a lot of time studying this. The AARP executive director and CEO, Bill Novelli, has said, in relation to the administration's proposal:

> This proposal handcuffs states because it leaves people more vulnerable in future years as states struggle to meet increased needs with decreased dollars.

Another quote, from the Consortium for Citizens with Disabilities:

> The Bush Administration proposal fails people with disabilities and dishonors the nation's commitment to its residents—it is not in the national interest. . . .What the Medicaid program calls ''optional'' services are, in reality, mandatory disability services for the children and adults who need them. These services often are not only life-saving, but also the key to a positive quality of life—something everyone in our nation deserves.

I believe strongly that the Federal Government at this particular time in our Nation's history should not be stepping away from its commitment to seniors, to people with disabilities, and to low-income children. It should not be leaving the States with the primary responsibility for dealing with growth in the cost of the services to these groups in the future.

The administration will point out that the proposal does provide more funding up front to the States. The proposal is to give $12.7 billion more over the first 7 years to help the States. But there is something of an element of bait and switch in that after the first 7 years, that additional funding goes away.

Secretary Thompson noted in his press conference that is after he has left his position, and I am sure it is after most of the Governors will have left their positions and probably after many of us will have left the Senate. That does not give us an adequate justification for putting in place a system that cuts funding for these vitally needed services in future years.

The administration points out that they are promising the block grant for optional populations in a way that will increase at the same percentages that are projected in its budget. This is difficult to respond to, frankly, until we see a written proposal. We need a written proposal from the administration. We do not have that as yet. We do not have that on the Medicaid subject. We do not have that on Medicare either. And I hope those will be forthcoming soon because they are extremely vital programs for all of our States.

Let me also talk a little about the proposal that I have, along with Congressman DINGELL, that we are going to introduce next week. And I will go into more detail about it next week.

Our idea is that there are certain groups that receive health care services under Medicaid, where the Federal Government needs to step up and pay the full cost of those services—or something very close to the full cost. One such group is so-called dual eligibles. These are people who are eligible for Medicare benefits, but are also low income enough that they are eligible for Medicaid at the same time.

Current law says for those who are covered under the Medicaid law the States pay the lion's share of that cost. We are saying the States should not have to pay the lion's share of that cost. This is something where these folks have become eligible for Medicare. We should be paying 100 percent of that cost at the Federal level.

Another group the Federal Government should be underwriting the cost of providing services for are illegal immigrants who come to our health care providers needing emergency attention. Here you can get into quite a philosophical argument as to whether or not these services should be provided. The reality is, if you are a doctor, if you are working in an emergency room and someone shows up who needs emergency care, you are obligated under your Hippocratic oath and the laws of decency, basically, to provide that care, if you are able to do so. To turn a person away because they do not have the right health insurance coverage, or they cannot demonstrate to you their financial solvency, when their circumstance is critical, is just not the way we should do business.

The question is, Once that person has come into that emergency room and asked for that emergency care, who should reimburse the hospital for it? Who should pay the cost of that physician? At the current time, the States are picking that up, or the counties are picking that up, or the health care providers themselves are doing this on a pro bono basis. The reality is the Federal Government should be responsible for that, and we are proposing that in our legislation.

Another group, of course, is Native American citizens. We have a great many Native Americans in my home State. The Federal Government should be stepping up to its responsibility to ensure that health care for these individuals is provided. We propose that as part of our proposal for saving our States as well.

I will have another chance to talk this ''saving our States'' proposal when we introduce it early next week. I very much wanted to make reference to it today and indicate my great concern about the proposal I understand the administration is about to present to us. The truth is, the cost of providing health care is very high, and it is not getting any cheaper. We need to budget that in and we need to acknowledge that and we need to recognize that as a matter of public policy in this country, we should provide that basic care to seniors, to low-income children, to those who are disabled. The Medicaid Program does that. We need to keep the Medicaid Program sound and not undermine it by rationing back on the dollars we are willing to spend on those basic services.

SOUTHWEST REGIONAL BORDER AUTHORITY ACT

Mr. President, let me also talk about a bill I introduced yesterday. This is a bill entitled Southwest Regional Border Authority Act. We offered this same bill last May. I am very pleased this year I am joined by Senator KAY BAILEY HUTCHISON, and also Senator BARBARA BOXER. This legislation would create an economic development authority for the Southwest border region that would be charged with awarding grants to border communities in support of local economic development projects. The need for a regional border authority is acute. The poverty rate in the Southwest border region is over 20 percent, nearly double the national average of 11.7 percent. The unemployment rate in Southwest border counties can reach as high as six times the national unemployment rate. The per capita personal income in the region is greatly below the national average. In many border counties, the per capita personal income is less than 50 percent of the national average. There is a lack of adequate access to capital that has made it difficult for businesses to get started in this region.

In addition, the development of key infrastructures, such as water, waste water, transportation, public health, and telecommunications—all of these areas of infrastructure need have failed to keep pace with the population explosion and the increase in commerce across our border with Mexico.

Mr. President, the counties in the Southwest border region are among the most economically distressed in the Nation. It should be noted that there are only a few such regions of economic distress throughout the country. Virtually all of the other regions that face this same economic distress are, in fact, served by regional economic development commissions today. These commissions include the Appalachian Regional Commission, the Delta Regional Authority, the Denali Commission in Alaska, and the Northern Great Plains Regional Authority.

In order to address the needs of the border region in a similar fashion, we are proposing this Regional Economic Commission for the Southwest border. The bill is based on four guiding principles.

First, it starts from the premise that people who live on the Southwest border know best when it comes to making decisions as to how to improve their own communities.

Second, it employs a regional approach to economic development and encourages communities to work across county and State lines where appropriate. All too often in the past, the efforts to improve our region have hit roadblocks as a result of poor coordination and communication between communities.

Third, it creates an independent agency, meaning it will be able to make decisions that are in the best interest of the border communities, without being subject to the politics of Federal agencies.

Finally, it brings together representatives of the four Southwest border States and the Federal Government as partners to work on improving the

standard of living for people living on the border.

This is not just another commission, and it is certainly not just another grant program. I believe this Southwest regional border authority not only will help leverage new private sector funding, it will also help to better target the Federal funds that are available to those projects that are most likely to produce results.

The legislation accomplishes this through a sensible mechanism of development planning. The purpose of the planning process is to ensure that priorities are reflected in the projects funded by the authority. It also is to provide flexibility to the authority to fund projects that are regional in nature.

I think the process has various advantages, and there are great benefits that can be derived from setting up this border authority. I believe very strongly this legislation is overdue. It is something that should have happened several years ago. For too long, the needs of the Southwest border have been ignored, overlooked, and underfunded.

I am confident the creation of a Southwest regional border authority not only will call attention to the great needs that exist on the border, but will help us to meet those needs. I urge my colleagues to give attention to this legislation that we have introduced. I hope other colleagues will choose to support it. I hope we can have a hearing on it in the near future and move the legislation through the Senate and through the House to the President for signature.

Mr. President, let me say a few words about the Estrada nomination as well. I know that is a subject of great concern to many on both sides of the aisle. I have taken some time in the last couple of days to review the transcript of the testimony that Mr. Estrada gave in the Judiciary Committee.

I have been struck by his position, as stated numerous times in that testimony, that he was not willing to share his views on any issue related to judicial philosophy or court decisions with the committee.

I was particularly struck by the discussion he had with our colleague, Senator SCHUMER. Senator SCHUMER was asking about Mr. Estrada's earlier statement that he saw as part of his job working for Justice Kennedy recommending law clerks and asking them questions, of course, interviewing them before he made the recommendation.

Senator SCHUMER said:

> Isn't it appropriate that you would ask those questions? Isn't it also appropriate that we would be asking you some questions to try to determine your views?

Mr. Estrada said in response to that question:

> Questions that I asked in doing my job for Justice Kennedy were intended to ascertain whether there were any strongly felt views that would keep that person from being a good law clerk to the Justice.

That is entirely appropriate, in my view, and a very well-stated position. That, in my view, is the exact job we have to perform as we screen and consider the various nominees for Federal court positions that the President sends us. We need to determine whether they have any strongly felt views that would keep them from being good members of the Court of Appeals for the District of Columbia, good members of the district court, or good members of the Supreme Court.

