now told next week's schedule will include 30 hours of debate on judges. Actually, there won't be any business before the Senate to debate; it will just be an opportunity for the majority party to ruminate for 30 hours about how unfair it has been that 4 nominees have not been approved by the Senate—4. Mr. President, 168 judicial nominees sent to us by the President have been confirmed by the Senate, and 4 have not been. Yet you would be led to believe by all of the information spewed out of this Chamber, from all of the political vents that exist here, that somehow the Senate has just been unwilling to approve judgeships.

We have the lowest vacancy rate on the Federal bench in 15 years. Why? Because this Senate has been cooperative with this President with respect to judgeships. He has nominated and we have confirmed 168. If next week they want to spend time, in a moment when it is urgent to finish our work on appropriations bills, instead to talk about the 4 judges who were not confirmed by the Senate, I want to come to spend some time talking about the 168 judges, including 2 from my State, both Republicans, both of whom I supported and was pleased to do so—I want to talk about the 168 judges we did confirm. I want the American people to understand what our record is with judges.

My colleague from West Virginia knows about the Constitution, perhaps more than anyone in this Chamber. He has studied it, he has lived it, and he carries it in his pocket every day. His copy of the Constitution is one I enjoy seeing when he pulls it out of his pocket during debate on the floor of the Senate, because he describes it in vivid detail and gives life to this fabric of American Government. The Constitution does not say the President has a right to put a man or woman on the Federal bench for the rest of their lives. That is not what the Constitution says. The Constitution says we will provide lifetime appointments to the judiciary in the following manner: The President shall nominate, and the Senate shall give its advice and consent. So there are two steps: The President shall nominate and the Senate shall decide yes or no.

There are circumstances where a President might say: I want to put someone on a very important Federal bench who is way outside the norm in terms of behavior, thought, or experience, or whatever; and the Senate has a right to say in that circumstance we are sorry, that is a person we are simply not going to confirm, Mr. President.

That is not terribly unusual. George Washington failed to get one of his nominees confirmed—America's first President. So it is not unusual for the Senate to say, no, this is not a candidate we agree should be put on the Federal bench for a lifetime.

In most cases, the President has sent us nominees we are satisfied with, and 168 of them have been approved; 4 have not been. In the middle of this time, when time is so critical and the appropriations bills are so urgently needed to be completed, the majority wants to ruminate and vent for 30 hours in the middle of next week about the 4 who have not been approved.

I say, as my colleague from Nevada has, I make no excuses for deciding not to support the nomination of Mr. Estrada. I make no excuses for that. Mr. Estrada wouldn't answer the questions when asked by the Senate Judiciary Committee. How do I know that? Because the same day that he was a witness before that committee, the same day his nomination was considered by that committee, a nominee for a judgeship in North Dakota was there before the committee. That candidate from North Dakota, whom I supported—and, incidentally, is a Republican—is a fine judge. I was pleased to support him. He answered the very questions put to him by that committee that Mr. Estrada refused to answer.

Mr. Estrada refused to answer questions. He and the administration refused to release information that was requested. I have no reason to make any excuses for deciding to vote against Mr. Estrada. I wouldn't have voted for him and didn't vote for him. I am not apologetic about that.

If next week in the middle of all of this urgency we are going to take 30 hours and decide just to have the majority party ventilate about the four who did not get approved by the Senate, then I say—my colleague from Nevada is here—I would like to be part of a process that talks about the 168 Federal judges we did approve, all Republican incidentally—168 of them we did approve. We will get some pictures and get their story. I will talk about a few of them. I hope my colleagues will as well because the American people need to understand the story, and the story is not of the four who didn't get approved by the Senate.

The story is the lowest vacancy rate in 15 years on the Federal bench because the Senate has moved forward on judgeships and because we have confirmed judges sent to us by this President and because we have succeeded in that effort. That is the story next week. If we are going to have 30 hours for the other side to ventilate about the 4 who didn't make it, I want 60 hours to talk about the 168 we did confirm.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I wish to take a couple of moments to do a few items cleared on both sides.

UNANIMOUS CONSENT AGREEMENT—H.R. 2799

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at 1 p.m., Monday, November 10, the Senate proceed to the consideration of the Commerce-Justice-State appropriations bill.

Mr. REID. Mr. President, reserving the right to object, it is my understanding that the distinguished majority whip is going to announce there will be no more rollcall votes.

Mr. MCCONNELL. I say to my friend, just as soon as he clears this.

Mr. REID. No objection.

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

Mr. MCCONNELL. I, therefore, mention there will be no more rollcall votes today.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, there are a couple of items on the Executive Calendar cleared. I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's calendar: Calendar No. 61 and 362. I further ask unanimous consent that the nominations be confirmed; that the motion to reconsider be laid upon the table; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

FEDERAL ENERGY REGULATORY COMMISSION

Joseph Timothy Kelliher, of the District of Columbia, to be a Member of the Federal Energy Regulatory Commission for the term expiring June 30, 2007.

Suedeen G. Kelly, of New Mexico, to be a Member of Federal Energy Regulatory Commission for the remainder of the term expiring June 30, 2004.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. MCCONNELL. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the Pastore rule run its course for the day?

The PRESIDING OFFICER. It has not.

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order for such time as I may require.

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

AN INFINITE MIRAGE AND A BOUNDLESS FACADE

Mr. BYRD. Mr. President, through its shortsighted actions, this administration perpetuates an infinite mirage and a boundless facade. This administration hopes to fool the American people into swallowing its wrongheaded policies with no questions asked. These