

So we come here today not with any personal animus against Miguel Estrada. To the contrary, on a personal basis, he is a very extraordinary individual personally, academically, and professionally. But we have a right to ask these questions. Let me restate that. We have a responsibility to ask those questions, to make certain that each man and woman headed for this awesome lifetime appointment, this awesome position of responsibility, really is the person we want in that position.

Now, make no mistake, with President Bush in the White House, the nominees are more than likely to be Republican, more than likely to be conservative, more than likely to be members—proud members—of the Federalist Society. I know that. That is the nature of this process, the nature of politics. Yet it is still our responsibility to make certain they are just conservative and not extreme in their positions. We cannot draw that conclusion on Miguel Estrada because he has carefully concealed what he really believes. And that is why we are here.

So as a result of focusing on this nomination for 3 straight weeks, we have ignored so many other issues that should be brought to the Senate. We could resolve this issue tomorrow morning easily.

Senator BENNETT, a Republican, of Utah has come to the floor and made a suggestion that I think is eminently reasonable. Let Miguel Estrada turn over his legal writings so they can be reviewed by Senator HATCH and Senator LEAHY. And if they find anything in there of moment, of consequence, or of controversy, let them follow through with the questions or, if necessary, a hearing, and let's be done with it, a vote up or down.

Senator DASCHLE came to the floor today, the Democratic leader, and said that would be perfectly acceptable. We would have the information, and then we could reach our conclusion. And in the process we could be protecting our responsibility as Members of the Senate.

It has nothing to do with Miguel Estrada personally, but it does have something to do with our constitutional authority and responsibility to review each nominee.

EPHEDRA

Mr. President, I would also like to address another issue that is totally unrelated.

On February 14, a Friday, I stood in this spot and spoke about an issue, one that has been on my mind for almost 6 months, an issue which worries me, concerns me, because it relates to the health and safety of American families.

On that day, I challenged the Secretary of Health and Human Services, Tommy Thompson, under his authority to protect American families, to protect them against a nutritional supplement known as ephedra. You will find this supplement in a lot of diet pills, pills that are being sold over the

counter as a supplement or vitamin or food product. They are sold as a way to lose weight or increase your energy or performance.

People come in and buy them, with no restriction on how old you have to be or what your health is or what might interact with these supplements. And people buy those and find out, in many instances, that not only don't they work, they are dangerous.

I have challenged Secretary Thompson for 6 months—6 months—to take these dangerous products off the market, and he has not done so. That was February 14.

On February 16, a pitcher from the Baltimore Orioles dropped dead during training. He had cardiac arrest, and the coroner who examined his body afterwards—those who did the autopsy—disclosed the fact that he had used these supplements with ephedra. That was 2 days after I had given that speech.

Time has run out for Steve Bechler and for many like him when it comes to protection from the harm of dangerous dietary supplements containing ephedra. We cannot bring Steve Bechler or my own constituent in Lincoln, IL, Sean Riggins, back. But we can fight to make sure this dangerous product is taken off the market immediately.

Sean Riggins was a 16-year-old boy. And about 4 weeks after I held a hearing in Washington, he went into a convenience store in Lincoln, IL, a small town, and bought—off the counter, with no identification, no check—a pill that was supposed to help him to perform better as a football player. The pill had ephedra in it. As best we can determine, Sean Riggins—this healthy football player, 16 years old—washed down that pill with Mountain Dew or some other product with caffeine in it and went into cardiac arrest and died. This healthy young man died, after taking a pill sold over the counter that contained ephedra.

I cannot think of another product that has generated so many adverse events, so many bad results—some extremely serious, even fatal—and yet has failed to generate any response from this Government to protect families and individuals buying these products.

The Food and Drug Administration has received over 18,000 reports of adverse events, serious health consequences, from those using ephedra and within those 18,000 over 100 deaths. Yet the Food and Drug Administration and Secretary Thompson refuse to act. They want to study the issue. And as they study, innocent people die.

Last August, I wrote to Secretary Thompson and urged him to ban these products. At that time, Lee Smith, an airline pilot from Nevada, had not yet suffered the debilitating stroke that cost him his health and his job due to ephedra.

I again wrote to Secretary Thompson on August 22. At that time, when I sent him a letter begging him to do some-

thing about these products, my constituent, Sean Riggins—that healthy 16-year-old boy in Lincoln, IL, who played football and wrestled for his high school team—was still alive. He died September 3, after consuming an ephedra product called yellow jacket. You will find those by cash registers at gas stations and convenience stores across America—kids popping them because they think they make them better performers when it comes to sports or, even worse, taking these pills and drinking beer, craziness that leads to terrible health consequences. And those pills are sold over the counter, with no Government control.

