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## Senate

The Senate met at 10 a.m. and was called to order by the Honorable MICHAEL ENZI, a Senator from the State of Wyoming.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Awesome God of the universe, Creator of the changes of day and night, giver of rest to the weary, Your works are great and Your ways are just and true. Thank You for Your mercies and for Your blessings on our work. Thank You for the riches of Your grace that make salvation possible. Forgive our doubts, anger, and pride. As we look to You, may we learn to esteem others as more important than ourselves. Give Your wisdom to our Senators that they may be instruments of Your providence. Keep them from sin, evil, and fear, for You are our light and salvation and strength. Give us that peace which the world can neither give nor take away. Fix our minds on the doing of Your will. To You be the glory for endless ages. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable MICHAEL ENZI led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 20, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable MICHAEL B. ENZI, a Senator from the State of Wyoming, to perform the duties of the Chair.

TED STEVENS,  
President pro tempore.

Mr. ENZI thereupon assumed the Chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

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

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for statements only for up to 60 minutes, with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the Democratic leader or his designee.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

### SCHEDULE

Mr. CRAIG. Mr. President, today, following 1 hour of morning business, the Senate will resume consideration of the nomination of William Myers III to be U.S. circuit court judge for the Ninth Circuit. A cloture vote is scheduled on the Myers nomination at 2:15 today, and that will be the first vote of the day. As a reminder, the Senate will recess from 12:30 to 2:15 to allow the weekly party luncheons to meet. Additional votes are possible today following the scheduled cloture vote. The Morocco Free Trade Agreement may be available, and we may begin consideration of the bill under the statutory limit.

As always, Members will be notified as additional votes are scheduled.

### VOTE ON WILLIAM MYERS

Mr. CRAIG. Mr. President, I see the minority leader in the Chamber. I will make a few brief comments prior to him taking the floor.

This morning, we will be in morning business, and I want to make a couple of comments about my frustration at this moment. William Myers is a Ninth Circuit court nominee from the President to fill the Idaho position. He is a phenomenal and highly qualified young man who has served as Solicitor at the Department of Interior. He was nominated well over a year ago and brought before the committee. He handled himself extremely well and professionally. He has been a man who has had experience in both the public and the private sector. He served on the Judiciary Committee under the former Senator from the State of Wyoming. He is a top-flight man.

Yesterday, as we debated the nomination of Bill Myers, no one from the other side came. The reason they did not is that we were served notice some months ago that Bill Myers would not receive a vote this year. We could try to cloture him, but they were going to block a vote against him. Was he qualified? Yes. Should he serve? Yes. Is he the selection of the President? Yes. Should he have an up-or-down vote? Absolutely. But that is not going to happen.

He is now the eighth judge the other side has just flat told us does not serve their political purpose, and therefore they will not allow us a vote. That is constitutional obstructionism in the first order of the advise and consent of our Constitution.

So here is a young man who came to Washington out of college to serve his U.S. Senator, served with honor with the Judiciary Committee, worked for a

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



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private organization advising this Senator and the Senator from South Dakota, as well as the National Cattle-men's Association, on grazing; became a private practice attorney; then went as attorney to the Secretary of Interior; has served most honorably and very credibly. He will not get a vote this session of the 108th Congress. Why? Because the other side has just flat said he serves their environmental agenda purposes and therefore we will not be allowed to vote on him.

That is a phenomenally frustrating reality to me as a Senator who believes that we do not have the right to arbitrarily pick and choose, we have the right to advise and consent and to vote them up or vote down, 51 votes or 50 votes, but not to arbitrarily pick and choose to serve the political agenda of a given political party for these purposes. There is no other explanation than the one I have just offered.

If one looks at the broad qualifications of the eight judges who have now arbitrarily been chosen for their political past involvement and therefore the accusation that they might be an activist on the court, that is a frustration of the first order.

So no one came to the floor yesterday to debate him except those of us on the Judiciary Committee advocating his nomination. The votes are so locked in, so fixed, so regimented, that this just is not going to happen. So we will have a 2:15 vote today. It is perfunctory. It is just the way it is going to be, unless we break out of this and say collectively to the Senate as a whole, no, this procedure of misusing the process is wrong. There is a time to debate, a time of reality, a time of broad understanding, but most importantly, under our Constitution, we have never filibustered nor intentionally blocked by demanding a 60-vote majority. They have always broken in the past when tried, and ultimately up until this Congress, Presidential nominations received the opportunity of the advise and consent of the Senate by a vote on the Senate floor, not of a cloture but of a majority.

