

any of these kinds of amendments dealing with the Most Wanted list or the terrorist list—we can't even get it before the Senate. That is the lock, the hold that the NRA has. It is disgraceful.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts yields the floor. The Democratic side has 30 seconds remaining.

The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to be recognized to conclude the morning business.

I think the Senator from Massachusetts has laid out the case. Can you imagine? We took the bill off the floor for the Department of Defense, for our soldiers and their families, and said we didn't have time to finish it this week because we had to go to this bill, the National Rifle Association's most important bill, which says that gun manufacturers and gun dealers selling their firearms to those on the FBI Most Wanted list, or to those in terrorist organizations, would not be held accountable for their misconduct? Where are the priorities of this Senate?

The PRESIDING OFFICER. The time on the Democratic side has expired. Who seeks recognition? The Senator from Utah.

Mr. HATCH. Mr. President, I have heard a lot of arguments on the floor in my day, but some of these arguments are some of the worst ever heard. I don't know, maybe I missed something. We were moving ahead on the Defense authorization bill when all of a sudden we couldn't get cloture. We couldn't move ahead because of the very people who have been making these arguments, in a holy fashion, that they want to help our soldiers. Yet they filibuster by preventing cloture and preventing a full acceptance of the Department of Defense authorization bill, and then turn around and say we stopped them from amending the bill. If they were stopped, it is because their amendments were not germane.

I have never heard arguments like this, that we are just going to give gun dealers an absolute right to violate the law. They haven't read this legislation at all.

And then they bring in an antiterrorism argument. What they do not tell the American public is that there are millions of guns out there in the underworld that people can get. But that doesn't justify holding liable gun manufacturers—who manufacture guns for our soldiers, by the way; if they all go broke we will not have the guns for our soldiers—when somebody takes one of their guns and misuses it. The person misusing it ought to be liable, not the gun manufacturer who cannot supervise the persons to whom they legitimately sold guns.

Let's face it. The folks on that side of the aisle hate guns. They talk in terms of, We want to take care of our hunters and our gun collectors and people who love guns who are decent, law-abiding

citizens. But look over the years how they have argued against anything that makes sense with regard to the right to manufacture weapons that we have always had in this country, and the right to keep and bear arms, which is explicitly in the Constitution. These are the same people who are constantly arguing about things that are not explicitly in the Constitution, claiming that they should be given the sanctification of constitutional protection. Yet something that is expressly written in the Constitution, they turn around and blast.

I could spend a lot of time on that, but that is not what I came over here to do. All I can say is I find it amazing that an argument would be made, after they voted against cloture—in other words, proceeding with the Defense authorization bill, they voted against proceeding—and now they are saying, Why didn't we proceed. I missed something maybe. But I don't think so. This is just typical: Politics trumps everybody. No one is saying, with regard to this issue of the gun manufacturer's right to manufacture guns that are legal, they have a legal right to do so—nobody is making the argument that dealers who are honest and decent and honorable should not be able to sell those guns to decent, honorable people. We have plenty of restrictions already in law against illegality with regard to the sale of weapons.

My gosh, is there no end to politics in these issues? This argument that this modest bill gives criminals a free pass and aids and abets terrorists is as phony an argument as I have heard. And the argument that it lets manufacturers off the hook for their wrongdoing—if they do wrong, they are on the hook under this bill.

They are not doing wrong. That is the problem. What is wrong is the chief fundraiser of our friends on the left happens to be—the chief hard-money funder in this country happens to be the personal injury trial lawyer for liberals. And those people literally are the reason why we have these, I think, misconceived arguments.

I could not sit here without saying something about it because it is hard to believe that they can stand and make these kinds of arguments. Much as I respect my fellow Senators, it is mind-boggling that they can make an argument that we are preventing going ahead with the DOD bill when they are the ones who stopped it. My gracious. Let me shift gears. I could talk for hours on that subject.

