

Committee in exchange for a date certain for an up-or-down vote on his nomination.

The second hearing is something we had not believed was appropriate, but I want to show both sides of the aisle that we are trying to reach out to do everything possible to go that extra mile and try to get an answer that works.

This is not a formal unanimous consent request at this time, but I do want to offer that opportunity. Again, it would be in exchange for a vote, up or down, at a time certain—to actually have another formal Judiciary Committee hearing with Miguel Estrada. It is my hope the other side of the aisle will decide it is time to conclude the debate and that we can focus on the challenges that lie ahead.

Mr. REID. Will the leader allow me to respond? Otherwise, I will use leader time.

Mr. FRIST. Yes.

Mr. REID. I appreciate that since being chosen majority leader the Senator from Tennessee has gone out of his way to make sure we have ample debate. He has used the cloture motion rarely, and we appreciate that very much. But I say, regarding the Estrada matter, we have been very consistent in our requests. No. 1 is that he answer questions. The Senator said he would try to satisfy that. But until he supplies the memoranda from the Solicitor's office, it is not going to change the position of the people on this side of the aisle. So if he makes the unanimous consent request, we will simply renew our unanimous consent request, as we have done on other occasions.

Mr. FRIST. Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, would the distinguished majority leader take a moment just to make a quick observation?

Mr. FRIST. Mr. President, I will yield for 1 minute, and then we will go to lunch.

Mr. LEAHY. Mr. President, I appreciate very much the distinguished majority leader trying to figure out a way to get through this impasse. It is in the tradition of majority leaders, and I have served with every majority leader since the time of Mike Mansfield. Majority leaders try to work these matters out, and I appreciate that.

I urge him, in doing so, to look at the fact that Miguel Estrada has said he is willing to discuss his papers and find a way that that could be done. I think his suggestion of a hearing where questions would be asked based on that would be very workable. But I commend the distinguished majority leader for doing what is the tradition of leaders—to try to find a way through this.

Mr. FRIST. Thank you, Mr. President.

#### RECESS

The PRESIDING OFFICER. The hour of 12:30 p.m. having arrived and passed, the Senate is adjourned.

Thereupon, the Senate, at 12:56 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

#### LEGISLATIVE SESSION

##### PARTIAL-BIRTH ABORTION BAN ACT OF 2003—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session and continue consideration of S. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

Mr. REID. 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.

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

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

##### UNANIMOUS CONSENT REQUEST— EXECUTIVE CALENDAR NOS. 32, 34, 35, 36 AND 55

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 32, Jeffrey Sutton, to be a U.S. circuit judge for the Sixth Circuit, there be 4 hours for debate equally divided between the chairman and the ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, on the circuit court judges, we have a couple circuit court judges on which we believe we can work out an agreement. Jeffrey Sutton is not one of them. So I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 34, Deborah Cook, to be a U.S. circuit judge for the Sixth Circuit, there be 4 hours for debate equally divided between the chairman and ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, this woman, along with Mr. Roberts, is part of those nominations we believe were improperly reported out of the committee. So I object to her and

to Mr. Roberts at this time until there is another hearing in the Judiciary Committee.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 35, John Roberts, to be a U.S. circuit judge for the DC Circuit, there be 4 hours for debate equally divided between the chairman and ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

Mr. REID. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 36, Jay S. Bybee, to be a U.S. circuit judge for the Ninth Circuit, there be 4 hours for debate equally divided between the chairman and ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, Senator BIDEN had an objection to this proposed judge. We heard from his staff earlier today that probably has been resolved, but we will not know that until they check with Senator BIDEN who, as my colleague knows, is indisposed having had surgery. We will get back later, hopefully today. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, there are five individuals who are on the Executive Calendar. This is the last of the five. I will ask unanimous consent for him, as well, but clearly we want to move ahead as much as possible and want to continue to work with the other side. We do want to reach out once again. These unanimous consent requests are a part of our efforts to reach out and advance the process. I hope we can resolve this shortly.

Mr. President, as in executive session, I ask unanimous consent that with respect to Calendar No. 55, Timothy Tymkovich, to be a U.S. circuit judge for the Tenth Circuit, there be 4 hours for debate equally divided between the chairman and ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, I have spoken to the leader and to the ranking member of the Judiciary Committee on the other judges. I have not spoken to either of them about this man. For that reason, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, with respect to the rejection of these five proposed unanimous consents, we do ask that the other side look at these as individuals. Once again, I state the willingness on our side of the aisle to bring these forward. I mentioned 4 hours for debate equally divided. If it takes 8 hours or 10 hours of debate, I would put that forward.

Rather than run through the unanimous consent request again, we will continue our conversations off the floor.

Mr. REID. Mr. President, through the Chair, I ask the leader this question: In regard to two of the names put forward, the woman from Ohio and Roberts, the best way to alleviate a very serious problem that has developed—and, you know, I think Senator LEAHY is right on his interpretation of the rules, but it really does not matter at this stage—why do we not have the Judiciary Committee reconvene regarding those two judges? If there are some more questions the Judiciary Committee members have, ask the questions and then those two matters, I am sure, will receive a number of Democratic votes, and we could have these two people on the floor. That could be scheduled under whatever the rules are in the Judiciary Committee.