My own position is that I am willing, and have demonstrated many times on the Senate floor my willingness, to support conservative nominees to the court. I believe many of those people are making excellent judges in our Federal court system. But I also want to be sure their views on issues that relate to their duties are mainstream, that they are not extreme. The only way I know to carry out that responsibility is to ask some questions to determine whether they have strongly felt views, as Mr. Estrada said, that would keep them from being, as he said in the case he was referring to, a good law clerk to the Justice.

In the Senate, when we are considering people for lifetime appointments to the Federal judiciary, we have a heavier responsibility to be sure there are no strongly held views that would keep these individuals from being good judges in our Federal court system for the remainder of their lives. That is what I believe we should be trying to do. I think that is what many members of the Judiciary Committee were trying to do in the hearing that took place on Mr. Estrada.

His view was that he would not respond to questions that were put to him about any such views, and he repeatedly said he did not think it was appropriate for him to comment on any personal views he might have. Since, of course, he would not comment on his personal views, there is no way to determine whether any of them are extreme.

I do not think that is an adequate carrying out of responsibilities by the Judiciary Committee. I do not think it is an adequate carrying out of responsibilities by the Senate. And I think we do need more information. That has been my position. Before we move ahead with this nomination, we should get more information.

I hope the Judiciary Committee will consider reconvening a hearing, once again providing the nominee with an opportunity to respond, as other nominees have traditionally responded. That is all we are asking, not that he give us information others were not asked to give or others did not give, but that he essentially provide basic information.

He may express some views with which I do not agree. That is fine. Many judges for whom I have voted also, I believe, expressed views with which I did not agree. At least I was confident their views were not extreme. At least I was confident their views were mainstream and that they were within the mainstream as far as their conception of where the law is and where the law ought to go.

I hope very much we can get the additional information we have been asking for and can proceed to dispose of this nomination. That would be my great hope. I do not know what the intent of the majority leader is at this point or the intent of the Judiciary Committee. I hope we can proceed in that manner.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ALLARD). Without objection, it is so ordered.

Mr. REID. Mr. President, last evening, there was a lot of talk about whether memos at the Solicitor General's Office had ever been made public. I am going to talk about that, but I think we should put this whole debate involving Miguel Estrada in a framework that people who are watching the debate who are not familiar with Senate procedure can better understand what is going on.

In effect, Miguel Estrada has asked his employer, the Federal Government, to give him a job to last for life. As with any job, one usually has to have an interview. In this instance, in addition to an interview, you bring whatever papers you have, whether it is a resume or other documents that your employer may want to find out if you should be hired. In the instance of Miguel Estrada, he simply has not filled out the requisite papers, he has not answered the questions or supplied the necessary information.

An employer in Nevada, whether a company that sold tires or a company that sold food—it would not matter what it is—if somebody applied for a job, they would have to answer the questions that employer asked and give the requisite papers. In this instance, Democratic members of the Judiciary Committee believe he has not answered the questions. By reading the transcript, it is quite clear that is true.

But yesterday, the distinguished Senator from Utah, Mr. HATCH, engaged in extensive discussion regarding the release of Solicitor General memoranda. As everyone by this time knows, we have asked that Miguel Estrada release memos he wrote while he was an attorney in the Solicitor General's Office. The administration has refused to provide these documents.

There are two basic charges raised by my distinguished colleagues on the other side of the aisle about these memoranda: First, the distinguished chairman of the committee, Senator HATCH, has argued that when such

memos were provided in the past, they were leaked.

My colleague argued that they have never, ever been given to anyone on Capitol Hill.

Second, he qualified his remarks by saying to the extent memos had been provided, they were provided because there was some allegation of improper behavior by the nominee in connection with the memo.

I will place in the RECORD a series of correspondence between the Judiciary Committee and the Justice Department from 1987 that demonstrates in fact such documents were provided. This is only one instance. These letters show that these memoranda were not leaked. They show that they were in fact provided freely by the Justice Department.

In a letter dated August 10, 1987, then Judiciary Committee Chairman BIDEN set forth a request for several types of documents relating to the nomination of Judge Bork to the Supreme Court. In the letter, Senator BIDEN requested four classes of Bork-related memos: He requested those that related to the Watergate controversy; second, all documents generated or involving Solicitor General Bork relating to the constitutionality, appropriateness, or use of the pocket veto; third, all documents generated to or involving then Solicitor General Bork regarding school desegregation; fourth, all documents generated to or involving then Solicitor General Bork in forming the U.S. position in a series of specific cases.

These requests involved memoranda provided by attorneys in the Solicitor General's Office to the Solicitor General recommending such things as whether to file amicus briefs in particular cases.

In this instance, what happened to Senator BIDEN's request? Well, in fact a letter came to him dated August 24 from then Republican Assistant Attorney General Bolton to Democratic Senator JOE BIDEN. In that letter, the Justice Department declined to provide documents relating to the Watergate controversy. This denial of documents was based on executive privilege. The documents involved did not include Bork but, rather, related to communications between and among close advisers to the President and the President.

Yesterday, Senator CRAPO made reference to the fact that some documents were not turned over to the committee during this time. While it is true that the Watergate documents were not turned over, and this is based on executive privilege, that does not affect our debate. Solicitor General memoranda from Estrada to his supervisors are not covered by executive privilege. No one has ever claimed they are.

In 1987, however, the Justice Department did provide the other documents I described above which were requested in the Biden letter. In these materials, the Justice Department noted in the letter: The vast majority of the documents that have been requested reflect or disclose internal deliberations within the executive branch. We wish to cooperate to the fullest extent with the committee and to expedite Judge Bork's confirmation process. The letter concludes that the documents referred to above would be provided. The letter confirms the nature and circumstances under which the Solicitor General memoranda were provided to the Judiciary Committee during Bork's hearings.

So what about the argument that to the extent memoranda have been provided, they were only provided when the request alleged misconduct or malfeasance on the part of the nominee or other attorneys involved in the matter? This simply is not true.

I have a list of internal attorney memoranda provided during the Bork, Reynolds, and Rehnquist nominations. These documents, some of which are from the Solicitor's Office, others from other parts of the Justice Department, were made public and given to Senator BIDEN, and in other instances given to others. For example, all documents related to school desegregation between 1969 and 1977 relating to Bork in any way, there was no allegation of misconduct; documents related to Halpren v. Kissinger, no allegation of misconduct.

I have about 14 of these that were made a part of proceedings before the Senate.

I ask unanimous consent that this list be printed in the RECORD.

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

All documents related to school desegregation between 1969 and 1977 relating to Bork in any way (disclosure included, among others, the SG Office memos about *Vorcheimer* v. *Philadelphia*, known as ''the Easterbrook memo''; *United States* v. *Omaha; United States* v. *Demopolis City* (school desegregation in Alabama)): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Documents related to *Halperin* v. *Kissinger* (civil suit for 4th Amendment violations for wiretapping): No allegation of misconduct or malfeasance by the nominee.

Memos about whether to file an amicus brief in *Hishon* v. *King & Spaulding* (gender discrimination at a law firm): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos regarding *Wallace* v. *Jaffree* (school prayer in Alabama): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about Congressional reapportionment in Louisiana and one-person, one-vote standard: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos regarding possible constitutional amendment in 1970 to overturn *Green* v. *New Kent County*, and preserve racial discrimination in Southern schools: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memo of November 16, 1970 from John Dean: No allegation of misconduct or malfeasance by the nominee.

Memos of William Ruckelshaus of December 19, 1969 and February 6, 1970: No allegation of misconduct or malfeasance by the nominee.

Memos of Robert Mardian of January 18 1971: No allegation of misconduct or malfeasance by the nominee.

Memos of law clerk to Justice Jackson: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about whether or not to seek Supreme Court review in *Kennedy* v. *Sampson* (pocket veto): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Hills* v. *Gautreaux* (racial discrimination in housing in Chicago): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *DeFunis* v. *Odegaard* (affirmative action program at the University of Washington law school): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Morgan* v. *McDonough* (public school desegregation in Boston): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Pasadena* v. *Spengler* (public school desegregation): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Barnes* v. *Kline* (military assistance in El Salvador): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Kennedy* v. *Jones* (pocket veto and the mass transit bill and bill to assist the disabled): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Documents related to Supreme Court selection process of Nixon and Reagan: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Mr. REID. I say respectfully that the statements made by the distinguished Senator from Utah were without basis of fact. Here we have records that were not leaked, they are directly as we said they were last night. We were unable to get the floor, but in fact that is what the story was.

So now that we do have the floor, I ask unanimous consent that the letter dated August 10, 1987, to Attorney General Ed Meese from JOSEPH BIDEN be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, August 10, 1987.