NOMINATION OF JOHN ROBERTS

Mr. HATCH. Mr. President, the nomination of Judge John Roberts to the Supreme Court presents the Senate with some real challenges and opportunities.

First, it allows us the specific opportunity to place on our Nation's highest Court a man of impeccable qualifications and unquestioned character. Everybody here knows that.

After an unprecedented degree of consultation with the Senate, President Bush has nominated a truly outstanding individual.

Judge Roberts has a strong background in terms of education and experience.

Judge Roberts is a summa cum laude graduate of Harvard College—a degree which he finished in just three years—and a magna cum laude graduate of Harvard Law School, where he was the managing editor of the Harvard Law Review; meaning he is at the pinnacle of Law school students at the time throughout the country.

He was a law clerk for two distinguished Federal judges: First for the late Judge Henry Friendly on the U.S. Court of Appeals for the Second Circuit, widely recognized as one of the most influential appellate judges of his time; and next on the U.S. Supreme Court for then-Associate Justice William Rehnquist. Now Chief Justice, he too is one of the most outstanding jurists of his time.

Judge Roberts's career in legal practice covers both the public and private sectors.

He held several positions in two administrations, including Special Assistant to the Attorney General, Associate Counsel to the President, and Principal Deputy Solicitor General, all high positions. They don't get much higher in the law.

In between his stints in public service, Judge Roberts became a leading member of the prestigious law firm of Hogan and Hartson, an internationally recognized law firm.

Overall, Judge Roberts became, by all accounts, one of the leading practitioners before the Supreme Court, arguing nearly 40 cases.

Not only does Judge Roberts have the education and experience, but his colleagues in the bar tell us that he possesses the integrity and character to make a fine member of the Supreme Court.

Just two years ago, the American Bar Association unanimously gave Judge Roberts its highest well qualified rating for serving in his current position on the U.S. Court of Appeals for the D.C. Circuit.

Mr. President, a second opportunity, as well as a great challenge, presented by this nomination is more general.

We can better educate ourselves and our fellow citizens about the proper role of judges in our system of government.

We can clarify the kind of judge we need on the bench.

We can get straight just what judges are supposed to do.

We must seize this opportunity, because I am concerned that lack of clarity on this point, a misunderstanding of what judges are supposed to do, contributes to the rancor and the partisan conflict surrounding the judicial selection process.

Mr. President, last week here on the Senate floor, I began to address this by

comparing judges to umpires or referees.

I used that analogy because I believe we can be simple without being simplistic, even regarding some of these very important, and sometimes confusing matters.

Judges, like umpires or referees, take rules they did not make and cannot change and apply them to the contest before them.

Neither judges nor umpires may first pick a winner and then manipulate the rules to produce that outcome or the final result.

Every American of a certain age remembers only too well the Olympic basketball game in which biased referees unfairly replayed the final seconds of the game so that the Soviets would win. And we all saw the tainted, colluding French ice skating judge at the last winter Olympics in Salt Lake City.

Neither judges nor umpires may allow their personal views of the parties or teams before them to influence their application of the law or the rules.

And they certainly may not prejudge the contest before the teams even take the field.

This role or function, this job description, must guide the hiring or selection process.

We hear it said, for example, that we must know a judicial nominee's views. At least on the surface, that notion sounds practical, even an assertion of common sense.

The problem is, that by itself, this general demand to know a nominee's views begs rather than answers the important questions.

It is so general that it simply cannot mean what it says. We have neither desire, need, nor right to know most of Judge Roberts's views on most imaginable subjects.

The real questions are these: What views do we actually need to know? What views may we properly seek to know?

I submit, that properly understanding what judges do helps us properly establish which of a nominee's views we need to know.

This is quickly coming to a head.

Some of my friends on the other side of the aisle, aided in turn by some of their friends among left-wing interest groups, are demanding to know Judge Roberts's views related to how he is likely to rule on certain issues.

