

earlier, I will be more than happy to work on it tomorrow.

I might turn to the distinguished chairman and ask for his perspective on what we might see over the course of today.

Mr. STEVENS. Mr. President, it is my understanding the House will not get to the bill until quite late tonight so I presume we will not receive it until tomorrow.

Mr. DASCHLE. I thank the chairman and the distinguished majority leader.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

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

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume executive session and the consideration of Executive Calendar No. 21, which the clerk will report.

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

The ACTING PRESIDENT pro tempore. The distinguished minority leader.

Mr. DASCHLE. I thank the presiding officer.

Let me say in response to the majority leader, it has been 8 days now since Miguel Estrada's nomination came to the Senate floor. The issue in this case is not only Mr. Estrada's qualifications. An even more immediate issue is Mr. Estrada's continued refusal to fill out what, for all intents and purposes, is a job application. Mr. Estrada is asking for a lifetime appointment to the second most powerful court in the land, the court just below the Supreme Court, and yet he refuses to answer the simple questions that are asked routinely of men and women who are nominated to the Federal bench.

We do not need more time to debate the nomination. We need more answers. Without those answers, debate is hollow because we lack the basic information we need to make an informed judgment about Mr. Estrada's fitness. We are prepared to wait as long as we have to for his answers. Whether that wait lasts an hour, a day, a week, or even longer, is up to the administration and Mr. Estrada.

The Constitution does not suggest, it does not hint that maybe it would be a good idea for us to advise the President on his nominees and withhold or offer our consent. The Constitution requires the Senate to advise the President on

the nominees and offer or withhold our consent. By refusing to answer even the most basic questions, Mr. Estrada is not only stonewalling the Senate, he is undermining the Constitution. He is preventing the Senate from exercising our fundamental constitutional responsibility in this matter.

I will simply say to my colleagues: We will not relent on this matter. We are united in our resolve to fulfill our obligation under the Constitution.

There have been efforts made by some on the other side to confuse people. They want the American people to believe that Democrats have been unfair in our handling of judicial nominations. I think most people know better than that. In the last 17 months, we confirmed 100 Federal judges. All of those judges were nominated by President Bush and all of them, one can assume, are quite conservative judges.

Our Republican colleagues have even suggested that this debate may be about Mr. Estrada's ethnicity. Some of his supporters have suggested—incredibly—that if you ask Mr. Estrada to answer questions, you are somehow hostile to the rights of Hispanic Americans. They have asserted on the floor of the Senate and also on the floor of the House that those who ask questions are somehow anti-Hispanic.

That charge is desperate and, frankly, offensive, and it is obviously untrue. In fact, the Congressional Hispanic Caucus, which unanimously opposed Mr. Estrada's nomination, has actually demanded an apology from those who have made this false claim. Regrettably, we have heard no apology from those who have had the poor judgment to make such unfounded allegations. Even one of the groups that supports Mr. Estrada's nomination has denounced those allegations by Republicans. So I hope we are not going to hear any more of that ill-advised talk on the Senate floor.

The fact is, many groups have expressed concern over Mr. Estrada's refusal to answer the Senate's questions. Among them, few have spoken out more forcefully than the organizations representing Hispanic Americans.

His nomination is opposed by every member of the Congressional Hispanic Caucus, by the Mexican-American Legal Defense and Education Fund, and the Puerto Rican Legal Defense and Education Fund.

Leaders of the Mexican-American Legal Defense and Education Fund said:

It is unclear whether Mr. Estrada would be fair to Latino plaintiffs as well as others who would appear before him with claims under the First Amendment, the Fifth Amendment, and Due Process clauses of the Constitution.

They continued:

Further, we found evidence that suggests that [Mr. Estrada] may not serve as a fair and impartial jurist on allegations brought before him in the areas of racial profiling, immigration and abusive or improper police practices . . .

We have concerns about whether he would fairly review standing issues for organiza-

tions representing minority interests, affirmative action programs or claims by low-income consumers.

We are also unsure, after a careful review of his record, whether he would fairly protect labor rights of immigrant workers, or the rights of minority voters under the Voting Rights Act.

All this, not from some Democratic Senator, not from some partisan Democrat, but from one of the most respected Hispanic groups to speak out on this issue, on either side.

Other Hispanic groups, including the Puerto Rican Legal Defense and Education Fund have expressed very similar concerns.

If these perceptions are inaccurate, Mr. Estrada could disprove them—if he would stop stonewalling. But, unfortunately, so far he has refused to do so.

As I said, there is far too much we don't know about Mr. Estrada. We will do everything we can to prevent his nomination from coming to a vote until he provides this Senate and the American people with some straight answers.

Perhaps the most troubling aspect of this situation is not the red herrings. It is not the cynical or false accusations of obstructionism or anti-Hispanic bigotry, as offensive as those charges are. What is even more troubling is what the Senate is not doing right now.

We have made it clear that the Senate cannot vote on the Estrada nomination until the necessary information is provided. Yet our Republican colleagues have chosen to force this fight onto the floor rather than to take up other, more urgent business.

Americans who watched as this debate stretched late into the night last night must have been mystified. They know we are facing daunting challenges at this critical moment in our history. Our Nation may be on the verge of war. We are told that America is at a high risk of terrorist attack. People are experiencing great anxiety about their safety and the safety of their loved ones. What is more, millions of Americans are out of work and our economy is in trouble.

Why—Americans must have asked themselves last night—with all of the great challenges confronting our nation, why has the Republican majority chosen to pick this fight at this time?

I don't understand, and I doubt that people at home do, either.

America faces serious, even life-and-death challenges: homeland security, the economy. That is what the Senate should be working on day and night. That is a good reason for an all-night session.

Miguel Estrada should stop the stonewalling. He should answer the Senate's questions and we should get on with addressing the real, urgent issues confronting our country—the economy, the terrorist attacks, and war in Iraq.

We can wait and we can talk, or we can set this nomination aside until we have the information to make an informed judgment and, in the meantime, we can deal with the issues that

are of far greater consequence and far greater concern to the American people. Until we deal with those concerns, we are not really meeting our responsibilities.

(The remarks of Mr. DASCHLE pertaining to the introduction of S. 385 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. FEINSTEIN. Mr. President, I had an opportunity to come to the floor once before and express my views about the nominee who is before the Senate for confirmation, Miguel Estrada. But I want to make a few additional points at this time, and I hope I don't repeat myself.

I want to say for my part and for the part of many others in the body that this is not a debate we were eager to begin; this is not a debate we are eager to continue; but this is a debate that really goes to the heart of the separation of powers and the checks and balances that the Founders of this Nation so carefully crafted more than 200 years ago.

The President makes nominations to the Federal judiciary. This is true. But it is a judiciary that Congress fashioned, and it is a judiciary that the Senate has been given the constitutional responsibility to help fill, through our advice and consent role.