I wrote again, and I spoke directly to Secretary Tommy Thompson in September and October. My Governmental Affairs Subcommittee had hearings on the dangers of ephedra in July and October.

I again urged the Secretary, in a letter sent to him less than 1 month before Steve Bechler of the Baltimore Orioles died. Incidentally, did you see the followup articles in the sports pages, as other athletes, professional baseball players such as David Wells came forward and told his story about how he wanted to lose some weight, and he took an ephedra product and his heart was racing at 200 beats a minute. He flat-lined. He was almost in cardiac arrest before they finally brought him back.

These are not sickly individuals. These are healthy athletes who are taking these products sold over the counter and risking their lives in the process.

Yet the most we can get from Secretary Thompson in response is a suggestion that maybe we need a warning label. When the reporters asked him this past weekend about Steve Bechler of the Baltimore Orioles, his death because of ephedra, the Secretary was quoted as saying: "I wouldn't use it, would you?"

Well, I must say to the Secretary, this is not a matter of his personal preference. It is not a matter of whether as a consumer he would buy the product. It is a matter of his personal responsibility, his responsibility as Secretary of Health and Human Services to get this dangerous product off the shelves of American stores today and to protect families.

I am not the only person calling for this ban on ephedra products. The American Medical Association, representing over 200,000 doctors, called on Secretary Thompson to ban ephedra products. They didn't do it last week after Steve Bechler died. No. They did it over a year ago after Canada had banned this product for sale in their country. They went to Secretary Thompson and said it is dangerous to sell in the United States. He has done nothing.

Let me tell you another thing you might not know. The U.S. Army has banned the sale of ephedra in their commissaries worldwide after 33

ephedra-related deaths occurred among American servicemen. Does this make any sense? We believe as a government that we need to protect the men and women in uniform and so we ban the sale of these products at commissaries across the world, and yet the Secretary of Health and Human Services and the Commissioner of the Food and Drug Administration will not ban the sale of these products in convenience stores and drugstores and gas stations across America.

When you ask him about it, the Secretary says: I am studying it. I have a group called the RAND Commission that is going to study it.

With all due respect, we don't need another study. The Food and Drug Administration has received over 18,000 adverse reports about ephedra. The FDA could do followup on the most serious ones. In fact, the FDA did commission a review of adverse reports several years ago. That review by Drs. Haller and Benowitz established that 31 percent of the reports were definitely or probably related to ephedra and an additional 31 were deemed to be possibly related.

We understand what we are up against. Ephedra is a danger. It is so dangerous that when it was used in its synthetic form with caffeine, that was banned over 15 years ago. They said you couldn't sell a drug in America, nor could you sell an over-the-counter drug product in America that contained ephedra and caffeine because, put together, it is a dangerous and sometimes lethal combination. But yet if you step back from the over-the-counter drugs and call it a nutrition supplement, a vitamin, a food, you are totally exempt from that prohibition. You can combine those two lethal substances, ephedra and caffeine, and sell them with impunity. Does that make any sense? Is that protecting consumers across America? Is that what you expect from your government?

Certainly it is not what I expect. Many of these companies say it is a natural product. Ephedra is naturally occurring. That is no defense. Arsenic is a natural product. Hemlock is a natural product. That doesn't mean that they are safe. In fact, they are dangerous.

We have seen a lot of studies that have come out about ephedra. We know what needs to be done. Many States have already taken action. Because the Federal Government has failed to act, over 20 States have enacted restrictions on the sale of ephedra-containing products.

Incidentally, if you think these products are something you have never heard of, the leading sales of ephedra products are under the brand name Metabolife 365. You have seen them advertised on television and in magazines. Every time you walk into a drugstore and convenience store, you find: Metabolife tablets help you lose weight. Look carefully. Many of them contain ephedra, this lethal drug which has killed so many people.

Suffolk County, a week or so ago in New York, decided to ban this product as well after a 20-year-old named Peter Schlendorf died in 1996, and others suffered serious consequences. They understood, as the U.S. Army, Canada, Britain, Australia, and Germany, that action had to be taken to protect the residents. The National Football League, the NCAA, and the International Olympic Commission have reached the same conclusion, banning the use of this product by athletes.

I wrote to the Baseball Commissioner, Bud Selig, last week and to the Baseball Players' Association urging them to follow suit. The question isn't whether these individual organizations will show responsibility. The question is whether this Government will accept its responsibility.