They seek to elicit those views in a variety of different ways and seem committed to ask carefully crafted questions designed to poke and prod, cajole and extract, but they are after the same thing.

Simply put, it appears that some of our Democratic colleagues want, in essence, Judge Roberts to prejudge issues and cases that might come before him.

It appears some Senators may even base their confirmation vote on his future judicial votes.

I might add that one Senator, I believe, said that he would vote no if the

Judge Roberts does not explicitly endorse *Roe v. Wade*. That is outrageous.

When Judge Roberts appears before the Judiciary Committee, I hope we will follow a standard, for both questions and answers, that is consistent with the nature of the judicial office and with Senate tradition.

The nature of the judicial office itself requires independence and impartiality. Nominees for judicial office, and especially those who are already sitting judges, must protect these essential elements of judicial character.

Many questions and answers will be consistent with judicial independence and impartiality, but others are not.

I have said before that Senators can ask any questions they choose, whether I disagree with those questions or not, whether I feel those questions are wise or not.

I have served on the Judiciary Committee during hearings for eight of the nine current Supreme Court Justices and more than 1400 lower court judges.

I know from experience that Senators want to know a great many things from a judicial nominee. Being legislators and being political, we may even want to know many political things.

I do, however, encourage my colleagues, and remind myself, to resist using a purely political standard to evaluate a nominee for judicial office.

Even more than Senators, however, the nominee before us will certainly use a judicial standard to answer even political questions.

Many of us have already met with Judge Roberts. I know him personally. I have seen him sit there for 14 years because he wasn't even given the courtesy of a hearing.

He is a thoughtful, sincere, and honest man.

We can be confident that he will do his best to balance the need to be forthcoming and responsive, on the one hand, with his commitment to judicial independence and impartiality, on the other.

There is, however, more for him to consider than simply that a Senator wants to know something.

Judge Roberts has not only been nominated to a judicial position, he already has one. He is a sitting judge.

He will be on the Federal bench, on one court or another, for many years to come.

Those who come before him deserve to know, need to know, that he is impartial. Nothing shatters that confidence more than knowing a judge has, under oath, already pledged to rule one way or another, which is being demanded by some of my colleagues on the other side.

In fact, this duty not to prejudge issues or cases is so important that it is codified in the Canons of Judicial Ethics. Let me read a portion of it here. I think it should be interesting to everybody.

"[A] judge or a candidate for appointment . . . to judicial office shall not

. . . with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office."

I know that Judge Roberts takes his judicial responsibilities, his judicial ethics, very seriously.

We can look not only to the nature of the judicial office, but to past judicial confirmations, for more concrete definition of this judicial standard.

As each Supreme Court nominee came before the Judiciary Committee, Senators asked different kinds of questions on a wide range of issues. Some of them sought, more or less obviously, to zero in on how the nominee would likely rule in the future cases raising particular issues.

We are probably all guilty of that at one time or another, but judges who use common sense refuse to answer those kind of questions. They should.

Senators of both parties pressed nominees of both parties.

The remarkable thing, which we will do well to keep in mind today, is the consistency with which nominees handled these questions. There were variations, to be sure, but those were variations in degree.

Nominees regularly took the same basic approach to the issue of prejudging issues and cases.

Let us look briefly at some examples from nominees of both parties.

Anthony Kennedy's nomination was sent by a Republican President to a Democratic Senate. At his confirmation hearing in January 1988, he said, "[T]he public expects that the judge will keep an open mind, and that he is confirmed by the Senate because of his temperament and his character, and not because he has taken particular positions on the issues." That is a pretty important statement.

The Senate confirmed Justice Kennedy by a vote of 97-0.

David Souter's nomination was also sent by a Republican President to a Democratic Senate. At his confirmation hearing in September 1990, he asked rhetorically, "[C]an you imagine the pressure that would be on a judge who had stated an opinion, or seemed to have given a commitment in these circumstances to the Senate of the United States?"