I am one who has always believed that every nominee should get a full and fair hearing and that every nominee should then get an up-or-down vote. For too long, I watched one after another Clinton nominee languish without any such courtesy, and with no explanation as to why. Many of his nominees were minorities who never even got the chance to speak to the Committee.

Chairman HATCH and I had many conversations during that time about moving more nominees through the committee. And I know he did more than many in his caucus would have liked him to do to move nominees. For that, I thank him. I believe deep in his heart he also believes nominees should move through and get a hearing. But still, too many nominees were stopped from even the most basic of rights during the nomination process—a hearing—a basic right for someone who is nominated to the Judiciary Committee. They should have a right to have a hearing, in my view.

In this case, the Democrat-controlled Senate gave Miguel Estrada a full and fair hearing and every opportunity to show the committee what kind of judge he would be. But he did not use that opportunity well.

Although I believe that every nominee deserves an up-or-down vote, an up-or-down vote on final confirmation should only occur after the Senate has had a full opportunity to learn about the nominee and to properly judge whether or not that nominee can serve impartially in the Federal judiciary. In this case, I don't believe we have enough information to make such a de-

cision, as a direct result of the lack of cooperation by this nominee and by the White House. As a result, we should not be asked to make such an important decision.

I want to clearly state this is not an issue of retaliation, as some have suggested. It is true that the Republican Senate did block a number of very qualified Hispanic nominees—female nominees, and so on—under President Clinton.

And it is true that many on this floor have mentioned those nominees—Enrique Moreno, for instance. But they were mentioned not to begin some tit-for-tat exchange of blocked nominations. Quite the contrary. Under Chairman LEAHY, the Judiciary Committee and the Democrat-controlled Senate confirmed 100 nominees in just over a year.

Mr. Estrada has already been given far better treatment than many were given by the other side in the recent past. All we ask for is some basic answers to the most basic of questions. Think about this: Before us now, we have a 41-year-old nominee about whom we know little. He has been nominated to a crucial appellate court, the DC Circuit, which is, at present, evenly split. That raises the question, Do we have a right to know if this judicial nominee can be impartial? I believe we do.

In this case, this nominee, for some reason, has been very controversial from the beginning. We have heard from many who have worked with Mr. Estrada or even supervised him, and many who have watched him work throughout the years.

Without exception, all of these individuals believe Mr. Estrada is bright. And I am confident that every Democrat in this body agrees with that assessment. But that is not the problem. And that is not the question today.

Without exception, all these individuals believe Mr. Estrada to be well educated, as my colleagues on the other side of the aisle have indicated throughout the last few days. But that, too, is an issue that is not in doubt, and it is not the problem.

And essentially, without exception, all of these individuals believe Mr. Estrada is conservative. Some believe him to be very conservative, some less so, but all recognize him to be a conservative. Even Mr. Estrada himself, as I understand it, would likely describe himself in this manner. But make no mistake, this is not about whether or not Miguel Estrada is conservative.

I have already voted for nominees whom I know to be conservative, as have most, if not all, of my Democratic colleagues.

At the present time, I have just given my proxy to the Judiciary Committee that is considering three nominees to appellate courts who are, in fact, conservative. And I will vote yes on those nominees.

So the question is not whether this nominee—or any nominee—is liberal or

conservative, White or Hispanic, Jewish or Catholic, or any other group or inclination. The question with this nominee—and with every nominee—is whether the nominee can put aside personal beliefs to rule fairly and impartially on the cases that come before him or her.

In some cases, we can get a clear idea of how a nominee would handle the responsibilities of a Federal judgeship. But in this case, as we tried to get a clear idea of how this nominee would handle these responsibilities, we were really stymied at every turn.

On the one hand, we have letters, phone calls. To my office, we have received almost 8,000 phone calls in opposition to this nominee; and less than 400 in favor. All these phone calls seem to indicate the belief that Mr. Estrada is an ideologue who cannot be trusted with a circuit court judgeship.

We have Professor Paul Bender, Mr. Estrada's direct supervisor at the Department of Justice, who said to the press that he believed Estrada to be so "ideologically driven that he couldn't be trusted to state the law in a fair, neutral way." Mr. Bender recently sent a letter to the chairman of the Judiciary Committee essentially reaffirming this statement.

We have major Hispanic organizations—just those groups one might expect to most strongly support Mr. Estrada—strongly opposing him instead.

On the other hand, as we look for facts to counteract such serious concerns, we have almost nothing.

Miguel Estrada has never been a judge, so we have no record of judicial decisionmaking to examine. This in itself is not dispositive, but it is the first area where we find no record to help us in our decisions.

Mr. Estrada is not a prolific writer, so again, unlike many, we have no real record of writings or speeches to examine. Again, this alone would not be dispositive, but, as I said earlier this week, in a sense, it is strike two in terms of where we can get information about this nominee.

We have not been granted access to the memos he wrote at the Department of Justice, so we can only take the word of the man who supervised him that those memos were ideologically driven and could not be trusted. That is strike three.

Mr. Estrada refused to adequately participate in his own confirmation hearing, so we have no real answers to these questions. And the questions are legitimate.

Even when given time to think about his answers, even when he was given questions in written form, he refused to answer those questions, using precisely the same language he used to refuse to answer at his hearing.

For instance, when Senator DURBIN asked this nominee, in writing: "Do you have an opinion on the merits of *Roe v. Wade*?" Mr. Estrada responded, as he did to me in committee, "it

would not be appropriate for me to express such a view without doing the intensive work that a judge hearing the case would have to undertake—not only reading briefs and hearing the arguments of counsel, but also independently investigating the relevant constitutional text, case law, and history.”

In the hearing, I asked him: Do you believe Roe was correctly decided? And he said he could not answer that question.

When Senator KENNEDY asked Mr. Estrada, in writing, how he would have resolved a case that came before the DC Circuit and was then decided by the Supreme Court—Hoffman Plastics—Mr. Estrada again answered that because he had not read the briefs and was not present at oral argument, he could not answer.

When Senator KENNEDY asked him about the Maryland/DC/Delaware Broadcasters case, again Mr. Estrada said he could not, or would not, answer.

When Senator DURBIN asked Mr. Estrada to name any judge, living or dead, whom he would seek to emulate, Mr. Estrada said he could name not one judge he would emulate.

In contrast, let me take a moment to talk about Judge Richard Paez, a well-qualified Hispanic nominee sent to the Senate by President Clinton and eventually confirmed to the Ninth Circuit Court of Appeals.

Judge Paez spent more than 1,500 days before this Senate before he finally got a vote. And this came despite the fact that he answered every question put to him.

For instance, Senator SESSIONS asked him: “Which Supreme Court Justice or federal judge has most influenced your judicial philosophy?” Judge Paez named Judge Harry Hupp, a man he appeared before as a litigator, and a colleague of his on the district court bench.

Senator SESSIONS asked Richard Paez: “In your opinion what is the greatest Supreme Court decision in American history?” Judge Paez did not refuse to answer, or claim that he could not give an answer because he had not been present at oral arguments. Instead, he simply named *Brown v. Board of Education*.