Hon. EDWIN MEESE III,
Attorney General, Department of Justice, Washington, DC.

DEAR GENERAL MEESE: As part of its preparation for the hearings on the nomination of Judge Robert Bork to the Supreme Court, the Judiciary Committee needs to review certain material in the possession of the Justice Department and the Executive Office of the President.

Attached you will find a list of the documents that the Committee is requesting. Please provide the requested documents by August 24, 1987. If you have any questions about this request, please contact the Committee staff director, Diana Huffman, at 224–0747.

Thank you for your cooperation.

Sincerely,

JOSEPH R. BIDEN, Jr.,
Chairman.

REQUEST FOR DOCUMENTS REGARDING THE NOMINATION OF ROBERT H. BORK TO BE ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT

Please provide to the Committee in accordance with the attached guidelines the following documents in the possession, custody or control of the United States Department of Justice, the Executive Office of the President, or any agency, component or document depository of either (including but not limited to the Federal Bureau of Investigation):

1. All documents generated during the period from 1972 through 1974 and constituting, describing, referring or relating in whole or in part to Robert H. Bork and the so-called Watergate affair.

2. Without limiting the foregoing, all documents generated during the period from 1972 through 1974 and constituting, describing, referring or relating in whole or in part to any of the following:

a. any communications between Robert H. Bork and any person or entity relating in whole or in part to the Office of Watergate Special Prosecution Force or its predecessors- or successors-in-interest;

b. the dismissal of Archibald Cox as Special Prosecutor;

c. the abolition of the Office of Watergate Special Prosecution Force on or about October 23, 1973;

d. any efforts to define, narrow, limit or otherwise curtail the jurisdiction of the Office of Watergate Special Prosecution Force, or the investigative or prosecutorial activities thereof;

e. the decision to reestablish the Office of Watergate Special Prosecution Force in November 1973;

f. the designation of Mr. Leon Jaworski as Watergate Special Prosecutor;

g. the enforcement of the subpoena at issue in *Nixon* v. *Sirica*;

h. any communications on October 20, 1973 between Robert H. Bork and then-President Nixon, Alexander Haig, Leonard Garment, Fred Buzhardt, Elliot Richardson, or William Ruckelshaus;

l. any communications between Robert H. Bork and then-President Nixon, Alexander Haig and/or any other federal official or employee on the subject of Mr. Bork and a position or potential position as counsel to President Nixon with respect to the so-called Watergate matter;

m. any action, involvement or participation by Robert H. Bork with respect to any issue in the case of *Nader* v. *Bork*, 366 F. Supp. 104 (D.D.C. 1975), or the appeal thereof;

n. any communication between Robert H. Bork and then-President Nixon or any other federal official or employee, or between Mr. Bork and Professor Charles Black, concerning Executive Privilege, including but not limited to Professor Black's views on the President's ''right'' to confidentiality as expressed by Professor Black in a letter or article which appeared in the *New York Times* in 1973 (see Mr. Bork's testimony in the 1973 Senate Judiciary Committee hearings on the Special Prosecutor);

o. the stationing of FBI agents at the Office of Watergate, Special Prosecution Force on or about October 20, 1973, including but not limited to documents constituting, describing, referring or relating to any communication between Robert H. Bork, Alexander Haig, or any official or employee of the Office of the President or the Office of the Attorney General, on the one hand, and any official or employee of the FBI, on the other; and

p. the establishment of the Office of Watergate Special Prosecution Force, including but not limited to all documents constituting, describing, referring or relating in whole or in part to any assurances, representations, commitments or communications by any member of the Executive Branch or any agency thereof to any member of Congress regarding the independence or operation of the Office of Watergate Special Prosecution Force, or the circumstances under which the Special Prosecutor could be discharged.

3. The following documents together with any other documents referring or relating to them:

a. the memorandum to the Attorney General from then-Solicitor General Boark, dated August 21, 1973, and its attached ''redraft of the memorandum intended as a basis for discussion with Archie Cox'' concerning ''The Special Prosecutor's authority'' (typeset copies of which are printed at pages 287–288 of the Senate Judiciary Committee's 1973 ''Special Prosecutor'' hearings);

b. the letter addressed to Acting Attorney General Bork from then-President Nixon, dated October 20, 1973., directing him to discharge Archibald Cox;

c. the letter addressed to Archibald Cox from then-Acting Attorney General Bork, dated October 20, 1973, discharging Mr. Cox from his position as Special Prosecutor;

d. Order No. 546–73, dated October 23, 1973, signed by then-Acting Attorney General Bork, entitled ''Abolishment of Office of Watergate Special Prosecutor Force'';

e. Order No. 547–73, dated October 23, 1973, signed by then-Acting Attorney General Bork, entitled ''Additional Assignments of Functions and Designation of Officials to Perform the Duties of Certain Offices in Case of Vacancy, or Absence therein or in Case of Inability or Disqualification to Act'';

f. Order No. 551–73, dated November 2, 1973, signed by then-Acting Attorney General Bork, entitled ''Establishing the Office of Watergate Special Prosecution Force'';

g. the Appendix to Item 2.f., entitle ''Duties and Responsibilities of Special Prosecutor'';

h. Order No. 552–73, dated November 5, 1973, signed by then-Acting Attorney General Bork, designating ''Special Prosecutor Leon Jaworski the Director of the Office of Watergate Special Prosecution Force'';

i. Order No. 554–73, dated November 19, 1973, signed by then-Acting Attorney General Bork, entitled ''Amending the Regulations Establishing the Office of Watergate Special Prosecution Force''; and

j. the letter to Leon Jaworski, Special Prosecutor, from then-Acting Attorney General Bork, dated November 21, 1973, concerning Item 2.i.

4. All documents constituting, describing, referring or relating in whole or in part to any meetings, discussions and telephone conversations between Robert H. Bork and then-President Nixon, Alexander Haig or any other federal official or employee on the subject of Mr. Bork's being considered or nominated for appointment to the Supreme Court.

5. All documents generated from 1973 through 1977 and constituting, describing, referring or relating in whole or in part to Robert H. Bork and the constitutionality, appropriateness or use by the President of the United States of the ''Pocket Veto'' power set forth in Art. I, section 7, paragraph 2 of the United States Constitution, including but not limited to all documents constituting, describing, referring or relating in whole or in part to any of the following:

a. The decision not to petition for certiorari from the decision of the United States Court of Appeals for the District of Columbia Circuit in *Kennedy* v. *Sampson*, 511 F.2d 430 (1947);

b. the entry of the judgment in *Kennedy* v. *Jones*, 412 F. Supp. 353 (D.D.C. 1976); and

c. the policy regarding pocket vetoes publicly adopted by President Gerald R. Ford in April 1976.

6. All documents constituting, describing, referring or relating in whole or in part to Robert H. Bork and the incidents at issue in *United States* v. *Gray, Felt & Miller*, No. Cr. 78–00179 (D.D.C. 1978), including but not limited to all documents constituting, describing, referring or relating in whole or in part to any of the exhibits filed by counsel for Edward S. Miller in support of his contention that Mr. Bork was aware in 1973 of the incidents at issue.

7. All documents constituting, describing or referring to any speeches, talks, or informal or impromptu remarks given by Robert H. Bork on matters relating to constitutional law or public policy.

8. All documents constituting, describing, referring or relating in whole or in part either (i) to all criteria or standards used by President Reagan in selecting nominees to the Supreme Court, or (ii) to the application of those criteria to the nomination of Robert H. Bork to be Associate Justice of the Supreme Court.

9. All documents constituting, describing, referring or relating in whole or in part to Robert H. Bork and any study or consideration during the period 1969–1977 by the Executive Branch of the United States Government or any agency or component thereof of school desegregation remedies. (In addition to responsive documents from the entities identified in the beginning of this request, please provide any responsive documents in the possession, custody or control of the U.S. Department of Education or its predecessor agency, or any agency, component or document depository thereof.)

10. All documents constituting, describing, referring or relating in whole or in part to the participation of Solicitor General Robert H. Bork in the formulation of the position of the United States with respect to the following cases:

a. *Evans* v. *Wilmington School Board*, 423 U.S. 963 (1975), and 429 U.S. 973 (1976);

b. *McDonough* v. *Morgan*, 426 U.S. 935 (1976);

c. *Hills* v. *Gautreaux*, 425 U.S. 284 (1976);

d. *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976);

e. *Roemer* v. *Maryland Board of Public Education*, 426 U.S. 736 (1976);

f. *Hill* v. *Stone*, 421 U.S. 289 (1975); and

g. *DeFunis* v. *Odegaard*, 416 U.S. 312 (1975).