By the way the Senate confirmed Justice Souter by a vote of 90-9.

Ruth Bader Ginsburg's nomination was sent by a Democratic President to a Democratic Senate. At her confirmation hearing in July 1993, she gave what she called her rule when asked to prejudge issues or cases—a rule which we honored in the committee and the Senate "No hints, no forecasts, no previews." That was a Democratic nominee and we honored those views, Democrats and Republicans.

The Senate confirmed Justice Ginsburg by a vote of 96-3.

And finally, Stephen Breyer's nomination was sent by a Democratic President to a Democratic Senate. At his

confirmation hearing in July 1994, he said, "I do not want to predict or to commit myself on an open issue that I feel is going to come up in the Court. . . . it is so important that the clients and the lawyers understand the judges are really open-minded." I agree with his statement and so did members of the Judiciary Committee by and large.

The Senate confirmed Justice Breyer by a vote of 87-9.

I hope everyone sees the pattern here. Each of these Supreme Court nominees was, like Judge Roberts, already a Federal appeals court judge.

Each of them, whether Republican or Democrat, used the same judicial standard when Senators, Republican or Democrat, sought prejudgment.

They refused.

These judicial nominees refused to prejudge issues or cases because it would compromise their own independence and impartiality.

They refused to prejudge issues or cases because litigants deserve confidence that the judge before whom they appear is impartial and open-minded. Let me put back up here the simple, straightforward Ginsburg Rule.

No hints, no forecasts, no previews.

We honored her in that. Why is it that somebody can come to the floor and say, unless he is against overturning *Roe v. Wade*, I will not vote for him? I guess that is a Senator's right, but it certainly is not consistent with the way we treated other Supreme Court nominees.

She was asked about her personal views on issues and precedents.

She was asked her judicial views on issues and cases. She steadfastly refused.

Once again, the Ginsburg Rule is no hints, no forecasts, no previews.

I know that this way of balancing responsiveness to Senators with commitment to judicial independence and impartiality can be frustrating. But we confirmed her nomination overwhelmingly.

Let me be clear. Senators have the right to ask any questions they choose. I do hope that Senators, myself included, consider the absolute imperative of judicial independence and impartiality when we decide what questions to ask.

But we must realize as we have in the past that simply asking the question does not mean a judicial nomination answer. I am concerned that some are already planning to change standards to demand that Judge Roberts abandon the Ginsburg rule or the rule of the other Justices. Some have already released a list of questions they intend to ask this nominee. Many of the questions asked in various ways how Judge Roberts will rule on issues. Many of the questions ask how he will prejudge cases. I am concerned that we might hear Senators demand that Judge Roberts sacrifice his independence and impartiality, that he violate his sense of judicial ethics before they will vote for him. I hope this does not happen. This

political standard will not only undermine judicial independence and impartiality but will be a radical departure from Senate tradition. I hope we do not see it.

Some have also argued that the Senate allowed Justice Ginsburg to follow her "no hints, no forecasts, no previews" rule because she had already been on the appeals court for more than a decade. This reasoning is faulty also. As I have described, the Ginsburg rule is compelled by the judicial function itself, by the absolute imperative of judicial independence and impartiality. This imperative exists whether someone had never before been a judge, been a judge for 2 weeks, or was a judicial veteran of 25 years. We should have faith in this fine nominee to take his responsibility as a judge seriously. I firmly believe we should follow the standard that the judicial function compels and Senate tradition confirms. Justice Ginsburg stated it as "no hints, no forecasts, no previews." We respected her and we confirmed her.

This administration has given up 75,000 pages of materials. Frankly, that is the haystack. I guess some are calling to now look for the needle.

We should do the same for Judge Roberts, and that is respect him and confirm him.

I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The majority whip.

Mr. McCONNELL. How much time is remaining on our side?

The PRESIDING OFFICER. Eight minutes 20 seconds.