Senator SESSIONS then asked: “What is the worst Supreme Court decision?” Judge Paez answered: “Dred Scott.” This is the decision where the Supreme Court ruled, essentially, “once a slave, always a slave.”

Miguel Estrada, on the other hand, would not answer these types of questions.

Senator SCHUMER asked him to name any Supreme Court case he thought was wrongly decided.

He did not simply say he thinks *Plessy v. Ferguson* was wrongly decided. That is the case that upheld the concept of separate but equal. And even the Supreme Court has since overturned it. I know of few people who would claim *Plessy* was correctly de-

ecided. But Miguel Estrada apparently thinks he could not say so without having heard the oral arguments. He did not say he disagreed with the *Dred Scott* decision, which upheld slavery. He did not say he believed *Korematsu*, which upheld the right of the United States to put American citizens of Japanese descent into internment camps. He named none of these cases. He simply said he could not answer the question.

This is in direct contrast to a recent experience with Jeffrey Sutton during his hearing less than 2 weeks ago. Mr. Sutton is also a controversial nominee, but he answered every question put to him. We got a good sense of how he would think and act as a judge. I, myself, who was concerned about him initially, felt he was a strong advocate, but he knew the difference. He could separate himself from the positions of advocacy and become a fair and impartial judge. So I have given my proxy right now to be carried out to vote yes for Judge Sutton. Mr. Estrada, on the other hand, did his best to keep from putting himself on record on any issue of real substance.

Quite frankly, there are options. One, return this nominee to the Judiciary Committee for answers. The Senate deserves the answers. Democratic nominees were asked by distinguished Republican Senators to answer questions such as this, and they did. Even of those, many had judicial records. Many had prolific writings. Many had speeches so that there were tools we could go to to understand what their thinking was. But in this case we have no speeches. We have no writings. We have no record. Therefore, the answers to the questions become extraordinarily dispositive. They also become meaningful to any Senator who wants to cast an informed vote.

It is that simple. That is what this debate is about. We cannot possibly fulfill our constitutional duty to advise and consent to nominees if we are not given the necessary information about the nominee.

In a case where you have a critical circuit such as the DC Circuit, not only the plumbing grounds for the U.S. Supreme Court, but handling environmental appeals, Superfund appeals, wetlands appeals, OSHA appeals, all kinds of administrative case law appeals, how this court is tilted becomes important to us, particularly if we take this job of confirmation of nominees seriously.

There is another option. That option is appoint Miguel Estrada to a district court. Give him an opportunity to gain that record. He is 41 years old. He is younger than my daughter. Give him an opportunity to gain that record. Remember, this is a man who will serve for 30, 40, possibly even 50 years. It is a lifetime appointment. We are entitled to answers to these questions.

In Miguel Estrada’s questionnaire, he admitted to having written no books, articles, or reports of any kind, save

one Law Review article in law school. That was titled “The Policies Behind Lending Limits.” He wrote that in 1985. At Miguel Estrada’s hearing, he would not comment on whether any case had ever been wrongly decided, even cases that have been overturned. He would not name any single judge he would want to emulate on the bench in any way. He would not answer written questions put to him that would help us learn more about how he thinks about cases and how he would judge them. He would not even try to convince the Justice Department to turn over some of the memos he wrote for the Solicitor General’s Office, nor would he himself turn them over.

If this nominee is confirmed, we believe we would be sending a signal that stonewalling the Judiciary Committee and the full Senate is the way to succeed on the way to a judgeship. That is the wrong signal and the wrong message.

In effect, we would be abdicating our constitutional role, our constitutional duty to advise and consent to nominees, because we would never again be able to learn enough about a nominee to make reasoned decisions.

Nominees could become increasingly young, increasingly ideological, and increasingly silent. The courts would soon be packed with judges of unknown disposition, unknown temperament, and unknown proclivities to judge fairly and impartially.

We should take our constitutional duties more seriously than that. We simply are determined not to let that happen.

I would like to read the concluding sentence from the editorial in today’s *New York Times*:

The White House can call this politics or obstruction. But in fact it is Senators doing their jobs.

I yield the floor.

THE PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank my colleague from California. She laid out the facts beautifully. I will attempt to try and talk about this issue from my perspective as someone who worked so hard on getting a couple of nominees through the Senate. Senator FEINSTEIN touched on those particular cases. They are relevant to what we are doing here.

I remind colleagues—I know they are aware of this, but it is worth repeating—we are talking about a lifetime appointment to one of the most important courts in the Nation, the U.S. Court of Appeals for the District of Columbia. It is a lifetime appointment. It is very important when we are looking at these types of appointments.

I have voted for well over 90 percent of the President’s appointees up to this time. It is very unusual for me to stand up here and say: We need more information. It is important to go back to the Constitution and read exactly what it tells us we have to do. Section 2:

[The President] shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of

the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for . . .

There has been a lot of discussion that we are in essence interfering with the rights of the President. It is very clear: If we sit back and don't do the work of advice and consent, we don't deserve to be in the Senate. This is where the rubber meets the road. This is where we have to play a role. Advice and consent just means that.

I want to relate a story, when Senator HATCH, who is now distinguished chairman of the Judiciary Committee, was chairman before Senator LEAHY and President Clinton was President at that time. Senator HATCH had a very direct conversation with me, and I am sure he did with other Democrats. What I like about Senator HATCH is, you kind of know where he is coming from.

He said: Senator BOXER, you have to send me moderates. Don't send me any liberals. Don't send me any progressives. Don't send me any activists. I want moderates for the bench. I am telling you here now, if they are not, they are not going anywhere. I had a little conversation with him about that but realized this was the pragmatics of politics and this is what we are going to do.

In essence, the nominees I had recommended to the President and President Clinton were mainstream moderate candidates. Even with that, a lot of them had a hard time here. But they made it, and I want to talk about how long it took and how many questions they had to answer and what we went through to make it happen.

I feel sometimes like Alice in Wonderland when I hear the kind of double standard that seems to be coming forward. This man, Mr. Estrada, cannot answer any questions, but look at how many questions they asked Margaret Morrow. Margaret Morrow—we recommended her to President Clinton. She was a distinguished lawyer in a business law firm. She is as straightforward as motherhood and apple pie. They asked her question on question on question. These are Republicans on the Judiciary Committee. She waited maybe 2 years before she could be voted on. Here is the interesting thing. Not only did the Republicans ask her every question known to humankind about everything she had ever written, they had to see everything she ever wrote, and everything else. They then went back and asked her how she voted in elections in California dealing with referendum. It was amazing. The first question was, How did you vote on every memorandum, I think it was, in the last 10 years. She was so stunned with it, she said: Barbara, this is between me and the secrecy of the ballot box. I said: If you want to move forward, you are going to have to respond.