GUIDELINES

1. This request is continuing in character and if additional responsive documents come to your attention following the date of production, please provide such documents to the Committee promptly.

2. As used herein, ''document'' means the original (or an additional copy when an original is not available) and each distribution copy of writings or other graphic material, whether inscribed by hand or by mechanical, electronic, photographic or other means, including without limitation correspondence, memoranda, publications, articles, transcripts, diaries, telephone logs, message sheets, records, voice recordings, tapes, film, dictabelts and other data compilations from which information can be obtained. This request seeks production of all documents described, including all drafts and distribution copies, and contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

3. In the event that any requested document has been destroyed or discarded or otherwise disposed of, please identify the document as completely as possible, including without limitation the date, author(s), addressee(s), recipient(s), title, and subject matter, and the reason for disposal of the document and the identity of all persons who authorized disposal of the document.

4. If a claim is made that any requested document will not be produced by reason of a privilege of any kind, describe each such document by date, author(s), addressee(s), recipient(s), title, and subject matter, and set forth the nature of the claimed privilege with respect to each document.

Mr. REID. Mr. President, this outlines seven pages of documents he wants and certain guidelines that would be followed so that the Attorney General's Office would be protected.

In addition, I ask unanimous consent that a letter dated August 24 of that same year to JOSEPH R. BIDEN from Mr. Bolton, the Assistant Attorney General, be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE, OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC.

Hon. JOSEPH R. BIDEN, Jr.
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR CHAIRMAN BIDEN: This responds further to your August 10th letter requesting certain documents relating to the nomination of Judge Robert Bork to the Supreme Court. Specifically, this sets forth the status of our search for responsive documents and the methods and scope of review by the Committee.

As we have previously informed you in our letter of August 18, the search for requested documents has required massive expenditures of resources and time by the Executive Branch. We have nonetheless, with a few exceptions discussed below, completed a thorough review of all sources referenced in your request that were in any way reasonably likely to produce potentially responsive documents. The results of this effort are as follows:

In response to your requests numbered 1–3, we have conducted an extensive search for documents generated during the period 1972–1974 and relating to the so-called Watergate affair. We have followed the same procedure, in response to request number 4, for all documents relating to consideration of Robert Bork for the Supreme Court by President Nixon or his subordinates. We have completed our search of relevant Department of Justice and White House files for documents responsive to these requests. The Federal Bureau of Investigation also has completed its search for responsive documents, focusing on the period October–December 1973 and on references to Robert Bork generally.

Most of the documents responsive to requests numbered 1–4 are in the possession of the National Archives and Records Administration, which has custody of the Nixon Presidential materials and the files of the Watergate Special Prosecution Force. The Archives staff supervised and participated in the search of the opened files of the Nixon Presidential materials and the files of the Watergate Special Prosecution Force, which was directed to those files which the Archives staff deemed reasonably likely to contain potentially responsive documents.

Pursuant to a request by this Department under 36 C.F.R. 1275, the Archives staff also examined relevant unopened files of the Nixon Presidential materials, and, as required under the pertinent regulations, submitted the responsive documents thus located for review by counsel for former President Nixon. Mr. Nixon's counsel, R. Stan Mortenson, interposed no objection to release of those submitted documents that (a) reference, directly or indirectly, Robert Bork, or (b) were received by or disseminated to persons outside the Nixon White House. Mr. Mortenson on behalf of Mr. Nixon objected to production of the documents which are described in the attached appendix. Mr. Mortenson represents that these documents constitute purely internal communications within the White House and contain no direct or indirect reference to Robert Bork.

Mr. Mortenson also objected on the same grounds to production of unopened portions of two documents produced in incomplete form from the opened files of the Nixon Presidential materials:

1. First page and redacted portion of fifth page of handwritten note of John D. Ehrlichman dated December 11, 1972.

2. All pages other than the first page of memorandum from Geoff Shepard to Ken Cole dated June 19, 1973.

Mr. James J. Hastings, Acting Director of the Nixon Presidential Materials Project, has reviewed these two documents and has advised us that the unopened portions of neither document contain any direct or indirect reference to Judge Bork.

Our search has not yielded a copy of the document referenced in paragraph ''a'' of your request numbered 3, which, as you correctly note, is printed at pages 287–288 of the Judiciary Committee's 1973 ''Special Prosecutor'' hearings.

Among the documents collected by the Department are certain documents generated in the defense of *Halperin* v. *Kissinger*, Civil Action No. 73–1187 (D. D.C.), a suit filed against several federal officials in their individual capacity, which remains pending. The Department has an ongoing attorney-client relationship with the defendants in *Halperin,* which precludes us from releasing certain documents containing client confidences and litigation strategy, without their consent. 28 C.F.R. 50.156(a)(3).

All documents responsive to request number 5, concerning the pocket veto, have been assembled.

All documents responsive to request number 6 have been assembled. The exhibits filed by counsel for Edward S. Miller on July 12, 1978 and referred to in your August 10 letter, remain under seal by order of the United States District Court for the District of Columbia. However, a list of the thirteen documents has been unsealed. We have supplied copies of eleven of these documents, including redacted versions of two of the documents (a few sentences of classified material have been deleted). We have supplied unclassified versions of two of these eleven documents, as small portions of them remain classified. We are precluded by Rule 6(e) of the Rules of Criminal Procedure from giving you access to two other exhibits—classified excerpts of grand jury transcripts—filed on July 12, 1978. We also searched the files of several civil cases related to the Felt and Miller criminal prosecution, as well as the documents generated during the consideration of the pardon for Felt and Miller.

With respect to request number seven, Judge Bork has previously provided to the Committee a number of his speeches, which we have not sought to duplicate. We have sought and supplied any additional speeches, press conferences or interviews by Mr. Bork, as well as any contemporaneous documents which tend to identify a date or event where he gave a speech or press interview during his tenure at the Department.

On request number eight, there are no documents in which President Reagan has set forth the criteria he used to select Supreme Court nominees, or their application to Judge Bork, other than the public pronouncements and speeches we have assembled.

Our search for documents responsive to request number nine has been time-consuming and very difficult, and is not at this time entirely complete. In order to conduct as broad a search as possible, we requested the files in every case handled by the Civil Rights Division or Civil Division, between 1969–77, which concerned desegregation of public education. Although most of these case files have been retrieved, several remain unaccounted for and perhaps have been lost. We expect to have accounted for the remaining files (which may or may not contain responsive documents) in the next few days. We have also assembled some responsive documents obtained from other Department files. The Department of Education is nearing completion of its search of its files, and those of its predecessor agency, HEW.

We have assembled case files for the cases referred to in question ten, with the exception of *Hill* v. STONE, for which there is no file. We have no record of the participation of the United States in *Hill* v. *Stone,* or consideration by the Solicitor General's office of whether to participate in that case.

A few general searches of certain front office files are still underway, and we expect those searches to be concluded in the next few days. We will promptly notify you should any further responsive documents come into our possession.

As you know, the vast majority of the documents you have requested reflect or disclose purely internal deliberations within the Executive Branch, the work product of attorneys in connection with government litigation or confidential legal advice received from or provided to client agencies within the Executive Branch. The disclosure of such sensitive and confidential documents seriously impairs the deliberative process within the Executive Branch, our ability to represent the government in litigation and our relationship with other entities. For these reasons, the Justice Department and other executive agencies have consistently taken the position, in response to the Freedom of Information Act and other requests, that it is not at liberty to disclose materials that would compromise the confidentiality of any such deliberative or otherwise privileged communications.

On the other hand, we also wish to cooperate to the fullest extent possible with the Committee and to expedite Judge Bork's confirmation process. Accordingly, we have decided to take the exceptional step of providing the Committee with access to responsive materials we currently possess, except those privileged documents specifically described above and in the attached appendix. Of course, our decision to produce these documents does not constitute a waiver of any future claims of privilege concerning other documents that the Committee request or a waiver of any claim over these documents with respect to entities or persons other than the Judiciary Committee.

As I have previously discussed with Diana Huffman, the other documents will be made available in a room at the Justice Department. Particularly in light of the voluminous and privileged nature of these documents, copies of identified documents will be produced, upon request, only to members of the Judiciary Committee and their staff and only on the understanding that they will not be shown or disclosed to any other persons. Please have you staff contact me to arrange a mutually convenient time for inspection of the documents.