Mr. McCONNELL. We are talking with the floor staff on the other side about getting additional time on this side since a bit more was used on the other side.

I ask unanimous consent that Senator CORNYN be given 2 extra minutes, then I be allowed to speak for 10 minutes, followed by Senator BROWNBACK for 5 minutes.

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

The Senator from Texas.

Mr. CORNYN. Mr. President, I will spend no more than 10 minutes to comment on the President's nomination of John Roberts to the U.S. Supreme Court.

Several weeks ago, shortly before the President nominated Judge Roberts, we were informed that the strategy on the other side of the aisle was a three-pronged strategy: one, to claim that there was inadequate consultation; two, to somehow paint the nominee as extreme; and three, to use document requests to go on a fishing expedition to delay the confirmation for as long as possible.

Before this nominee was proposed by the President, there was unprecedented consultation with both sides of the aisle, and because this nominee is clearly in the mainstream of American jurisprudence and has a distinguished record of public service as a judge and as an advocate on behalf of the United

States in the Solicitor General's Office and elsewhere, it looks as if we already have jumped to prong three, the first two prongs being unavailable.

Some members on the other side of the aisle are already intimating that, unless the White House finds and turns over every piece of paper written by Judge Roberts when he was a Government lawyer, they cannot properly assess his qualifications to the U.S. Supreme Court. This is preposterous. The public record on Judge Roberts is already immense. It is telling that opponents of this nomination, or at least those who want to slow it down unnecessarily, have not even had a chance to review the documents that are already available. Yet they are calling for more documents. If history is any teacher, and I believe it is, this may indeed be the beginning of a case of moving the goalpost each time a document request is made and then satisfied, to then ask for more, which then leads to another request for more, and a game that the nominee cannot win because the goalposts move each time.

I would like to remind my colleagues what we already have. Judge Roberts was confirmed to the D.C. Court of Appeals just 2 short years ago. He testified extensively before this Senate on two previous occasions, and these transcripts total 14 hours of testimony. In conjunction with those hearings, he completed more than 100 pages of responses to written questions posed to him by Senators on the Senate Judiciary Committee. If this were not enough, the Senate already has before it various legal briefs and oral argument transcripts from the hundreds upon hundreds of briefs written by Judge Roberts, or in which he participated, when he practiced as a lawyer both in the private sector and in the Solicitor General's Office. The committee and the Congress already has before it 10 articles authored by Judge Roberts, scholarly legal articles which reflect some of his thought processes and his expertise on various issues of law.

All of this, of course, was more than enough for the Senate to unanimously confirm Judge Roberts as it did 2 short years ago to the U.S. Court of Appeals for the District of Columbia, which many of my colleagues on the other side of the aisle have called the second most important court in the land.

There is more. Since his confirmation to the bench, he has participated in more than 300 appellate cases and opinions that cover more than 2,000 pages. The White House, as recently as yesterday or perhaps the day before, has pledged to expedite the public processing of more than 75,000 pages of memoranda that Judge Roberts wrote while an adviser to President Reagan during the 1980s. By any measure, this is a vast public record.

I am quite confident none of my colleagues on the other side of the aisle or even on our side of the aisle have had an opportunity to digest this huge disgorging of public information at this

point. Yet there is the clamor already for more, more, more and complaints that the President and this administration have not given them enough. Perhaps my colleagues, I respectfully suggest, should read what has already been produced before they start complaining that it is not enough unless, of course, this is more about picking a fight than it is about finding a reasonable path toward an orderly process leading to an up-or-down vote on the Senate floor.

The documents my colleagues are demanding to see, the documents that remain that have not been provided, are documents written while he was a Government lawyer working in the Office of Solicitor General at the Department of Justice. As my colleagues know, the Solicitor General is the public official who argues cases on behalf of the U.S. Government in the U.S. Supreme Court. Of course, there are a number of lawyers who work there assisting the Solicitor General. Those lawyers write memoranda suggesting various litigation strategies—weighing, on the one hand, we could make this argument; perhaps it would be better to make this argument—and make a recommendation on the litigation strategy of the U.S. Government in the U.S. Supreme Court.