I don't know Secretary Thompson that well. I have met him a few times. He is a very likable person. He certainly has had a distinguished public career in the State of Wisconsin, serving as a legislator and Governor of the State for many years, one of the most popular elected officials in its history. Everyone tells me this man really understands public service. I believe it.

This really seems to be a blind spot. When I talked to Secretary Thompson on the phone about these products, he said: How are we going to stop these fellows from selling these products and endangering people? I said: Mr. Secretary, you can stop them. You have the authority to stop them.

Time passes and nothing happens. I understand this industry is powerful. I have heard from them. I have heard from my colleagues in the Senate and House who have said: Don't take on these folks in the vitamin and nutritional supplement industry. They really have a lot of political clout. They do. But for goodness' sakes, if you can't stand up to an industry that is selling a lethal product to protect American families, why in the world would you take the oath of office to serve in the Senate? I think every Member understands that responsibility. It goes beyond political fear. It goes right to the heart of your political responsibility, the oath of office we all take and one we all value so much.

In closing, I say to Secretary Thompson, you have another chance now. It is a chance which I pray you will take. The last time I made a speech on the floor of the Senate about this issue, Steve Bechler of the Baltimore Orioles, a man in his early twenties, a promising athlete with a great future ahead of him, was still alive. Sadly, he is not alive today. He took this product and he died as a result. Others will, too.

That story, that tragic story of Steve Bechler, Sean Riggins, and so many others will be repeated over and over again. This industry may have political clout, but it does not have a conscience. It is up to the Secretary, as head of the Health and Human Services Department, to accept his responsibility to protect American families. A

warning label is not enough. You cannot get by with putting a label on this product, saying: Caution, use of this product may cause stroke, a coronary event, or death. Why in the world would you allow such a product to be sold over the counter, unregulated in terms of the age of the buyer, unregulated in terms of the dosage? How in the world can you justify that kind of a thing?

The Secretary needs to accept his responsibility, and if he does, I will be the first to applaud him. But until he does, stay tuned. You will continue to hear these speeches on the floor from me and others while helpless victims across America fall because of their consumption of this deadly product.

Mr. REID. Will the Senator yield for a question?

Mr. DURBIN. I am happy to yield.

Mr. REID. As the Senator knows, the Senate has been tied up in the matter of Miguel Estrada for 9 or 10 days. From what the Senator said, I don't know much about the product, but he has made a very persuasive argument. It seems to me if the administration and the Secretary, as part of the administration, refuses to do anything administratively, maybe we could well use some Senate time debating this issue. Maybe there should be a moratorium put on the sale of this until further information is obtained on it. I make that suggestion.

My direct question, if the Secretary refuses to do something forthwith, wouldn't we well use the time that is now being spent on this nomination talking about this product that has killed people as the Senator has related?

Mr. DURBIN. The Senator is absolutely right. In fact, we not only could, we should. We should accept that responsibility. We do have this Government which has three coequal branches. If the executive branch and Secretary Thompson refuses to use the authority he has under the law, frankly, I think we should ban the sale of this product in the U.S.

As the Senator knows, we have been tied up for 3 weeks because Miguel Estrada refuses to disclose legal writings he has made. Even Republican Senators have suggested that he should.

We have waited for Republicans to understand that with more information, we can put this behind us and move on to other important business—not just questions about health and safety, but questions about the economy of this Nation, issues on which we ought to be debating and acting.

In closing, I am just going to ask Secretary Thompson again to take this very seriously. I hope we don't have to read about more athletes and other unsuspecting individuals and children who lose their lives as a result of these dangerous products. I say to any citizens following this debate, please think twice before you use a product containing ephedra. There are too many

cases of death and serious health consequences for people who thought they were taking an innocent little pill that can be sold over the counter at a convenience store. In fact, many have turned out to be lethal doses that have killed or caused a great deal of harm.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TALENT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON of Florida. Mr. President, the courts provide the foundation upon which the institutions of government in our free society are built. Their strength and legitimacy are derived from a long tradition of Federal judges whose knowledge, integrity and impartiality are beyond reproach.

The Senate is obligated by the Constitution—and the public interest—to protect this legacy and to ensure that the public's confidence in the court system is justified and continues for many years to come.

As guardians of this trust we must carefully scrutinize the credentials and qualifications of every man and woman nominated by the President to serve on the Federal bench.

The men and women we approve for these lifetime appointments make important decisions each and every day, which impact the American people. Once on the bench they may be called upon to consider the extent of our right to personal privacy, our right to free speech, or even a criminal defendant's right to counsel. The importance of these positions and their influence must not be dismissed.

We all have benefitted from listening to the debate about Miguel Estrada's qualifications to serve on the D.C. Circuit.