As I stressed in my previous letter, if the Committee is or becomes aware of any documents it believes are potentially responsive but have not been produced, please alert us as soon as possible and we will attempt to locate them.

Should you have any questions or comments, please contact me as soon possible. Thank you for your cooperation.

Sincerely,

LAURA WILSON
(for John R. Bolton, Assistant Attorney General)

APPENDIX

DOCUMENTS SUBJECT TO OBJECTION BY MR. NIXON'S COUNSEL

1. Memorandum to Buzhardt and Garment, from Charles Alan Wright, January 7, 1973. Subject: June 6th meeting with the Special Prosecutor. (Document No. 8)

2. Memorandum to Buzhardt and Garment, from Charles Alan Wright, January 7, 1973. Subject: June 6th meeting with the Special Prosecutor. (Document No. 9)

3. Memorandum to Garment, from Ray Price, July 25, 1973. Subject: Procedures re: Subpoena. (Document No. 13)

4. Memorandum to General Haig, from Charles A. Wright, July 25, 1973. Subject: Proposed redrafts of letters. (Document No. 14)

5. Draft letter to Senator Ervin, dated July 26, 1973. Subject: two subpoenas from Senator Ervin. (Document No. 15)

6. Draft letter to Judge Sirica, dated July 26, 1973. Subject: subpoena duces tecum. (Document No. 16)

7. Memorandum to The Lawyers, from Charlie Wright, dated July 25, 1973. Subject: Thoughts while shaving. (Document No. 17)

8. Memorandum to The President, from J. Fred Buzhardt, Leonard Garment, Charles A. Wright, dated July 24, 1973. Subject: Response to Subpoenas. (Document No. 18)

9. Memorandum to Ray Price, from Tex Lezar, dated October 17, 1973. Subject: WG Tapes. (Document No. 20)

10. Memorandum to Leonard Garment and J. Fred Buzhardt, from Charles A. Wright, dated August 3, 1973. Subject: Discussions with Philip Lacovara. (Document No. 25)

11. Memorandum to the President, from Leonard Garment, J. Fred Buzhardt, Charles A. Wright, dated August 2, 1973. Subject: Brief for Judge Sirica. (Document No. 26)

12. Memorandum to Len Garment, Fred Buzhardt, Doug Parker and Tom Marinis, From Charlie Wright, dated August 1, 1973. Subject: note regarding brief. (Document No. 27)

13. Memorandum to The President, from J. Fred Buzhardt, Leonard Garment and Charles A. Wright, dated July 24, 1973. Subject: Response to Subpoenas. (Document No. 28)

14. Draft letter to Senator Ervin, dated July 26, 1973. Subject: two subpoenas issued July 23rd. (Document No. 29)

15. Draft letter to Judge Sirica, dated July 26, 1973. Subject: subpoena duces tecum. (Document No. 30)

16. Memorandum to J. Fred Buzhardt, Leonard Garment and Charles Alan Wright, from Thomas P. Marinis, Jr. (undated). Subject: Appealability of Cox Suit. (Document No. 31)

17. Notes (handwritten) (undated). Subject: [appears to be notes of oral argument]. (Document No. 32)

18. Memorandum to The President, from Charles Alan Wright, dated September 14, 1973. Subject: Response to Court's memorandum. (Document No. 34)

19. Handwritten notes. (Document No. 36)

20. Memorandum to J. Frederick Buzhardt, from Charles Alan Wright, dated June 2, 1973. Subject: Executive privilege. (Document No. 41)

21. Memorandum to J. Frederick Buzhardt and Leonard Garment, from Charles Alan Wright, dated June 7, 1973. Subject: June 6th meeting with Special Prosecutor. (Document No. 42)

22. Memorandum to J. Fred Buzhardt from Robert R. Andrews, dated June 21, 1973. Subject: Executive Privilege. (Document No. 43)

23. Memorandum to J. Fred Buzhardt and Leonard Garment, from Thomas P. Marinis, Jr., dated June 20, 1973. Subject: Professor Wright's attempt to obtain document. (Document No. 44)

24. Memorandum to J. Fred Buzhardt and Leonard Garment, from Charles Alan Garment (sic), dated June 7, 1973. Subject: June 6th meeting with the Special Prosecutor. (Document No. 46)

25. Draft letter to Senator, from Alexander Haig, dated December 12, 1973. Subject: Response to letter of the 5th. (Document No. 60)

26. Draft Letter to Senator, from Alexander Haig, dated December 12, 1973. Subject: Response to letter of the 5th. (Document No. 61)

27. Proposal re: transcription of tapes, dated October 17, 1973. (Document No. 63)

28. Typed note with handwritten notation: Sent to Buzhardt 12/11/73, undated. Subject: papers Buzhardt sent to Jaworski. (Document No. 66)

29. Chronology—Presidential Statements, Letters, Subpoenas, dated March 12, 1973. Subject: chronology of same. (Document No. 71)

30. Handwritten note, dated 1/31/74 (January 31, 1974). Subject: Duties and responsibilities of Special Prosecutor. (Document No. 82)

31. Memorandum to Fred Buzhardt, from William Timmons, dated 7/30/73 (July 30, 1973). Subject: refusal to release taped conversations. (Document No. 91)

32. Memorandum to Fred Buzhardt, from Paul Trible, dated October 30, 1973. Subject: Cox's diclosure of Kleindienst's confidential communication. (Document No. 92)

33. Proposal regarding transcription of tape conversations, dated 10/17/73 (October 17, 1973). (Document No. 94)

Mr. REID. These clearly indicate that Bolton acknowledged materials would be forthcoming.

The reason these are important is that we have said this man who has no judicial record whatsoever—and I heard the distinguished Presiding Officer give a statement yesterday about the many judges who have been distinguished who have not had judicial experience. We have never debated that. We agree, one does not have to have judicial experience to be a good judge. If that were the case, there would never be any good judges, quite frankly. Somebody has to start someplace. In fact, we would never have judges. That is what is referred to as a red herring.

We have never alleged that Miguel Estrada is disqualified from being a judge because he has not been a judge. That is something that the majority has talked about a lot, but we have never raised that as an issue.

What we have said is that those instances where we can learn something about his political philosophy and his philosophy as it relates to jurisprudence, we need to know something about that. The only place we can go to look is in relation to when he worked at the Solicitor's Office because he has not answered the questions we have asked him about the cases he prepared and took to trial when he was an Assistant Attorney General or when he argued cases before appellate courts.

As I have said on a number of different occasions, I have been to court lots of times. I have represented all kinds of different people. In all the cases I took, when I argued a case before a jury and before a court, one could not find out what my political or judicial philosophy was. The reason was I was being paid to represent somebody and carrying out my responsibilities as a lawyer.

So the fact that he has been before the Supreme Court and other appellate courts and has tried cases adds to someone's capabilities, but it does not allow us to find out about a person who is going to the second highest court in the land, if he passes this test. That is not enough. We need to know something about him. That is the reason we have raised these issues.

One thing my friend from Vermont raised, and I thought it was so good last evening: One does not have to graduate first in their class at Harvard to be a judge, but we heard assertions that Miguel Estrada has graduated first in his class. He has not. But he could graduate last in his class. He went to Harvard, which is one of the top two or three law schools in the entire country. The mere fact he went to Harvard means he is really smart.

He did not graduate first in his class. He was not editor of the Law Review. He was, with 71 other men and women at Harvard, part of the Law Review. He was 1 of 71. That is a pretty large group. As I have indicated, they are all smart.

The fact that he was an editor adds to his qualifications, but do not try to puff him up to make him something that he is not. He was not editor of the Law Review.

I think we are off on a lot of tangents. As Senator HATCH laid out so clearly last night, I think it is tremendous that a man came from Central America when he was 17 years old, went to Columbia University, also a school that is hard to get in, so he must have done well on his tests. I think it is tremendous that he was able then to go to Harvard. But let's not try to make this a rags-to-riches story because it was not. He did well, and that is tremendous. He is an immigrant to this country who has done well academically, but let's not build this up to some kind of a Horatio Alger story as some have said. I think the guy has done very well, and that is commendable. But we have heard all of these assertions that he graduated first in his class and he was editor of the Law Review, which is not true. It does not take away from what a smart man he must be.