In 2002, all seven former living Solicitors General of both political parties wrote a letter asking the President to refuse to turn over these confidential documents because they said such a move would chill for years to come the candid advice the Government receives from its lawyers. They noted that “our decisionmaking process requires the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear their private recommendations are not private at all, but vulnerable to public disclosure.”

Most Americans understand that it makes sense to allow this sort of private communication between a lawyer and a client in order to provide the most effective legal representation, and the same principle applies, of course, whether you are the Solicitor General representing the U.S. Government or whether you are a lawyer representing someone who has been accused of a crime or someone who is pursuing a civil claim in a court of law.

A couple of our distinguished Senators from Vermont and Massachusetts have in recent days argued that confidential memoranda written by Government lawyers are the property of the American people and, therefore, should be handed over to the Senate. Of course, that is in direct contradiction to what the seven bipartisan appointees of the Office of Solicitor General have said as recently as 2002.

But we all understand that the nature of the attorney-client relationship is not one that should be breached simply because the government is a party to the communication. For example, the Federal Government’s veterans

hospitals are there to take care of the men and women who fought for our freedom. Does this mean that Members of this Senate are entitled to see confidential medical files of veterans who receive care in these facilities? Does that mean somehow we should be able to invade the doctor-patient relationship by making public their private medical records? Certainly not. The same principle holds true, this principle of confidential communications in a position of trust or fiduciary relationship, between lawyers and clients as well. To hold otherwise would deny the American people the vigorous and outstanding representation they are entitled to before the U.S. Supreme Court.

I suggest, in accordance with traditional practice, that the claim of attorney-client privilege for these Solicitor General documents, these deliberate documents written by Judge Roberts when he was working in that office representing the U.S. Government, can and should remain confidential. They should not be made public. And we should stop playing this game of “gotcha” by moving goalposts on the President’s nominees.

I yield the floor.

The PRESIDING OFFICER. The majority whip.

Mr. McCONNELL. Yesterday, I expressed my concern that some may try to turn the confirmation process for Judge John Roberts into a political circus. After recent media reports, I have become concerned that some of those fears I spoke of earlier in this Senate are coming true; namely, that our friends on the other side of the aisle are going to do everything they can to obstruct the confirmation process of the President’s nominee to the Supreme Court.

Earlier, I spoke of the Washington Post article that outlined a carefully constructed plan of attack on the Roberts nomination. It was a three-staged battle plan.

The first stage was to assert that the amount of consultation from the White House, no matter the amount, no matter how much consultation, was somehow insufficient. But that dog clearly won’t hunt. The White House consulted with over 70 Senators, including two-thirds of the Democratic caucus and every Democrat on the Judiciary Committee. The President himself met with the Democratic leader and the Democratic ranking member of the Judiciary Committee. He and his staff were receptive to any and all suggestions our Democratic friends cared to give. Frankly, he has done more than the Constitution requires by far, and more than his predecessors did. No one can say he did not consult the Senate, period. End of story.

The second salvo against the President’s nominee, as told to the Washington Post, was to try to distort and destroy his record and paint him as extreme. This plan, too, has failed.

Judge Roberts is one of the pre-eminent jurists of his generation. He is

a top graduate of Harvard Law School and Harvard University. He was unanimously approved by the Senate for his current position on the U.S. Court of Appeals for the D.C. Circuit. Over 150 of his peers, Democrat and Republican alike, endorsed him for the current position he holds. And he has argued, as we have pointed out numerous times, before the Supreme Court 39 times. He is clearly in the mainstream, is fair-minded, has a keen intellect, and a sterling record of integrity.