We went to Senator GRASSLEY, who wanted answers to these questions, and he limited it to the 10 most controversial referendums. I am talking about the ones that deal with every single hot button issue. She answered the questions. Believe me, it is really a personal issue, how you vote when you get to the ballot box.

Now there is a big fuss about our getting answers to questions such as: Will you give us one Supreme Court case you didn't agree with or send us your writings, for which there is adequate precedent.

So under the Constitution, the President and the Senate share the power to appoint the principal officers of the United States. I read the Constitution and, if we were to do otherwise, it really would be a dereliction of our duty if we rolled over and said whatever any President wants, just go ahead and roll over the Senate. Not me; I don't care if I have to stand here all night—and I might have to at the rate this is going.

I am here because I have to represent the 35 million people of California. When someone comes up to me in the grocery store and says, I noticed they had a vote on Miguel Estrada to the second most important court in the land, what does he think? I would say that I have no idea.

I have to tell you, there are a lot of groups against Miguel Estrada and they have their reasons. I will list the groups—a lot of Hispanic groups and a lot of other civil rights groups. They have their reasons.

I need to see what he stands for. If I get these papers—that is the reason we are not permitting a vote because if we would get these papers, we would permit a vote here. He may well win that vote or he may lose that vote. That is the fair thing. But advise and consent—before you can consent, you have to see who this man is. Maybe when I see his writings—and I hope we get answers to our questions—I certainly would have no interest in holding this up at all.

Blind judgment is not the proper way to confirm someone to the Federal court. As I said, if I were to engage in blind judgment, I would not be true to my constitutional responsibilities and what I owe the people of my State. Frankly, I told them I would vote for mainstream people, just as President Bush said he would nominate mainstream people. That is what he promised us. The night the Supreme Court decided the election, he said eloquently, "I am going to govern from the center."

Maybe Miguel Estrada is from the center. Nobody here can tell you because he cannot even name one Supreme Court case he disagreed with—even the one on making slavery legal. So these are very serious matters, very serious matters.

Stealth maneuvers are appropriate for the military but not for judicial nominees. By evading questions about his record, Mr. Estrada is trying to slip

into a lifetime position on the Federal bench without sharing information about his record. So if we were to just say, OK, we don't know anything, the man cannot name a case he disagrees with and won't show us any writings, and we just have the vote, what will happen when we get a Supreme Court nominee for a vote?

We have reason to believe there are some who are advising these nominees not to say anything about anything. I will talk about that later. It was really at a Federalist Society luncheon last year that a panelist coached potential nominees on how to get confirmed by the Senate. This has been written about in the legal times.

The simple instructions that came were—I am quoting because this isn't very nice language, but it is the language that was used—"Keep your mouth shut."

What a situation. It is an honor to be nominated by the President, a chance to tell people what you believe in—not to talk about a case before the court or one that is coming. That is not what we are saying.

I represent the largest percentage of Hispanics in the United States. There are close to 11 million Californians who are Latinos. That is approximately 33 percent of my State. I resent roundly some of the comments by my colleagues on the other side that somehow those of us who are saying to Miguel Estrada: answer the question, be a grown up, this is a serious job, that are against minorities. If it wasn't such a serious charge, it would be, in a way, laughable.

I could tell you that the organizations that oppose Mr. Estrada, or have raised concerns, most of them are Latino. They know, in the case of the Democrats in my State, who fights for the Latinos. That isn't even a question. I fought hard to get a Mexican-American nominee, Richard Paez, a position on the Central District Court of California. Mr. President, he became the first Mexican American to sit on that court, and it was a struggle. It was a struggle. President Clinton nominated him. Judge Paez was so stellar in the district court that he was nominated by President Clinton to the circuit court. He had to wait 4—count them—not months, not weeks, but 4 years before the Senate acted on his nomination.

Judge Paez was voted out of committee three times, Mr. President, three times, and still he had to endure 4 years of waiting before the Senate acted on his nomination.

He was nominated in three different Congresses before his confirmation in March 2000. He was the first Hispanic to sit on the district court. He had extensive experience as a judge on State courts, as well as Federal courts, with lawyer reviews in the Almanac of the Federal Judiciary such as "well prepared," "runs a good courtroom," "excellent judicial temperament," "fair," "evenhanded," and "gets to the right result."

Who held him up for 4 years? Not the Democrats. The Republicans.

He answered every question. Every single bit of his writing was analyzed. There were more written questions asked and answered. He was strongly supported by Hispanic groups, such as the Mexican American Legal Defense Fund, in contrast to Mr. Estrada, who has a huge number of Hispanic groups with great concern about his nomination.

I have to tell you when I hear some of the comments from the other side—it is really amazing—I can only think that this is all about politics because reality is not even in the game. This Republican Senate fought so hard against Judge Paez. Four years they made him wait and made him answer question after question—written and oral—and would not stop there.

When his nomination finally came to the floor, there was a filibuster, and it was finally broken.

I have to say as someone who fought for that first Latino to sit on the court in California and for one who fought to get the first Asian American judge on the Eastern District of California, Anthony Ishii, another wonderful appointment by President Clinton. It is extraordinary to me to hear some of the rhetoric from the other side. I have some news for the other side: Tell the man to answer the questions just as they asked Richard Paez, just as they asked Margaret Morrow, just as they asked every single nominee by President Clinton. They asked them to answer the questions. They called them back. They sent them long questionnaires in the mail. How about saying the man the Republicans support has to do the same? It is pretty simple. Then we will not be here wasting this precious time we should be using to discuss homeland security and other issues.

I will tell my colleagues right now, I will stand here as long as it takes until I get answers to those questions because otherwise, I do not deserve to be here. My people in California should boot me out if I roll over and play dead simply because the President says: I want this man; he does not want to answer the questions; and the Federalist Society tells him to keep his mouth shut. This is not what we do in an open society. In an open society, there is no room for secrecy in the judge selection process.

This is the greatest country in the world. If somebody is nominated for this position, they should be proud to talk about what are the Supreme Court cases they may not agree with or some they do. They should be proud to say: Yes, I will make sure you get my writings because I am proud of my writings.

The American people do not like secrecy. They do not like it. I hope they are, in fact, listening to this debate because I want to state again what we Democrats are doing. It is not a handful. The President said a handful of

people—I forget his exact words. I think it was a handful of people were stopping this nomination. The fact is, there are a lot of us from different parts of the country and different philosophies who are saying: Just give us the information. Some of us may wind up voting for Mr. Estrada; some of us may not. Give us the information. We need it. We deserve it. It is in the Constitution.

The Constitution does not say the President shall have everyone he wants. Read it. It gives equal power—equal power—to the Senate. I say to my colleagues on the other side, where is their self-respect for the Senate? That is what it is about. It is unfortunate it turned out to be a partisan split.

I keep remembering back to Margaret Morrow and how many questions the Republicans asked her. Oh, my God. There were two hearings: One in 1996 and one in 1997. There was round after round of followup questions, including how she voted in every California ballot measure for 10 long years. I ask you, Mr. President—maybe you would remember. If you lived in California, I assure you, there would be, oh God, hundreds of referenda. Finally, Senator GRASSLEY, who was asking her this, said: OK, just tell us how you voted on the 10 most controversial ballot measures.