We heard a lot last night, with Senators asking questions of Senator HATCH about all the editorials from around the country. Of course, there are lots of editorials that oppose Miguel Estrada. There is no need to read all of them, but I would like to read one from the New York Times. It may only be one newspaper, but the circulation makes up for a lot of smaller newspapers.

This editorial is 411 words long and is entitled ''Full Disclosure for Judicial Candidates.''

The Constitution requires the Senate to give its advise and consent on nominees for federal judgeships. But in the case of Miguel Estrada, the Bush administration's choice for a vacancy on the powerful United States Court of Appeals for the District of Columbia Circuit, the Senate is not being given the records it needs to perform its constitutional role. The Senate should not be bullied into making this important decision in the dark.

Mr. Estrada, who has a hearing before the Senate Judiciary Committee tomorrow, has made few public statements about controversial legal issues. But some former colleagues report that his views are far outside the legal mainstream.

The best evidence of Mr. Estrada's views is almost certainly the memorandums he wrote while working for the solicitor general's office, where he argued 15 cases before the Supreme Court on behalf of the federal government. In these documents, he no doubt gave his views on what position the government should take on cases before the Supreme Court and lower federal courts. Reading them would give the Senate insight into how Mr. Estrada interprets the Constitution, and in what direction he believes the law should head.

There are precedents for this. When Robert Bork was nominated to the Supreme Court in 1987, the Senate was given access to memos prepared while he was solicitor general. The administration has no legal basis for its refusal to supply these documents. Congress has oversight authority over the solicitor general's office, which is part of the Justice Department, and therefore has a right to review its records. Attorney-client privilege and executive privilege are inapplicable for many reasons, including their inability to override the Senate's constitutional duty to investigate fully this judicial nomination.

This is an administration that loves secrecy, on issues ranging from the war in Iraq to Vice President Dick Cheney's energy task force. And it seems to think that if Congress is ignored, it will simply go away. Congress must insist on getting the documents it needs to evaluate Mr. Estrada, and it should not confirm him until it does.

There are three things that can be done and we have been saying this for the 3 weeks we have been on this matter. No. 1, pull the nomination. What does that mean? That means go to something else. No. 2, try to invoke cloture. File a motion to invoke cloture and to do that you need 60 votes. That certainly is within the framework of the Senate for these many years. I also recognize the other way to do this is for Mr. Estrada to come before the Senate and answer the questions that we ask and also supply the memoranda that the New York Times says he should supply. That would be the way to get over this.

We have had now for several days statements made that we should not be on this, that Miguel Estrada is making hundreds of thousands of dollars a year as a lawyer, fully employed at a large law firm here in Washington, DC. We believe that for the many people who are unemployed, the many people who have lost their jobs, 2.8 million during the 2 years of this administration, we should be dealing with those people who are not employed and underemployed people with no health insurance or who are underinsured, people who are trying to make it educationally and otherwise in this society. That is what we should be dealing with. Rather than spending 3 weeks on a man who is fully employed, making hundreds of thousands of dollars a year, we think we should get off this and go to something else.

We are, as has been indicated, here for the duration. If the majority decides they would rather spend the Senate's valuable time on Miguel Estrada, they can do that. But I say that idle time is time we cannot make up later. There is a limited amount of time and a limited amount of legislative days that we have. We could be going to something else.

These filibusters occur very infrequently. I have been here more than two decades now and filibusters are very rare. Once in a while you have to stand for what you believe is right. As the New York Times indicated, we believe we are right.

Now, there was a lot of name calling last night. Both my friend from Colorado and my friend from Tennessee have the absolute right to voice their opinion. I don't think any less of Members for voicing opinions because they disagree with me. I don't think this is the time to name call. We have an actual factual dispute in the Senate. It is now in a procedural bog. We have to figure a way out of this. It should be a debate that is worthy of the traditions of the Senate. That is what this is all about. The Senate traditionally has had debate we read about in our history books. That is what I want the people who read about this debate to see in years to come—not calling each other names, negative in nature but, rather, referring to a person's position as one of conviction.

I listened to the speech of the Presiding Officer who indicated he would wait until next Tuesday to give his maiden speech, but he felt so passionate—that is my word, not his—about this issue that he wanted to give it a few days early. More power to the Senator from Tennessee. That is certainly fine. That is tremendous that the Senator from Tennessee made his speech and he feels strongly about the issue. It does not mean I have to agree with him. But I admire and respect his position.

Everyone on the other side should understand we also have conviction and feel passionately about this issue, and sometimes there are stalemates. This may be one of those. There may be a very tough decision that the majority leader has to make to pull this nomination. If he wants to go through a cloture vote, second cloture vote, a third cloture vote, eat up more time of the Senate, we are here. We are here for the duration. I don't think because we are involved in this debate that people suddenly need to say the Senate will never be the same. Of course it will be the same. We survived the filibuster with the Abe Fortas nomination. We survived that. It was very tough at the time. I watched that from the sidelines. We survived the filibusters conducted against President Clinton's nominees. The problem the Republicans had at that time, they did not have enough votes to stop cloture from being invoked because there were Republicans of good will who decided it was the wrong thing to do. That is good.

The fact there were filibusters and some people felt so strongly is hard to comprehend, but even after the filibuster was ended with the cloture vote then people still moved to postpone that nomination. It went that far.

The Senate survived that. And the Senate will survive this little dustup that is going on here.

The point I am trying to make, let's feel good about other people's positions. You do not have to be mean spirited about someone disagreeing with you. I hope, however long this debate takes, whether it is ended today, Friday, next week, or a month from now, that people will speak well about each other in the Senate and not resort to name calling. That is not good at all.

I hope we can move on to some of the other important issues now facing this country.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Colorado.

Mr. ALLARD. Mr. President, I stand in support of Miguel Estrada, and the need for a vote on his nomination. I listened to the comments of my colleague from Nevada, and I ask myself, what is this debate really about? The debate is about whether a majority of Senators should have the opportunity to voice their opinion through a vote on Miguel Estrada. I, for one, feel like I have adequate information. There is more than a majority of Senators in this body who obviously feel they have adequate information to take a vote on Miguel Estrada.

This filibuster is unprecedented. We have never had a filibuster of this nature before on a circuit court judge up for consideration before this body. I think it is time we recognize that in the Constitution there is an advise and consent provision. Many of us feel the debate has reached the point where enough questions have been asked and now the full body of the Senate is ready to proceed to a vote.

When a judge starts through the nomination process, he is introduced to the Senate through resolution. The nomination goes to the committee. There is also a process where individual Senators can express their concerns through a blue slip process. Then there are hearings and votes in committee, and then the nomination comes to the floor for a vote.

Miguel Estrada has gone through this process. He has even received the highest recommendation from the American Bar Association. That is a body of peers, peers he has done business with on a regular basis, who understand his

record, who know him personally, and who appreciate and respect his professional competence to the point they are willing to give him the highest rating the American Bar Association will give to any nominee.

I think he has a great story. He came to this country with a limited English language ability at the age of 17. He could speak Spanish hardly any English at all. If you come here at 17 and don't know the language and you graduate from a university magna cum laude and then go and serve on the Harvard Law Review—it is simply an outstanding academic accomplishment.

This individual's accomplishments did not stop with graduation; they continued through his professional life. Not just anybody gets to argue before the Supreme Court of the United States. That is a select group of people. So as far as I am concerned, let's simplify this debate, as my colleague suggested. Let's have a vote. That is what we are talking about. Let's just bring up Miguel Estrada for a vote in the Senate. I think it is time. I think a lot of debate has been going on. There are some differences of opinion about things that can be argued about. But if we have a vote, each individual Senator has an opportunity to make up his or her mind as to how they feel, as to whether or not there is enough information, to make up their minds as to whether they think this is the quality of person they would like to have on the DC Court of Appeals.

The assistant Democratic leader suggested there are three ways to resolve this problem. He said we can pull the nomination, file cloture, or submit the nominee to additional questioning. I suggest another: To do what we do for most nominees; that is, have the debate, which we are having and have done, set a time certain for a vote, which the other side simply has refused to do, and then vote up or down. Unfortunately, they are not going to permit that to happen.

Last night I joined a majority of my colleagues to display our unity in support for Miguel Estrada, a display of support that is particularly important in the midst of this Democrat-led filibuster. But last night was more than just a display. It was an attempt to break the logjam, a good will invitation to carry out the Senate's duties as commanded by the advice and consent clause of the Constitution. My colleagues and I gathered here on the floor last night, ready to act. A majority of this body is willing to move forward on the nomination of Miguel Estrada by taking a simple up-or-down vote. That is all we are asking for, a simple up-or-down vote on a nominee who is more than qualified to assume the judgeship of the DC Circuit Court, the second most important court in the United States.

