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# House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 11, 2003, at 12:30 p.m.

# Senate

MONDAY, FEBRUARY 10, 2003

The Senate met at 11 a.m. and was called to order by the Honorable NORM COLEMAN, a Senator from the State of Minnesota.

## PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, who knows our needs before we ask You for Your help, and has plans for us and our Nation ready to reveal to leaders who humble themselves and seek Your guidance, we praise You for the privilege of being alive and the delight of serving You.

Give us a positive attitude for the challenges and problems of this day. Help us utilize Your divinely inspired gift of imagination to energize our vision of Your very best for the individuals, concerns, and complicated issues we must creatively confront today. Empower us to prayerfully picture Your solutions and direction and speak with the tone of Your articulated inspiration in our souls. Help us not to go it alone today on our own limited resources but draw on the inspiration of the vivid images You play on the screen of our inner eye of vision.

Today we pray for all in the Senate family who are ill or recovering from surgery. Especially we pray for Senators ROBERT GRAHAM and MITCH MCCONNELL, two distinguished Senators who are recovering from heart surgeries and procedures. Infuse Your healing power into their bodies and give them strength and renewed resiliency. We thank You for these two great leaders.

We expect great things from You today, dear God, and we will attempt great things for You throughout this new week. You are our Lord and Saviour. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable NORM COLEMAN led the Pledge of Allegiance, as follows:

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

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, February 10, 2003.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable NORM COLEMAN, a Senator from the State of Minnesota, to perform the duties of the Chair.

TED STEVENS,
*President pro tempore.*

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

## RECOGNITION OF THE MAJORITY LEADER

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

## SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit.

On Thursday we attempted to reach a consent agreement which would have allowed for a vote on that nomination during today's session. Unfortunately, that consent was not granted last Thursday. However, it is still my hope to work with my colleagues on the other side of the aisle to set a time certain for a vote on the confirmation of this important nomination. I know there are additional Members who want to speak on the nomination, and I hope they do so today, that they take advantage of the opportunity, beginning in a few minutes, over the course of today.

I do want to express our willingness to go as long as necessary tonight to allow for that open discussion, that open debate, so colleagues do have the opportunity to express their wishes.

I do want to make sure my colleagues understand it is our intent to finish this nomination and vote on this nomination as early as possible this week. I would love to have that opportunity to do so either later tonight or tomorrow—again recognizing that it is important people have the opportunity to speak. Again, we are perfectly happy to stay here as long as necessary tonight.

In addition, three district court judges were reported by the Judiciary Committee on Thursday. We are working towards an agreement for a vote on one of those nominations this evening,

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

or possibly all three nominations this evening. We will report shortly after discussion with the leadership on both sides of the aisle, but we expect the first vote to be at 5:15 this afternoon.

Also, as a reminder, the current continuing resolution is set to expire on Friday of this week. We are still hoping the appropriators will complete their work on the conference report and therefore the Senate would consider the conference report later this week, as soon as it becomes available.

We are also attempting to clear several important items that are on the Legislative Calendar. Each may require a short period of debate this week and a rollcall vote. Thus, we have a very full week over the next 5 days. Senators should expect a busy session this week and, indeed, as I mentioned earlier, late nights are possible. It is likely that there will be several late nights this week, including tonight if people will take advantage of that, in terms of discussing and bringing their views to the floor.

The ACTING PRESIDENT pro tempore. The Democratic whip.

Mr. REID. If I could, while the majority leader is in the Chamber, first, on the vote on the judges, the ranking member of the committee, Senator LEAHY, has said he is aware of the three judges and he would like a rollcall vote on each of the three and that you and Senator DASCHLE can work on the time of when at least the first will occur this evening.

Mr. FRIST. Let me remind the Senator, I would like to do all three this evening. We can plan on having the first vote at 5:15 and then we can discuss about the other two. I think it would be our intent to have all three tonight.

Mr. REID. Fine.

I also say to the distinguished Senator from Tennessee, the majority leader, last week there were a number of problems, as the leader is aware. There were memorial services—it was difficult to have people speak. Also, it was difficult to get some Democrats to speak because the distinguished chairman took a lot of time speaking. It was hard to work in other people.

With that in mind, and with the distinguished chairman of the committee in the Chamber, what I would like to do is arrange some times for people to speak today so we do not have people waiting around and so the chairman of the committee and ranking member know who is planning on coming. If it is appropriate, I will give those times to both the leader and to the chairman. The ranking member, Senator LEAHY, is here and he is available all of the day, of course, if necessary.

But from 1 to 2, Senator FEINSTEIN would like to be able to speak; from 2 to 2:45, Senator KENNEDY would like to speak; from 3 to 4 o'clock, Senator SCHUMER would like to speak; and Senator LEVIN would like to speak after that until the vote. And then Senator FEINGOLD would like to speak at 5:30. They may not use all this time.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Let me say, first, I appreciate the assistant Democratic leader outlining that. It is very important that we hear from people who have very important things to say. It is really a matter of time management at this juncture, so I very much appreciate it. If we could just have a gentleman's agreement for those times without locking it in, and then allowing the chairman and ranking member to determine the specifics of those times, but it sounds agreeable to me.