So now some of our Democratic friends, as some of us could have predicted, have come to the third and final stage of the attack plan. They are making unreasonable demands for documents about the nominee.

Now, the administration has been very generous in releasing documents from Judge Roberts’s time in the Justice Department as a special assistant to Attorney General William French Smith and his tenure in the White House Counsel’s Office.

In fact, the Judiciary Committee will receive some 70,000 pages of documents, at the behest of the administration. Let me say again: That is 70,000 pages turned over. I doubt that our colleagues have pored through those pages already, and yet they are hungry for more.

Since the release of these documents, some in the media have hurriedly—some might say recklessly—skimmed document after document, many of them quite complex, looking for any hint of controversy so precious to the demands of the 24-hour news cycle. In so doing, they run the risk of simplifying complex constitutional issues beyond recognition.

For example, during the last couple of days, there has been a great deal of media attention regarding the arcane issue of so-called “court stripping,” a shorthand term describing the issue of whether Congress has the authority to deny jurisdiction to Federal courts.

The New York Times writes this morning that:

Mr. Roberts consistently argued that courts should be stripped of authority of abortion, busing, school prayer and other matters.

The Washington Post yesterday:

Roberts presented a defense of bills in Congress that would have stripped the Supreme Court of jurisdiction over abortion, busing and school prayer cases.

The Boston Globe:

One memo suggested that [Roberts] supported proposals in Congress to strip the federal courts of jurisdiction over abortion, busing and school prayer cases. “Aha,” say our friends in the media. The media and some of our friends on the other side of the aisle suggest that John Roberts may have taken a position on these controversial issues. The problem is not that this is an oversimplification. The problem is that it is just plain wrong.

As a young attorney in the Justice Department, John Roberts was assigned to write a memo advocating that Congress had the constitutional authority to determine the appellate

jurisdiction of the Supreme Court and other federal courts. This memo was written in response to legislation introduced in Congress proposing to strip Federal jurisdiction on a number of controversial social issues. Now, Mr. Roberts was a constitutional scholar, and he did what constitutional scholars are frequently asked to do: argue a legal theory about congressional authority. Mr. Roberts was given this assignment by his boss, and he responded with the outstanding advocacy for which he is justly admired.

Making a legal argument, however, is miles away from endorsing the policy underlying the constitutional argument. And, as it turns out, John Roberts did not think that "court stripping" was good policy in the first place. Let me say again: John Roberts did not think that "court stripping" was a good policy in the first place.

The Associated Press reported, yesterday, that in 1985:

[A]s a lawyer in the Reagan White House, John Roberts wrote that Congress had authority to strip the Supreme Court of jurisdiction over cases involving school prayer and similar issues, but he added that "such bills were bad policy and should be opposed."

The second half of the story was he added that "such bills were bad policy and should be opposed." This tempest in a teapot over "court stripping" refers to a position that Mr. Roberts never agreed with in the first place.

That is the problem with a rush to judgment on a complex legal document—these documents that have been released just recently. Instant media reports can muddy the waters by confusing a legal opinion with a policy position. A legal opinion is different from a policy position.

Now, half the story only conveys half the truth. Half the story only conveys half the truth. And a half-truth is frequently 100 percent wrong. I hope those in the media who got it wrong will not make the same mistake again. This is the exact kind of misrepresentation I hope the Senate can avoid as it debates the Roberts nomination.

Now, Judge Roberts deserves a fair and dignified process. The Senate needs to be thorough and deliberate, but it must be fair. I would say to our friends in the media, half a story is frequently 100 percent wrong. Read all the documents before reaching a conclusion.

So, Mr. President, I suggest we all take a deep breath and not rush to judgment in an effort to get tomorrow morning's headlines out before we have read the entire story.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

STEM CELL LEGISLATION

Mr. BROWNBACK. Mr. President, I rise this morning to address some of the comments that have been made on the other side of the aisle regarding the Castle bill on embryonic stem cell research that passed in the House a few

weeks ago: I have heard the proposal this morning from my colleagues from the other side that we should discuss and talk about embryonic stem cell research and the proposed umbilical cord blood bill that have been put on the calendar here in the Senate, but without any discussion about human cloning. I want to try to put this issue in context a little, and to propose some factual information.