I think we are creating problems for ourselves. I know Senator HATCH feels right the way he interprets the rules. We have people on this side who feel that he is wrong, and it would seem that an easy way to avoid that problem would be to reconvene the Judiciary Committee, see if Democratic members of the Judiciary Committee want to ask any more questions of those nominees, and we could move along. Otherwise, I am afraid that because of how we interpret the rules of the committee having been violated, it is going to unnecessarily throw another cloud over an already cloudy situation. I do not suggest the leader has to answer that publicly, but I would hope that he would follow through on that and see if that would be a way to avoid these problems.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, all five of these individuals are on the Executive Calendar for consideration on the floor of the Senate. We can continue our conversations, but all of these have gone through the Judiciary Committee and have been presented on the floor.

#### EXECUTIVE SESSION

#### NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA—Continued

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate

proceed to executive session for the consideration of the Estrada nomination.

The PRESIDING OFFICER. Is there an objection?

Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. FRIST. Mr. President, earlier today we had a productive debate with the Vice President in the Presiding Officer's chair. The debate was constructive and did fulfill my goals to elevate the debate to the level of talking about advice and consent of the Constitution itself.

The nomination of Miguel Estrada has been pending before the full Senate for over a month. He was initially nominated 2 years ago. I have tried on numerous occasions to reach out for a time certain for a very simple up-or-down vote. That is all we ask for after these 5 weeks of debate. Each of the requests has been met with an objection from the other side of the aisle.

As I have stated, we are not going to give up on this nominee. We are going to continue to push for that very simple request that this nominee should have an up-or-down vote. He deserves an up-or-down vote, and I will continue to pursue every avenue possible in terms of reaching out. If the other side of the aisle says they want more information, we have responded by saying submit written questions and we will get the answers. The White House has made Miguel Estrada available individually to Senators to answer their questions, in an effort to keep this nomination moving forward.

Prior to lunch, I asked my Democratic friends if they would agree to a time certain for an up-or-down vote if a further hearing in the Judiciary Committee is scheduled. If they think they need more information regarding this nomination, they would agree to a hearing to be followed by an up-or-down vote. That would be another way to get information, if it really is the fact that the other side of the aisle wants more information. I hope it reflects to my colleagues on both sides of the aisle my attempt to reach out through every avenue possible to respond to their request for more information.

At the end of that hearing, I would expect as part of the proposal to have an up-or-down vote. If people do not like what they hear or, after that process, they say they do not know enough, then let them vote no, so they can express themselves with an up-or-down vote. I think it is time for a vote.

I am happy to yield for a brief response to my Democratic colleague, if he would like to comment.

Mr. REID. I thank the leader. As I indicated this morning, we would be willing to attend the hearing and ask questions of Mr. Estrada if, in addition to

that, we had the documents that we have requested from the Solicitor's Office while he worked there.

Mr. FRIST. Mr. President, I ask unanimous consent that following a further hearing with respect to the Estrada nomination, there be an additional 4 hours for debate equally divided in the usual form, and the Senate then vote on the confirmation of the nomination of Miguel Estrada with no intervening action or debate.

Mr. REID. Mr. President, I ask unanimous consent that the request be modified to allow the provision of documents relevant to Mr. Estrada's Government service, which were first requested in May of 2001; that the nominee thereafter appear before the Judiciary Committee to answer questions which we believe he failed to answer in his confirmation hearing and any additional questions that may arise after reviewing the documents we have requested.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. FRIST. Mr. President, reserving the right to object, as we have mentioned again and again, access to these SG confidential memorandum would be unprecedented and would jeopardize the integrity of our system. Therefore, I object to the request for modification.

The PRESIDING OFFICER. The objection is heard.

Is there objection to the initial request of the majority leader?

Mr. REID. Objection.

The PRESIDING OFFICER. The objection is heard.

#### CLOTURE MOTION

Mr. FRIST. Mr. President, given that response, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin Hatch, Trent Lott, Robert F. Bennett, Peter Fitzgerald, Jeff Sessions, John Ensign, Kay Bailey Hutchison, Rick Santorum, Don Nickles, Jim Talent, Lindsey Graham of South Carolina, Lisa Murkowski, Conrad Burns, John Warner, John Sununu, Gordon Smith, Elizabeth Dole, Saxby Chambliss, Christopher Bond, Susan Collins, Wayne Allard, Lamar Alexander, Norm Coleman, Pat Roberts, Craig Thomas, Larry E. Craig, Olympia Snowe, John McCain, James Inhofe, Jon Kyl, Lincoln Chafee, Judd Gregg, Richard G. Lugar, George Allen, Chuck Grassley, George V. Voinovich, Mike Capo, Michael B. Enzi, Thad Cochran, Mike DeWine, Arlen Specter, Sam Brownback, Ben Nighthorse Campbell, Richard Shelby, Ted Stevens, Chuck Hagel, John Cornyn, Pete