I want to read a partial list of people who are supporting us in this delay: The Congressional Hispanic Caucus; the Congressional Black Caucus—these are elected leaders who have fought hard to get minorities on the bench. This is extraordinary for them to have to stand up and say: We want more minorities on the bench, but we want to know who they are; we do not know who this guy is.

Hispanic organizations: Puerto Rican Legal Defense and Education Fund; Mexican American Legal Defense and Educational Fund; National Association of Latino Elected and Appointed Officials, National Council of La Raza, National Puerto Rican Coalition, California La Raza Lawyers, Puerto Rican Bar Association of Illinois, Southwest Voter Registration Education Project, Labor Council for Latin American Advancement, 52 Latino labor leaders.

Mr. President, these are people who fight hard to put minorities on the bench, and they are very concerned. Do you think this is easy for them? This is not easy for them. It is brave of them. They are doing it because they are very concerned.

There is a list of 52 leaders. I will not read the list. We also have the Leadership Conference on Civil Rights and the Alliance for Justice. We have the Mexican American Legal Defense and Education Fund, Lawyers for Civil Rights Under Law, Alliance for Justice, and it goes on.

I also want to read an article that was in the Legal Times. We put it in the RECORD, but I think it is worth listening to it:

President George W. Bush's judicial nominees received some very specific confirmation advice last week: Keep your mouth shut.

The warning came from someone who had been a part of the process, Laurence Silberman, a senior judge at the U.S. Court of Appeals. . . .

And it goes on. He advises: Don't answer any questions. Don't answer them and, he basically said, you will land a judgeship.

This is dangerous. Talk about the role of the Senate. The Senate cannot do its work on advice and consent if we are stonewalled.

My view on this nomination is clear. I am happy to vote up or down on this nominee any day of the week, but he has to answer the questions. Period. End of quote.

Someone who is afraid to answer questions either does not know the answer, has something he does not want to say, or is hiding something. It makes no sense at all. Answer the questions. If Senator HATCH brings the committee back and Mr. Estrada gets a chance to answer these questions that Senator FEINSTEIN and others have laid out—believe me, I have no interest in knowing how he voted for the last 10 years like the Republicans asked one of my nominees. I think that is going way too far. I do not care about that. I thought it was outrageous when the Republicans asked that of Margaret Morrow. I could not believe it. She was stunned, but she answered it. Even though it is a secret ballot, she answered it because she respected the Senators who asked her the questions. She respected the process. She respected the Constitutional requirement of advice and consent.

So we go from a woman who was asked by the Republicans to tell how she voted on a series of referenda in her home State on the most controversial issues to a candidate where the Republicans say it is fine, forget about it, we are not going to give any answers. It is a remarkable thing. I make that point today. We need to hear from this nominee. We owe it to the American people.

What do my colleagues think this is? This is not some dictatorship. This is not some situation where one man, the President, nominates someone and says, OK, that is it, I can tell the Senate who I want and that is the end of it. If the Founders wanted that, they would not have written this article, which is very clear. As was pointed out by Senator SCHUMER, if we go back to the Federalist Papers, there was a big debate over who should have the power. At one point, it was going to be the Senate that had the full power, but then in the end it was a compromise. So if we assume that what is written in this Constitution is what we swore to uphold, then to do any less is to essentially throw this away.

I do not care what people say, I am not going to do that. They can say anything they want about me, it is OK. I will take the case to my people. I will tell my people it would be far easier to

roll over, but I am not going to do it. If Mr. Estrada answers the question, I will not be standing here. I will be calling for a vote and let the chips fall where they may.

I do not know how my Republicans friends will vote on Mr. Estrada. I am assuming they will support him, and he will be a judge. Or maybe they will find out something in his record that is worrisome that they do not like. I do not know what is in the record because he will not show us the record.

As long as this Constitution is the basis of our Government, we should respect it. What happens when the next judge comes before us? The President may say this is a good deal, my guy did not have to answer anything and he will go on to do whatever he wants, and then he sends someone else who has no record and will not show writings and will not answer questions and listens to the Federalist Society where they say keep your mouth shut, which is exactly what they said. Where are we headed?

This is not a partisan question. I would feel the same way if President Clinton were still President and sent down a nominee who would not answer questions. I went out of my way on Margaret Morrow and on Richard Paez. One was held up for 22 months. One was voted out of three Congresses, waited 4 years. There were oral questions, written questions, more questions. The session ends, and there is a renomination. Again, there are questions; appearances again, writings again. If we go down this road of not asking questions and not demanding answers to basic questions such as was there ever a Supreme Court case you did not agree with, and a man or woman says, you know what, I cannot answer that question, that is a frightening answer. Maybe he agreed with all of them. I do not know, because he will not answer the question.

Mr. President, I believe I have the floor until 12:30, although I technically have it as long as I wish.

The PRESIDING OFFICER (Mr. BENNETT). There is no unanimous consent. The Senator has the floor as long as she is able to stand.

Mrs. BOXER. I thank the Chair. I see one of my colleagues. I do not intend to go on much longer than about 15 minutes, but I want to talk about a couple of other issues.

THE CHALLENGES FACING OUR NATION

Mrs. BOXER. Mr. President, we are making the case about advise and consent but many of our people around the country are worried about what is coming in these next couple of days. The country is on alert. People are asking me, should I really go out and get duct tape? What can I do?

I have been around politics for a very long time. I was elected to the House in 1982. These are the toughest times I have seen, and I have seen some tough ones. We have an economy that is not performing. We have a budget which has turned from surplus to deficit.

The very people who said deficits were terrible when Democrats were in the majority are saying deficits are now fine as long as they are not more than so many percent of the gross national product, no problem. Unfortunately for those people, Alan Greenspan said deficits do matter, and we have an economy that is the worst that it has been in 50 years. On top of that, we have Osama bin Laden who apparently issued a warning to Americans and he told the Iraqi people that if the Americans come in there, do what it takes to hurt them all around the world.

We have the tragedy and sadness of the Shuttle *Columbia*. We have the news that North Korea possesses perhaps the ability to hit the west coast, where I live and my people I represent live and not far from where the Presiding Officer lives. We have a lot of challenges.

What I say today is measured in my comments because whatever the future holds for us, and I think many people fear it is war, we are going to pull together as one. Looking at all of these challenges I mentioned, and I exclude from that the shuttle tragedy, but the North Korea situation, the Iraq situation, the Osama bin Laden situation, the economic situation, I believe this administration has seen these crises and they have amplified them. I do not think they are solving them. I think they are amplifying them. I do not see the path to a prosperous economy in any of the plans. I see more deficits as far as the eye can see. I do not see a path for job creation. I do not see a path where we are protected in our homeland. I see my local responders saying, Where is the help that was promised?