The reason I highlight that is because that is the vote this afternoon. It is a false vote. It is an unnecessary vote for a highly qualified young man who would serve the Ninth Circuit well, a Ninth Circuit court that is now viewed as the most dysfunctional court in the land, where over 90 percent of its decisions are overturned by the Supreme Court. Bill Myers brings common sense to the court, not the radicalism of San Francisco lawyers but common sense spread across the western public land States of our country.

Is that why he is not getting the vote? Very possibly so. And that is a tragedy of the highest order. This is not the kind of day the Senate, this great Chamber, ought to have, but we are going to have it today at 2:15 this afternoon. So it is important that I speak briefly to that.

#### 9/11 COMMISSION REPORT

Mr. CRAIG. Mr. President, I know the minority leader is kindly waiting, but let me say one other thing. We are going to be presented—the press has already been presented—the 9/11 Commission report. I do not have one in my office. I have to go read about it in the New York Times. Thank you, Commission, for being so public that you will not even inform those of us who created you, but we understand they are going to recommend the creation of a czar-like or individual director of intelligence that coordinates all of the agencies.

I have one comment on that only because I have not seen the report, and I do not know that the minority leader has either—we have not had a full opportunity to read it—let us proceed with caution. We have done a great deal of work since 9/11 now to bring these institutions together to coordinate intelligence. We are better off than we were pre-9/11.

I am not sure that I want a Cabinet level, politicized director of intelligence for our country. I do not know that it is a good idea to politicize that. If we put them in a Cabinet level position, by the character of that position we have politicized intelligence. Intelligence should not be politicized. It ought to be factual. And we now know we have had a problem with the facts, but it wasn't just our intelligence community; it was intelligence communities around the world. Bad information makes bad information makes bad reports and can produce bad decisions.

Intelligence is critical and it needs to be of the highest order. I am not suggesting we don't have a top level coordinator/director, but let us think long about the idea of politicizing that person. We have seen the Directors of the FBI stay on through Republican and Democrat administrations throughout history—not always but many times. It brought quality and uniformity to that law enforcement community. It did not politicize it. It is every bit if not more important today, with the war on terrorism, that we build a quality structure, that the information be of the first order, and that it never ever could be suggested or run the test of, well, that person is a political person, that person was appointed because he was a political friend. That is my only caution today, in a preliminary thought, until we get the report and see the facts and the evidence. And I do wish the Commission would let us have the report before they give it to the New York Times. It probably would be a bit more appropriate and give us an opportunity to speak factually and knowledgeably about it.

I thank you, Mr. President. The minority leader has been kind and patient, and I yield the floor.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

#### ORDER OR PROCEDURE

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Democratic half hour be allocated in the following manner: Senator SCHUMER, 15 minutes; Senator HARKIN, 10 minutes; and Senator REID, 5 minutes.

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

Mr. DASCHLE. Mr. President, I will use my leader time so as not to take any of the Democratic time.

#### JUDICIAL NOMINATIONS

Mr. DASCHLE. Mr. President, let me respond briefly, if I may, to the Senator from Idaho. I have respect for him and for much of the work we have done together over the years on many issues, including forest health. But I must say I strongly disagree with his characterization of this particular judicial nominating debate.

Over the history of our 220 years, the Senate has seen fit on countless occasions to require either a threshold cloture vote or, before we had cloture, some resolution to controversial matters involving extended debate. Before we had cloture, there was no way to resolve it. A Senator could see fit to talk about an issue or a nominee for days, weeks, months, and there was no way to resolve it. There were many occasions during the 20th century when this was exactly the case. That evolved, of course, with the implementation of cloture and the use of cloture over the course of the last 100 years. So now we have a rule of the Senate that says on those issues that are controversial, a supermajority is required.

I think for the Senator from Idaho to make the point that there is no vote is just wrong. The vote occurs at 2:15. If the supermajority will move to proceed on this very controversial nominee, you go to the second phase of consideration. But that is what the Senate rules require. I must say that is a far better approach than what we faced during the Clinton administration, when more than 60 nominees never got a committee vote. We go back to the old days of the 20th century during the Clinton years when you didn't even have an opportunity for cloture because the Judiciary Committee refused to act on over 60 nominees. So this is an improvement, to say the least, over that.

As to the qualifications of Bill Myers, I will simply say the ABA does not share the view of the Senator from Idaho with regard to his qualifications. It is very rare for the ABA not to categorize a nominee as qualified—extremely rare. They have not done so in