Mr. President, we need to have a broad discussion about bioethical issues in this body and all across the country, and it needs to involve the full range of issues that have come to light as we attempt to grasp the implications and come to understand the decisions that must be made in this challenging area.

This discussion should involve cord blood stem cells. These types of cells are stem cells that come from the umbilical cord when a child is born; they are a rich source of pluripotent stem cells that have proven very helpful in providing a number of treatments for humans.

We need to continue to talk honestly about embryonic stem cell research: the possible limitations of this research to cure diseases in humans, as well as the certain destruction of embryos that this type of research necessitates.

We need to talk about human cloning, whether or not we want to continue to allow the practice of cloning to take place in the United States of America (it is currently a legal process in this country, to clone, create and kill an embryo, a young human).

We need to talk about the cutting edge related research applications, we need to consider where the science is leading us on issues such as the creation and manipulation of chimeras—human-animal crosses that are created by, for instance, taking human brain cells and putting them in a mouse—we cannot bypass these critical issues in this discussion.

And we need to talk about some exciting new application prospects of these broad-based pluripotent cells, cells that can do virtually anything—but I speak of cells where it is not necessary to extract them from a human embryo, destroying that embryo in the process, but cells yielded from other places in the body.

With this background in mind, I want to point out a couple of quick facts.

No. 1, Mr. President, I ask unanimous consent to have printed in the RECORD, from this morning's Washington Post, an article describing new revelations about pluripotent adult stem cells that can answer many of these questions. I ask that the article be included and printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BROWNBACK. Mr. President, I wish to read one section of this article:

A team of Harvard scientists is claiming the discovery of a reservoir of cells that appear capable of replenishing the ovaries of sterilized mice, possibly providing new ways to [create human eggs].

Adult stem cells in the body with the ability to create human eggs. Now, people may say: What do you mean by that? Well, here we have a pluripotent adult stem cell (derived from bone marrow) with a broad capacity to create a lot of different cells, so much so that they can generate, when placed in the right place in the body—a woman's ovary—human eggs.

Listen to what the scientists here say about this:

In addition, because the cells appear to be a particularly versatile type of adult stem cell—

I would like to pause for a moment to point out that there are no ethical problems or objections to research conducted with adult stem cells. We should put millions of dollars into this type of research. This type of research is yielding cures—65 treatment applications for humans with adult stem cell research. However, I'd like to conclude the reading of this excerpt:

... a particularly versatile type of adult stems cells [which] could provide an alternative to those obtained from embryos, avoiding the political and ethical debates raging around the use of those cells.

End of quote, in this morning's Washington Post, from Harvard researchers.

Mr. President, I ask then, why would we want to kill young human embryos, young humans, who are clearly alive, who are clearly human, when we have the capacity, in adult stem cells, to conduct useful and productive research to cure diseases, that is not hindered by ethical problems?

In an article from this month's *The Lancet*—a well-respected British medical journal—Mr. President, I ask unanimous consent that the article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. BROWNBACK. The author of this editorial—this is the lead British medical journal—says:

... what is unarguable is that the human embryo is alive and is human, and intentionally ending the life of one human being for the potential benefit of others is not territory to which mainstream clinical researchers have hitherto sought claim—or which ethically conscientious objectors could ever concede.

These embryos are alive. They are alive. They are human.

I want to conclude, because time is very limited—Mr. President: I want cures for people. I want cures for juvenile diabetes, for cancer, for spinal cord injuries, for Parkinson's disease. And, with research generated from pluripotent adult stem cells, we are getting these treatments.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of human clinical trials going on now, using adult or cord blood stem