Hoping to proceed, my colleagues and I participated in a dialog with Chairman HATCH, a back-and-forth exchange of questions and answers. I admire, I have to say, the ability and knowledge of Chairman HATCH and his dedication to this cause, especially as it became apparent that we, once again, would be denied the opportunity to vote, held hostage by a game of entrenchment politics.

Every time I hear one of my colleagues address the nomination of Mr. Estrada, I cannot help but to be both impressed and shocked, impressed with the character and integrity, the intellect and principles of Mr. Estrada; and shocked that such a capable man, who has the opportunity to become the first Hispanic judge on the DC Circuit Court, cannot even receive a vote, a simple up-or-down vote.

The majority of my colleagues are ready to move forward on the nomination. We are ready to vote. I cannot cast judgment on those who oppose Mr. Estrada. If they want to vote no, that is their choice. I respect that. It is their right. I understand that. I voted against judges whom I believed were not fit to serve. But it is implausible to think he should be denied a vote entirely.

Newspapers, radio stations, television programs across the country are demanding that the stalemate end, and that the minority party allow the Senate to proceed and to break off a filibuster that could amount to a major shift in constitutional authority.

Last week I spent the Presidents Day recess traveling across the State of Colorado. In every community, big or small, concerned citizens shared their beliefs on the importance of this nomination and the need to provide a vote for Miguel Estrada. They were appalled that we were not moving forward, that their representative in the Senate would not have an opportunity to vote on a very important consideration for the judiciary. Perhaps some disagree on whether he should be confirmed, but they all agree there should be at least a vote, and they agree it should be done without shifting constitutional authority in a manner that imposes a supermajority requirement on all judicial nominations. I am afraid that is where we are headed.

Let me share with you a couple of editorials that ran in Colorado's two major newspapers, one published in the Denver Post, the other appearing in the Rocky Mountain News.

The Denver Post, a paper that endorsed Al Gore in 2000, and by no means an arm of the Republican party, demands that Estrada be given his day in court, that the Senate be provided a vote. The paper confirms the outstanding quality of the nominee, noting that he is a picture book example of an immigrant pursuing the American dream.

The Denver Post also recognizes his outstanding credentials, stating that while he may lack judicial experience, so, too, do a majority of those now sitting on the DC Circuit Court, some of whom were nominated by Presidents Carter and Clinton.

I have a statement here from the editorial in the Denver Post on the posterboard beside me.

The key point is that there should be a vote . . . a filibuster should play no part in the process.

The Rocky Mountain News simply described the Democrats tactics as ''ugly,'' commenting on their attempt to thwart the Senate's majoritarian decisionmaking.

The editorial calls the filibuster:

. . . irresponsible, a hysteria being acted out to keep Estrada from serving on the US Court of Appeals for the District of Columbia.

On the chart I have a quote from both papers highlighting the need to end the filibuster and to proceed to a vote.

The Denver Post:

The key point is that there should be a vote . . . a filibuster should play no part in the process.

The Rocky Mountain News concludes that:

The Democrats have no excuse. Keeping others from voting their consciences on this particular matter is simply out of line.

Editorial boards across the country echo this very same sentiment. More than 60 major newspapers are calling for an end to the filibuster.

I would like to share with my colleagues here this afternoon a few of those. Let me name a few:

The Arkansas Democrat-Gazette; in California, Redding, and The Press Enterprise; The Hartford Courant; The Washington Post; in Florida, The Tampa Tribune and The Florida Times-Union; The Atlanta Journal Constitution and the Augusta Chronicle; the Chicago Tribune in Illinois, along with the Chicago Sun-Times, and Freeport Journal Standard; The Advocate in Baton Rouge, Louisiana; The Boston Herald; The Detroit News and Grand Rapids Press; in New Mexico the Albuquerque Journal; in Nevada, the Las Vegas Review Journal; the Winston-Salem Journal in North Carolina; in North Dakota, the Grand Forks Herald; the Providence Journal in Rhode Island; in West Virginia, the Wheeling News Register/Intelligencer; and nationally, the Investor's Business Daily and the Wall Street Journal.

I would also like to refute one of the arguments being put forward by the Democrats against Mr. Estrada.

For 11 days we have heard statements that the nominee is not qualified to serve because he lacks judicial experience. This standard is simply ridiculous.

Had it applied to their own Democratic nominees, it would have prevented some of the most capable attorney's from being seated on the federal bench.

Under the experience litmus test, the late Justice Byron ''Whizzer'' White, a great Coloradan, who was nominated to the Supreme Court by President John F. Kennedy, would never have been confirmed.

Nor would another great Coloradan, Judge Carlos Lucero, who was nominated by President Bill Clinton to the

Tenth Circuit Court of Appeals, have been confirmed.

To consider a lack of judicial experience as the poison pill of the Estrada nomination while ignoring the confirmation of Democratic nominees Justice White and Judge Lucero, is a double standard of the highest order.

The majority of this body, a majority elected by the American people, is ready to proceed with the nomination of Miguel Estrada.

I have no doubt that the obstructionists have their own reason to vote against the nominee. But they have no reason to prevent a vote entirely.

I hope that my colleagues will realize the danger of the path they have chosen, and will end this course of obstruction.

While I believe a full and fair debate of Presidential nominees is of paramount importance, obstructing an up-or-down vote fails the public trust and is a disservice to our system of justice.

I know how I am going to vote. I am voting for a highly qualified individual. A nominee who the American Bar Association has stated is ''highly-qualified.'' That individual is Miguel Estrada, and he deserves a vote by the United States Senate.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TITLE IX

Mrs. CLINTON. Mr. President, yesterday, the President's Commission on Opportunity in Athletics released its recommendations for Title IX and some of the findings are a haunting reminder of the way things used to be.

It seems that many of the Commissioners believe that men's sports have suffered because of women's programs. They believe that it is okay to count ''slots'' instead of actual women players. And some believe that since men are better ''naturally'' at sports compared to women—that is their word and not mine. That is a true statement if it comes from me, but it is not a true statement when it comes from other women who are more athletically different—and, therefore, men deserve more funding and support. I don't think we should forget that was the excuse used for decades and for generations to keep women out of college, out of math and science classes, and out of the workplace.

I remember as a young girl reading stories of the first women back in the 19th century who wanted to go to medical school to become a doctor or to a law school to become lawyers and who wanted to go to college to further their education. There were court decisions which said women naturally were not suited for higher education. It will wear out their brain. It will undermine their health, and they certainly are not fit to go into the courtroom or into the operating room. Thank goodness we have come a long way from those days.

But I think about it frequently because my mother was born before women could vote. Lest we forget that many of the changes which we now take for granted did not come about just because somebody changed their mind. It is because we had to fight for work and for the kind of progress which we can see all around us.

For 30 years, title IX has encouraged millions of girls and women to participate in sports. In 1972, only 1 out of every 27 women participated in sports. Today, that number is 1 in 2. The program works. I think we should recognize the extraordinary progress we have made.

I remember very well that although I loved playing sports and athletics as a young girl, I was never very good at it. But I played hard, and it was a major influence on my understanding of my abilities, my limits, teamwork, and sportsmanship. It was hard for me to accept the fact that many of my friends and colleagues who were more talented really hit a wall. There were not the kind of interscholastic teams available at the high school level which we now take for granted. There were not scholarships available in most sports for most girls who had the capacity to compete and be good. The colleges were in no way fulfilling the need and desire that young women had to further their athletic pursuits. There really wasn't anything that you could point to as being professional athletic options for extremely well-qualified and motivated women.

I believe passionately that title IX changed the rules on the playing field and opened up the opportunities so more girls and women could see themselves on that field—and create conditions that would encourage our institutions actually to respond to those needs and desires.

I was very pleased to hear last night that Secretary Paige announced he would only consider the recommendations of the Commission that the Commission unanimously agreed upon. And I applaud that announcement.

But I believe that the minority report, which was written by Julie Foudy, the captain and 9-year veteran of the U.S. Women's National Soccer Team, and Donna de Varona, an Olympic swimmer with two gold metals, raises questions about whether any of these recommendations can actually be described as unanimous.

The introduction of the report reads as follows:

After . . . unsuccessful efforts to include . . . our minority views within the majority report, we have reached the conclusion that we cannot join the report of the Commission.