I do not see that. I do not see a path to peace in Iraq. I see a lot of energy and focus on a path to war. I do not see the path—and I have lived through many administrations, Republican and Democratic. I wish the President would put the same focus and attention on avoiding war and disarming Iraq as he does on war to disarm Iraq. War may be inevitable. It should not be a first resort or a second. It should be a very last.

Looking at North Korea, why are we not talking to them? We have brilliant people in the State Department.

As far as I can tell from my post on the Foreign Relations Committee, we have not elevated this to the same level as Iraq in any way, shape, or form. They keep saying we will resolve this diplomatically. I am glad. But I don't see that focus. What I see is when the North Koreans want to talk, they fly to New Mexico to talk to Bill Richardson. Something is wrong with that. We need to do better.

I see issues turning into problems, turning into crises, and I don't see them being resolved; I see them getting worse. I can tell you, when I go home, people are coming up to me in the supermarket—Democrats, Republicans,

Independents—tugging at my sleeve, literally. They say: We are anxious. We are worried. We are scared.

I am waiting for the type of leadership in this administration on all of these issues that will help us see the light at the end of the tunnel. We will pull together as Americans, regardless. The greatest Nation in the world, we will meet our challenges. But there is much more we need to do—not more deficits as far as the eye can see. That is not going to help. Not talk about war, war, war, and ignoring the chance that we can avoid it and achieve the total disarmament of Iraq. I don't see the kind of help to our hometowns, if you will, to get ready.

Someone said it right—this is not original on my part; I believe it was a mayor of one of our Midwest cities. She said when people fear an attack by a terrorist, they are going to call 9-1-1. They are not going to call the Senate, and they are not calling the President. They will call 9-1-1.

What are we doing? We lauded the firemen and the policemen, as well we should have. The best way to honor them is to give them the help they need. Guess what this administration is doing. It is canceling the COPS program. These are the grants to our local law enforcement people who are going to get the 9-1-1 call if, God forbid, there is an attack on our homeland.

This President is spending a lot of money in the budget. But talk to the people back home, and they are not happy with the unfunded mandates they are seeing. We see an unprecedented attack on the environment. Talk about danger, I will tell you about danger. As we worry about chemical and biological attacks, Osama bin Laden, why have we lost the focus on getting him? The President was fierce in his resolve to get Osama bin Laden, and we have not achieved that up until this point. We fear the chemical and biological attack.

Seventy million Americans—and that includes 10 million children—live within 4 miles of a Superfund site which contains these dreadful chemicals that harm our children and all of us. What have they done? They have slowed the cleanups and are now telling taxpayers they have to pick up all of the costs of that program because they do not want to continue a fee on the polluters, which was something put into place under Republican and Democratic administrations. This is a crisis, and it is being amplified by this administration.

I look around and I see the fund sites proliferating. Under President Clinton, we cleaned up an average of 87 sites a year. It is down to 40 sites. It is down to the taxpayers now picking up the tab, and people are beginning to be very fearful about their children's health.

There are many issues that confront us. I will close with this. Last night, the Republicans stayed in the Chamber to make their point. That was a good thing to do. I am in the Chamber today

to make my point. Give me the information, folks. Tell this man to answer the same number of questions you asked Richard Paez. Tell this man to answer the same number of questions you asked Margaret Morrow to answer. Tell this man to answer the same number of questions and in the same depth as President Clinton's nominees answered. And if you do not like that approach, simply ask him to answer the questions that some of President Bush's nominees answered.

We are not going to stand here and treat this Constitution as some relic. We have equal power with the President. If we were not to ask for these answers, we do not deserve to be here.

I see a couple of my friends on the floor, and I have to say, I am ready to vote on Miguel Estrada as soon as he answers the questions. I am not going to roll over for any President, Republican or Democrat, if they send us people who are either too scared to answer the questions or we are told by some Federalist Society expert to keep your mouth shut and it will go well. It is wrong.

I have some self-respect as a Senator. Do you know who gave it to me? I was not born with it. The people who sent me here—35 million strong—believe me, they did not all send me here, but of those who voted, a majority did. Do you know what I told them? I told them that the makeup of the courts is very important and the power of the courts is very important. I promised them that before I cast a vote, aye or nay on anyone, I would have information and I would always tell you why I was voting yes or no. And I have voted for more than 90 percent of this President's nominees. I don't know how I will vote on this one. I might vote for him if I see his writings. I might. I might not. I may find that he does not come from the center, which is what President Bush promised. We would get judges from the center.

They can stay here all night and talk and talk and talk and talk. But I will be ready to vote when I have seen the answers to the questions, the same kind of questions they asked Margaret Morrow, Richard Paez, and every one of Bill Clinton's nominees.

Double standards do not sell with me. I worked very well with Senator HATCH and colleagues on the Judiciary Committee on both sides of the aisle when I had people I was very interested in getting through the process. And I said to them: You deserve to know every single thing you are asking for, and I will work with these nominees and make sure they give you those answers.

That is respect. That is respect for the job we are supposed to do. I respect this job. I respect the people I represent too much to roll over and say to this President or any other: Send nominees down who will not answer questions. It does not matter to me. It is your choice.

If I were to do that, I would be belying this Constitution. When I got

elected to this body, I held up my hand and I swore to protect and defend it. It means everything to me. It is more important than me. It is more important than any other Senator. It is more important than any President. This is the document that has kept us going as the greatest democracy in the world all these years. And God forbid we turn our back on it. If we do, we will not recognize the country we will have.

I see coming, if we roll over on this one, a judge selection process that is essentially a secret process. That is something I cannot support, I will never support, even if I am the only one left who feels that way—and I doubt that will be the case because there are very strong feelings on my side of the aisle that the judicial selection process should be an open process, an honest process, a fair process.

I appreciate the chance to express my views on these issues and other issues. It is time we solve the problems we are facing and not create new ones. A new problem we are creating is judicial nominees who will not talk. That is a new problem. I hope, as a result of what we are doing today, the Republicans will go back, they will chat with Mr. Estrada, they will tell him to answer the questions, and we can get on with a vote and the other important business we have before us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, the Honorable Senator from California laid out a very touching and moving litany of the times in which we live. These are difficult times, with the prospect of dealing with a brutal dictator in Iraq, a dictator who has used weapons of mass destruction against his own people, has shown no hesitation to use poison gas, chemicals, and biological weapons, a dictator who clearly has ignored resolution after resolution of the United Nations over a 12-year period, who poses a threat to all of us. That crisis looms out there. The day of decision is coming soon. As the President has noted, Saddam Hussein will either disarm or be disarmed. We have to be concerned about what is happening in North Korea where they are talking about restarting a nuclear program that they agreed to abort.