I very much respect those Senators who desire to have additional information about Mr. Estrada's personal beliefs. Their efforts reflect a sound commitment to the Senate's constitutional obligation to advise and consent.

At the same time, I am troubled by those who have suggested that some Senators are anti-Hispanic because they seek additional information about this nominee. Poisoning the debate with baseless accusations demeans the nomination process.

After reviewing Mr. Estrada's personal and professional credentials—including personally interviewing the nominee—I believe he is qualified to serve on the D.C. Circuit Court—and, I will vote in favor of his nomination.

A Federal appellate judge's power to decide and pronounce judgment and carry it into effect is immense and comes with a moral and legal obligation to conform to the highest standards of conduct.

Federal judges must possess a high degree of knowledge of established

legal principles and procedures and must also be impartial, even tempered and have a well-defined sense of justice, compassion and fair play.

In addition, a judge must have the integrity to leave legislating to lawmakers. Judges must have the self-restraint to avoid injecting their own personal views or ideas that may be inconsistent with existing decisional or statutory law.

I believe Mr. Estrada possesses the knowledge and skills needed to be a successful court of appeals judge. Few would argue with his academic credentials, litigation experience or intelligence.

And based on my conversation with him, and those who know him well, I believe he respects—and will honor—his moral and legal obligation to uphold the law impartially.

However, should Mr. Estrada someday be considered for a position on the Supreme Court—as some have suggested he could be—I believe further inquiry not only will be justified, but necessary.

While appellate judges are constrained to a great degree by precedent, and by a check on their power by the Supreme Court, justices on the High Court have greater latitude to insert their own ideological viewpoints.

Mr. Estrada agreed wholeheartedly with this point when we discussed his nomination.

Make no mistake; I believe all judicial nominees should be completely forthcoming during the confirmation process.

Mr. Estrada has argued that he's satisfied a minimum threshold of disclosure, and that revealing additional information about his personal ideological beliefs may compromise his image of impartiality—if he eventually is seated on the federal bench.

I disagree with his approach, because it leads to the suspicion and mistrust—like that which now engulfs us.

Furthermore, I do not believe a similar argument reasonably can be made by a nominee to the Supreme Court. Ideology can be central to the High Court's decisions. As a result, absolute disclosure by Supreme Court nominees is necessary to protect the public interest.

In sum, while I believe Mr. Estrada could have been more forthcoming in order to avoid this controversy, my conclusion is that he is qualified to serve on the D.C. Circuit.

Should he come before the Senate as a nominee to the Supreme Court, he must be willing to provide additional information about his personal beliefs.

MORNING BUSINESS

Mr. TALENT. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING MAJOR GENERAL PHILIP G. KILLEY FOR 40 YEARS OF SERVICE

Mr. DASCHLE. Mr. President, today I salute a great American and South Dakotan, Major General Philip G. Killey.

General Killey, currently the Adjutant General of the South Dakota National Guard, retires at the end of this week, after 40 years of service. His service includes nearly a quarter-century with the South Dakota National Guard, including two separate appointments as Adjutant General covering more than 6 years.

Since September 11, 2001, General Killey's job has become more demanding and complex, but, as ever through his career, he has proven worthy of the challenge. Since September 11, his troops have been performing a broad variety of missions, from bolstering security at our State's airports to enforcing the no-fly zone over Iraq, from fighting forest fires to keeping the peace in Bosnia. All this, while also staying trained and ready for their next assignment.

Now, that next assignment is here. About 1,200 South Dakota Guard personnel have been called to active duty as part of our Nation's buildup on the borders of Iraq. Given the small population of our State, this is a major contribution. In fact, on a per capita basis, South Dakota is contributing more Guard personnel than all but five other States. This is a much larger commitment than the South Dakota Guard was asked to provide during Desert Storm, its other major call-up of the post-Cold War period, and it has come at a time when General Killey is already managing other high-priority commitments.

Managing these tasks and the Iraq call-up turns out to be the capstone event of General Killey's long military career, and it stands as a real testament to his skill and leadership. It is at critical moments like this, when your resources are stretched thin and you are asked to do even more, that gaps in training, leadership or equipment will reveal themselves. But in South Dakota, General Killey's troops have met the test. They are ready, and it shows.

Over the years, General Killey and I have worked together on many fronts to improve the equipment and facilities of the Guard. In the past 2 years, we have been able to secure nearly \$35 million in construction funds to improve 7 Guard facilities at Camp Rapid, Fort Meade, Pierre, Watertown, Mitchell, and Sioux Falls. We were able to

LEGISLATIVE SESSION

Mr. TALENT. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.