And Julie Foudy and Donna de Varona go on to say:

Our decision is based on our fundamental disagreement with the tenor, structure and significant portions of the content of the Commission's report, which fails to present a full and fair consideration of the issues or a clear statement of the discrimination women and girls still face in obtaining equal opportunity in athletics—

They go on to say:

[secondly,] our belief that many of the recommendations made by the majority would seriously weaken Title IX's protections and substantially reduce the opportunities to which women and girls are entitled under current law; and, [third,] our belief that only one of the proposals would address the budgetary causes underlying the discontinuation of some men's teams, and that others would not restore opportunities that have been lost.

Their goal in issuing this minority report was to make sure it was included in the official record of the Commission. Unfortunately, it is my understanding that the Secretary of Education today has refused to include the minority report. I think that is fundamentally unfair. To me, that report should belong with the majority report, especially since those two women, probably between them, have more direct personal experience in what athletics can mean to a woman's life and what it was like before IX, when Donna was competing, and what it was like after IX was enacted, when Julie helped to lead our women's soccer team to the World Cup Championship.

Therefore, Mr. President, I am going to ask unanimous consent to have printed in the RECORD this minority report. I am doing so because I believe it is important that on this issue we hear from the people who have the most to lose: women athletes, women students. Julie and Donna were invited to join the Commission to represent that point of view, and their voices should be heard. For the information of my colleagues, the minority report can be found at http://www.womensportsfoundation.org/binary-data/WSF—Article/pdf—file/944.pdf.

Now, along with my colleagues, Senator DASCHLE, Senator KENNEDY, Senator MURRAY, Senator SNOWE, and Senator STEVENS, who care so deeply about this issue, we will continue to keep a watchful eye on the Department of Education because the truth is, they do not need permission from the Commission or anyone else to adopt the changes the Commission has proposed; they can propose to change the regulations or offer guidance at any time.

So I am here today in the Chamber to say that I, and many of my colleagues on both sides of the aisle—men and women alike; athletes and nonathletes alike—will fight to protect title IX for our daughters and our granddaughters and generations of girls and women to come.

But let me also add, my support of title IX and my support of the right of the minority to be heard with respect to the Commission's recommendations does not, in any way, suggest that I do not believe in the importance of sports for young men, because I do. I strongly support sports for all young people.

In fact, I think it is very unfortunate that physical education has been dropped from so many of our schools, that so many of our youngsters not only do not have the opportunity to discharge energy and engage in physical activities, but to learn about sports, to find out that maybe something would inspire their passion and their commitment.

There are other ways to ensure that all boys and girls, all men and women have the opportunity for athletic experiences, to participate on teams.

I was somewhat distressed, when the Commission was appointed, with the number of Commissioners who represented an experience that is not the common experience; namely, the experience of very high stakes, big college and university football, which of course is important; I very much believe that. But that is only one sport, and it is a very expensive sport.

I think there are ways, without taking anything away from anyone—boys, girls, men, women—that we can listen to the voices of experience, such as Julie's and Donna's, and come to recognize that there may be other reasons, besides the law, that some men's teams have been discontinued, which I am very sorry about and wish did not have to happen and believe should not have happened if there had been a fairer allocation of athletic resources across all sports.

So I think we can come to some agreements that would serve perhaps to create additional opportunities, but we should not do it to the detriment of girls and women.

I appreciate the opportunity to come to the floor to recognize this very important piece of legislation which has literally changed the lives of girls and women and should continue to do so. What we ought to be doing is looking for ways we can enhance the physical activity, the athletic, competitive opportunities of boys and girls.

One of the biggest problems we have confronting us now is obesity among young people. We need to get kids moving again. We need to get them in organized physical education classes, intramural sports, interscholastic sports, afterschool sports, and summer sports, so they can have an opportunity to develop their bodies and their athletic interests, as well as their minds and their academic pursuits.

Mr. KYL. Mr. President, also, for the information of my colleagues, ''Open to All,'' the report of the Secretary of Education's Commission on Opportunity in Athletics can be found at http://ed.gov/pubs/titleixat30/index.html.

HOMELAND SECURITY

Mrs. CLINTON. Now, Mr. President, on another issue that is of deep concern to me, I come also to raise questions about our commitment to homeland security. This is something I have come to this Chamber to address on numerous occasions, starting in those terrible days after September 11, 2001. And it is an issue I will continue to address in every forum and venue that I possibly can find because, unfortunately, I do not believe we have done enough to protect ourselves here at home.

On February 3, Mitch Daniels, the Director of the Office of Management and Budget, said:

> There is not enough money in the galaxy to protect every square inch of America and every American against every conceived threat.

This statement bothered me at the time. It has continued to bother me. I suppose, on the face of it, it is an accurate statement. Not only isn't there enough money in the United States, the world, or the galaxy to protect every square inch, but what kind of country would we have if we were trying to protect every square inch? That would raise all sorts of issues that might possibly change the character and quality of life here in America.

But I do not think that is what really motivated the statement. The statement was a kind of excuse, if you will, as to why this administration has consistently failed to provide even the rudimentary funding that we have needed for our first responders and to deal with national security vulnerabilities.

We have learned, in the last few months, that threats do exist all over our country. It is not just New York City or Washington, DC, that suffered on September 11. We know that in the months since then, we have seen many other parts of our country respond to alerts—our latest orange alert—which have required huge expenditures of resources in order to protect local water supplies, bridges, chemical plants, nuclear powerplants, to do all that is necessary to know that we have done the best we can.

Life is not certain. There is no way any of us knows where we will be in an hour or in a day or in a year. But what we try to do is to plan for the worst, against contingencies that might undermine our safety. And then we have to just hope and trust and have faith that we have done enough. But if we do not try, if we do not make the commitment, if we do not provide the resources, then we have essentially just put up our hands and surrendered to what did not have to be the inevitable.

When I heard Mr. Daniels make that comment, I thought to myself, if you had made a list of every community in America that might possibly be a site for an al-Qaida terrorist cell, I am not sure that Lackawanna, NY, would have made that list. It is a small community outside of Buffalo where the FBI, in cooperation with local law enforcement, uncovered such a cell of people who had gone to Bin Laden's training camps in Afghanistan and then come back home, most likely what is called a sleeper cell. Their leader was in Yemen where one of our predator aircraft found him and took action against him and his compatriots who are part of the al-Qaida terrorist campaign against us. If we were just thinking, where should we put money to protect ourselves, I am not sure Lackawanna, NY, would have been on that list. Yet we have reason to believe it should be on any list anywhere. Just yesterday four men in Syracuse, NY, were accused of sending millions of dollars to Saddam Hussein.

I don't know that we can sit here in Washington and say: Well, we can't possibly protect everybody so we shouldn't protect anybody. But that seems to be the attitude of this administration. That is what concerns me most. We should be doing everything we possibly can to make our country safer. We should be thinking 24 hours a day, 7 days a week about new steps, smart steps that we should be taking. Why? Because that is what our enemies do when they think about how to attack us. If somebody is on CNN or the Internet, it doesn't stop at our borders. That is viewed and analyzed in places all over the world. We know that they are working as hard as they possibly can to do as much harm to us and our way of life as they possibly can.

Since September 11, our first responders, our mayors, police and fire chiefs have said over and over again they need Federal support so they can do their jobs to protect the American people. During this recent code orange alert, they have done a remarkable job. They have responded to their new responsibility as this country's frontline soldiers in the war against terrorism with grace, honor, and a dedication that Washington should emulate.

We have had the opportunity to do so. We could have already had in the pipeline and delivered more dollars to pay for needed training, personnel, overtime costs, equipment, whatever it took as determined by local communities that they require to do the job we expect them to do. But every time the Senate has tried to do more for our first responders, the administration and some in Congress have said we should do less.

Senator BYRD stood right over there last summer and offered an amendment, which the Senate supported, that would have provided more than $5.1 billion in homeland security funding. It included $585 million for port security; $150 million to purchase interoperable radio so that police, firefighters and emergency service workers can communicate effectively, a problem we found out tragically interfered with communication on September 11 in New York City; another $83 million to protect our borders. But in each case, despite having passed it in the Senate, the administration and Republican leaders settled for far less. They called such spending ''unnecessary.'' In some cases, such as the funding for interoperable radios, not only did we not get the increase to buy this critical equipment, the funding was cut by $66 million.

It was during that debate that we needed the administration's support. But instead, they opposed such efforts,