We have problems of recession. A lot of folks in my State are worried about where the next paycheck is going to come from, worried about the state of the economy. We have a lot of concerns out there. This is a time of great uncertainty. This magnificent, august body, the Senate, one of the greatest deliberative bodies in the world, instead of focusing its efforts on dealing with those issues of great concern, we are involved and engaged in trying to break off a filibuster from my honorable colleagues on the other side who are not going to allow us to have a vote, a simple up-or-down vote—that is all we are asking for—on the nomination of Miguel Estrada to the circuit court of appeals.

I have been here a little over a month. I don't have that great sense of history that my colleagues, such as Mr. BYRD, the Honorable Senator from West Virginia, has. He is a walking history of the Senate. I sit here in awe as I listen to him.

I listen to the honorable chair of the Judiciary Committee, Senator HATCH, who has been here a long time. I still get chills standing where I am standing, looking at this great sense of history. Yet we are sitting here, and I was listening last night, and we are talking about the nomination of the first Hispanic to serve on the circuit court, and what I am listening to is a litany of who did what to whom before. You would almost think that we were the Hatfields and McCoys instead of Democrats and Republicans. You would think we were the Earps and Youngers at the OK Corral.

I don't know who did what in the past. I don't know why a particular judge in the past perhaps took a long period of time before they got a chance to have a vote on the floor of the Senate. I don't know who was right yesterday and who was wrong. But this is today. This is a time when I got elected. I can tell you the citizens of Minnesota were saying they wanted to get past the bitter partisanship that stops the Senate from doing its business. They want public figures to simply get something done, move on, take care of the flood problem, the disaster problems we have had in northwest Minnesota, the drought that is affecting other parts of the country, get an energy bill through, get a budget—that would not be a bad thing for the U.S. Government—get a budget passed. Moms and dads have to deal with that all the time. We have folks out there clamoring for us to just do what we have been elected to do, to do our business.

Instead, I listened last night to the Honorable Senator from New York and the Honorable Senator from Illinois, and they had pictures of candidates in the past who, for some reason or other, did not get through the Judiciary Committee fast enough. We went back and forth and back and forth and back and forth. You know, that was yesterday.

We are never going to be younger than we are today. The proverbial: Today is the first day of the rest of your life. What would be so hard for us, as a deliberative body, to say we are going to start with today, we are going to make sure—we are going to put aside all the sins of yesterday and make sure that, from here on, when folks come up, they have a hearing and they have a vote?

By the way, I have to say I have heard my honorable colleagues on the other side of the aisle talk about Mr. Estrada not answering questions. This has been shown last night; Senator HATCH showed it many times. This is the transcript of the hearing, the all-day hearing in which he answered question after question after question.

Maybe he gave answers folks on the other side of the aisle did not like, but he answered questions. He answered questions. Then, after the hearing itself, a few Senators—I understand two Senators on the other side of the aisle—sent written questions, which he answered. So he has answered the questions.

What we have today, unfortunately, is we are getting caught up in the worst kind of partisan wrangling based on what folks did yesterday.

I think we are better than that. I think this august, deliberative body is better than that. I think it would be good for America today, in this new millennium, this new century, to forget what happened in the last millennium. Let's move forward on this one and say what we are going to do and say a nominee of any President, whether it is a Republican President or President not of my party, will get a fair hearing and a vote, up or down. In fact, when I ran for office, I answered a question in one of the debates, and I said I would use the same standard to judge a nominee from the President of another party as I would to judge a nominee from President Bush. That is what I think we were elected to do.

If we can just get past what happened yesterday, if we can stop talking about who said what to whom and when, then we can kind of move on here to act fairly, act deliberately, and, by the way, act with great respect for this Constitution that we all love.

I heard a wonderful discourse from the Senator from New York yesterday about the Constitution. I love the Constitution. What we are asking for Mr. Estrada is follow the dictates of the Constitution.

Does the Senator from Pennsylvania have a question?

Mr. SANTORUM. I ask the Senator from Minnesota to yield for a unanimous consent request.

Mr. COLEMAN. I yield for that purpose.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask unanimous consent that at 1 p.m. today, the Senate stand in recess subject to the call of the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, I ask my friend from Minnesota through the Chair how much longer he is going to speak because we do have a Member in the Chamber who wishes to speak.

Mr. COLEMAN. Mr. President, I say to the Honorable Democratic whip, I will speak not more than 10 minutes if this understanding is accepted.

Mr. REID. We have two over here. That leaves only 5 minutes for each of them. They have been here waiting for some time.

Mr. COLEMAN. Mr. President, I say to the Honorable Democratic whip, less than 10 minutes. I can move to the other portion of what I was going to

speak about if the Senator from Nebraska seeks the floor.

Mr. REID. If my friend would be kind enough to divide the remaining 20 minutes between Senator NELSON of Nebraska and Senator STABENOW of Michigan?

Mr. COLEMAN. I have no problem with that.

The PRESIDING OFFICER. Is that proposed as a unanimous consent request?

Mr. REID. It is.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Pennsylvania?

Without objection, it is so ordered.

Is there objection to the request of the Senator from Nevada?

Without objection, it is so ordered.

AUTHORITY FOR COMMITTEE TO MEET

Mr. SANTORUM. I further ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup past the hour of 1 o'clock.

Mr. REID. On behalf of Senator KENNEDY, I object.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. In deference to my colleagues, the Senators from Nebraska and Michigan, I will shorten my comments with regard to the Estrada nomination.

I want to say this to America. I hope they are listening. They should be listening. These are important times. What my colleagues on the other side are doing by engaging in this filibuster is really changing the constitutional standard. And we love this Constitution. It talks about the Senate's role in providing advice and consent. In practice that has always meant 51 votes—a majority. The Constitution specifically lays out when a super majority is needed. What we are witnessing now is a change in the way we abide by this important document, where we will now require 60 votes to get our nation's judges confirmed. That is not good for America, and that is certainly not what our Founders wanted to do.

The PRESIDING OFFICER. The Senator from Michigan.

URGENT NEEDS FOR HOMETOWN SECURITY

Ms. STABENOW. Mr. President, I rise today to speak, once again, about the urgent needs in our local communities for hometown security—efforts for us to support local police and firefighters and emergency medical workers, including those in our local emergency rooms at our hospitals. These people are on the front lines of any terrorist attack that our citizens may face in the days or weeks or months ahead.

Many of us have been talking, since just after 9/11, about the importance of partnering with local communities, and that it is not enough to ask our local sheriffs, firefighters, police officers, and others in the communities, to assume this additional set of duties relating to national security without having the support and assistance of the Federal Government.

I commend all of my colleagues and the President for coming together to make sure our men and women in the armed services have what they need at this critical time. We have come forward with substantial increases in the Department of Defense, and I am sure we will continue to do so.

But when it comes to the home front, we have not yet done what needs to be done. There is a growing sense of urgency and bewilderment in our communities here at home about why this has not occurred and why the President is not supporting the efforts that we have put forward.

