thompson and the Bush administration. Do not look the other way. Do not ignore the deaths that are occurring. Do not ignore the fact that 23 States have now moved to restrict the sale of these products because the Federal Government refuses to accept its responsibility.

It is time for us to act and to act now before there are more innocent victims.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Ohio.

TRIBUTE TO JIM MCKEE

Mr. DEWINE. Mr. President, I rise today to pay tribute to a dear and cherished friend, a mentor and a role model, former Yellow Springs, OH, chief of police of 34 years, Jim McKee, who passed away on January 18 of this year at the age of 73.

Raised in Springfield, OH, Jim McKee moved to Yellow Springs when he was 18 years old, fresh out of high school, in search of a job. During his first year in Yellow Springs, Jim held a number of different positions, working in a shoe repair shop and later at Mills Lawn Elementary School.

It was at Mills Lawn Elementary School that I first met my future wife Frances, in first grade, but it was also at Mills Lawn I first met Jim McKee. Jim was the person who kept things going at Mills Lawn. I remember how much respect, love, and admiration the students had for Jim.

I first saw in Jim the ability he had to connect with people. I saw it as a child. I remember he would gather the students together and talk to them about how we needed to keep the place looking good and how important that was. I remember how we looked up to him and how much we respected him.

Eventually, Jim McKee took a job at Wright Patterson Air Force Base near my hometown of Yellow Springs. But by 1957, Jim decided he needed to move on. True to form, Jim saw this change not as a bad thing but really as a new opportunity to do something he had always dreamed of doing, and that was to get involved in law enforcement. This was his chance, his opportunity. Before long, he was realizing that dream. The village of Yellow Springs then hired him as a police officer. He joined a department of two officers and a chief, a small department at the time. Within 2 short years and the recognition of his talent and his hard work, Jim McKee was appointed chief of police.

In this new leadership position, Jim McKee soon found himself dealing with issues he probably did not think he was going to be dealing with, issues of historic importance, because at that time the civil rights movement was beginning to sweep our country. The civil rights movement had reached Yellow Springs, a small community in southwest Ohio, my hometown. It reached Yellow Springs sooner than most other parts of the country.

Jim McKee was one of the few African-American chiefs of police in the State of Ohio. Jim McKee guided my hometown with great skill through a very difficult period of time. As one of the few African-American chiefs of police in the State, really one of the few in the country at the time, Jim McKee faced his own civil rights issues early on in the movement. Everybody in Yellow Springs, a community then and now of great diversity and a community that then and now embodies a person's right to free speech, everybody in Yellow Springs respected and liked Jim McKee. That made all the difference in the world.

Whether Jim realized it or not during this tumultuous era, Jim was in fact playing a part in our American history. Jim McKee kept the peace, maintained order, and all the while respected people's freedom of speech, their right to demonstrate, and their civil rights. He did it in a professional way.

I remember when Dr. Martin Luther King came to Yellow Springs to deliver the commencement address at Antioch College. Chief McKee, of course, provided his security detail. Years later, recalling this experience with Dr. King, Chief McKee had this to say:

> At the time there were rumors they were out to get him. I saw him do his nonviolent teachings. I drove around in the car with him for 2 days. He was a perfect Christian gentleman and I was frightened to death because I was providing his security. We told people he was staying at the Antioch Inn, but in fact he was right across the street from where I live—in the home his wife, Coretta, lived in as a student at Antioch years before. You would think they would have figured it out, with all the police cruisers parked out front. I was never so glad to see a plane take off.

Despite whatever concerns Jim McKee may have had, the chief performed his duties with a great sense of professionalism, with honor and courage. Though he dealt with significant issues on the national stage, Chief McKee dedicated his career to Yellow Springs and to keeping the community he loved so much safe and free from crime.

As Members of the Senate know—or may not know—Yellow Springs is not a large city. It is a village. It is a small village where people know their neighbors and watch out for one another. Even today, I believe there are probably only about eight or so police officers on the force. Chief McKee, as the local police chief, was really an icon in his own community. He was greatly admired and respected as an officer, as a protector, but most of all as a friend.

Though I first met him as an elementary school student, actually in the first grade, I had the opportunity later on to reconnect with him. Our lives came together again when I became assistant county prosecuting attorney and he was by that time the dean of the chiefs of police in Greene County. I knew him then and later when I became the prosecutor of our home county. We worked on a number of cases that arose out of Yellow Springs, several very difficult rape cases. We