I have been holding meetings around Michigan—I believe eight different meetings now—from Detroit to Macomb County, Oakland County; I was in Port Huron, MI, on Monday; on over to Lansing and Kalamazoo, and all the way up to Marquette in the Upper Peninsula of Michigan—and I hear the same thing over and over: We need help purchasing updated radio equipment; we can't talk to one another; the city versus the county or county to county. In some cases, in smaller communities, the fire department cannot talk to the police department. We need a better dispatch system. We need better communications systems. We need, frankly, to be doing this on a statewide and national basis. But the communities do not have the resources to do it alone.

We hear about training, not only having a trainer come in—whether it is for bioterrorism, whether it is other types of training that is needed—but we are hearing from local law enforcement and others that when you have a training certification, and you take 10 police officers away from their normal duties of patrolling our streets and keeping the citizens safe, and they sit in training, no matter how important it is, the police chief still has to replace those 10 officers so the citizens remain safe while that is happening, while the training is occurring. That takes additional dollars.

There are multiple costs to training that we need to be supporting in order to be able to get this done as quickly as possible and as thoroughly as possible. And certainly we need additional personnel, different kinds of personnel, in our local communities.

I am sure my colleagues have received many letters. I have received many letters in addition to the personal conversations that I have had with people across Michigan. Let me share parts of a couple letters from mayors in Michigan.

The mayor from the city of Birmingham wrote to the President and sent me a copy:

Mr. President, I am writing to express my deep concern that funding for first responders promised nearly a year ago has still not been provided to America's cities, towns and villages. As you know, the nation's local municipalities have carried the burden for homeland security during the 15 months since the September 11 attacks, with only the promise of federal support.

This was written back in December.

The absence of federal funding for police, firefighters and emergency response staff has been a disappointment for many city leaders across the country as their concerns were voiced at the recent National League of Cities conference held earlier this year.

I have a similar letter that has come from the mayor of Cadillac, in northern Michigan, again expressing grave concerns and saying:

At the recent National League of Cities conference in Salt Lake City, city leaders from across the country voiced their deep disappointment regarding the absence of federal funding for police, firefighters and emergency response staff.

The city of Fenton, in Michigan, the city of East Lansing, in my own home county—mayors, county officials, police chiefs, sheriffs—and of both parties; this is not Republican and Democrat; this is not urban and rural; this is not a question of one part of the country against another—everyone, every community is saying this same thing.

I am deeply concerned not only about past actions but what is occurring right now in this current budget bill that we will have in front of us tomorrow.

Let me, first, indicate and remind us that last summer we passed an emergency supplemental that included \$2.5 billion, passed by the Senate with bipartisan support, passed by the House with bipartisan support, and sent to the President, an emergency supplemental including \$2.5 billion for local communities. It was on the President's desk. All he had to do was sign it. And he would not declare it as an emergency and would not sign it and release the funds.

We have come back again and again. Twice this last month, in January, Senator BYRD stood in this Chamber and eloquently spoke about the needs of communities and first responders. Again, we could not get the support.

And now in the omnibus budget bill that will be coming before us, despite a unanimous Senate appropriations vote back last July on a series of items that deal with transportation security, border security, community policing, Federal emergency management, firefighter grants, equipment and communications, emergency operations, port container security—and on and on and on—we now have in front of us a bill that, in fact, will cut from that amount supported unanimously by the Senate Appropriations Committee \$4.4 billion from homeland security from what we passed, what the Appropriations Committee passed and recommended to us last summer based on the needs presented to them from communities.

We could go down the list. I am deeply concerned when I see the cuts in community policing, the firefighter grants, the inoperable communications equipment grants, which I am hearing so much concern about, emergency operations, et cetera.

It is time for us to act. It is time for us to hear what our communities are saying. I urge my colleagues to join

with us in making sure we truly keep our communities safe.

The PRESIDING OFFICER. The time of the Senator has expired.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess subject to the call of the Chair.

There being no objection, the Senate, at 1 p.m., recessed subject to the call of the Chair and reassembled at 2:07 p.m., when called to order by the Presiding Officer (Mr. ALEXANDER).

EXECUTIVE SESSION

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

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. I thank the Chair.

(The remarks of Mr. EDWARDS pertaining to the introduction of the legislation are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

Mr. THOMAS. Mr. President, I will discuss the topic on the floor, the nomination process.

It is interesting the Senator from North Carolina has a bill he thinks is important and probably is important, yet questions are not able to move forward on any of those bills because we are tied up in doing something that is not at all useful, not at all productive, but it continues. Those important things we have to do are not being done, and as a matter of fact will not be done, apparently, for some time.

I rise more to talk a little bit about the disappointment I have in the process in which we find ourselves. There is not much point in talking about the nominee, Mr. Estrada. He has been talked about forever. I can't think of another thing that could be said that has not already been said. What we can do is talk a little about the process being created. Talk about the obstruction that is taking place and the Congress that is faced with a great many important issues we need to get considered.

We all recognize in any issue, particularly of a nominee, it is perfectly legitimate that people have different points of view. That is not unusual. Indeed, that is the way it ought to be. It

also is appropriate for people to come to the floor after the committee has acted and to share those points of view and to do whatever they feel appropriate to try and convince others to share that point of view. That is the way it is supposed to be. Finally, after that is done in a reasonable limit of time, we have a vote, an up-or-down vote, so those who feel one way can vote one way, those who feel the other can vote the other. Not a very unusual process. On the contrary, it is the very well-accepted process.

That is not what has happened here. That is not what has happened.

As has been said before, it is time to move forward. It is time to move on. It is time to deal with the dozens of other important issues out there for this country and for the people of this country, issues that to people in the country are much more meaningful and have more to do with their business and welfare than we have here. I cannot imagine there is more to say from the other side of the aisle in opposition. They are opposed; fine. That is fine. They are able to convince anyone else? I don't think so. We have been working on this for about a week. It looks as if we will be here some more.

It is very disappointing for those who would like to do things that are most important to do. Among other things, of course, the White House has responded. The letter was sent to the President renewing the request to him for confidential judicial memoranda that have never before been released. The response of Mr. Gonzales, the counselor to the President, basically indicates they respect the Senate's constitutional role in the confirmation process, and they agree the Senate must make an informed judgment consistent with the traditional role and practices. However, requests for these kinds of papers have no persuasive support in history and the precedent of judicial appointments. It is not there. It has not been done.

Relevant history and procedures convincingly demonstrate that would be shifting standards. There is no basis for doing that.

In conclusion, the President's counselor said: Miguel Estrada is a well-qualified, well-respected judicial nominee with very strong bipartisan support. Based on our reading of history, we believe you have ample information about this nominee and have had more than enough time to consider questions about his qualifications and his ability. We urge you to stop the unfair treatment and the filibuster and allow an up-or-down vote to confirm Mr. Estrada.

I agree with that. Certainly, that is the case. I am not here to talk about the legal aspects of it, just the operational aspects of it, and make it clear, this man was before the committee from 10 in the morning until 5 in the evening, answering all the questions, answered written questions subsequent to that, and we continue to carry on with it.