Mr. REID. That sounds like a good idea.

Mr. FRIST. Again, it is not our side of the aisle I think at this point that will do the majority of talking. We have a number of Members who want to speak as well. But our goal is to have an up-or-down vote on this important nomination after sufficient time as judged by the other side of the aisle and our side of the aisle.

I encourage, once again, the Senator to continue scheduling just as he has done, which I appreciate, but to go as long today as he is comfortable doing because we want to make sure he has that opportunity. But it is my intention to bring this matter to a vote as soon as practical as we go forward.

Mr. REID. I also say to the distinguished majority leader and the distinguished Chair of the committee that one of the things we are concerned about—and we know there has been very little time used on the debate so far, as the Senator knows, and as Senator DASCHLE stated publicly, the Democrats have not decided whether there is going to be a filibuster. That is something the majority leader and Senator DASCHLE can speak about later today. But I ask for the cooperation of the majority; that, in effect—and I don't mean this to be a derogatory term—no games be played. If somebody steps off the floor in the next few hours, I hope the question would not be called on this nomination until we get into a more—I want to use the right word. Until we get into a more competitive phase of this debate, I hope there would not be anything like that done.

Could I have the assurance of the chairman of the committee that in fact would be the case?

Mr. FRIST. Mr. President, I think for today, of course, we will agree to that. But again, I want to come back to the fact of whether it is competitive and the accusations of a filibuster going back and forth. That is going to sort of occur.

Let me just say on the part of the chairman and myself that as long as we are having good participation, it is important—not just listening to people because they want to get out and talk for an hour, which looks like a filibuster—to the American people that we work in good faith to come to what I hope will be a fair up-or-down vote in a reasonable period of time, and games are not in order and are not to be played. At the end of the day, we expect no filibuster—again, that is a decision which will be made on your side—because the American people deserve better. If there is insistence on a filibuster, we will use everything within our power being in the majority under the Senate rules to bring this to an up-or-down vote.

Mr. REID. One last thing I would like to say is we are having, as the majority leader knows, a conference committee meeting of the Appropriations Committee at 6:30 this evening. There are still a number of open issues. We will hear from Senator STEVENS and others. But this thing has moved along significantly over the weekend.

Mr. FRIST. Mr. President, I will close.

We have the opportunity of a very productive and very useful week. When you look at the continuing resolution and completing the appropriations bills with the omnibus package and the three judges tonight, if we can finish the Estrada nomination early enough in the week, there are two other bills we are working on, including the Moscow treaty. There is other legislation that is to follow. We have the opportunity of a very productive week before going out on recess. We have to keep the train moving.

The reason why I mention that is, if members want to talk on the other for 30 minutes or 45 minutes each tonight, we want to make that opportunity available, and we hope the other side will seize that opportunity since we express that willingness.

Thank you, Mr. President.

Mr. LEAHY. Mr. President, will the Senator from Tennessee yield for just a moment, the distinguished majority leader?

Mr. FRIST. I yield to the Senator.

Mr. LEAHY. A couple of things should be mentioned.

As the distinguished senior Senator from Nevada has noted, we have a committee of conference on the appropriations this evening, which is a very significant one because of the level of appropriations bills being rolled into one. A number of us who might speak on the floor are also on that committee. Senior members of the Appropriations Committee have to be at the meeting. Some have said and others have commented about games-playing here. I don't think the distinguished majority leader or the distinguished acting Democratic leader would want to do that. I would suggest just for my friend—looking around the floor—having been here longer than anybody else on the floor right now, in the majority four or five times, and four or five times in the minority with very distinguished majority leaders, Senator Mansfield, Senator BYRD, Senator Baker, Senator LOTT, Senator DASCHLE, Senator Mitchell—

Mr. REID. Senator Dole.

Mr. LEAHY. And Senator Dole, and also having served as minority leader

back and forth—all of them realized that anyone can come down at any moment of inattention and, using the rules, gain a one-time advantage. With all the distinguished leaders, I never saw a single one of them do that, even when over and over again they had an opportunity to do it. Many times when I was chairman of the Agriculture Committee, when I was chairman of Judiciary Committee, when I was chairman of the Foreign Operations Committee, and when I was chairman of a number of others, we would have hotly contested issues and cases where the ranking Member, the only other person on the floor, had to leave the floor for a phone call or something like that. And, of course, I always protected their rights. That is something that has been done. It is the role of the majority leader, of course, to try to move legislation forward. It has always been my feeling, whether being in the majority or in the minority, that the majority leader should do that. I think we can. But I also think everybody should realize that last week was a rather extraordinary week with, first, the services in Houston, and then the services at the National Cathedral, and then the Republicans had a conference where they had to go on Friday. A lot was chopped into that week.

I have already said the three judges which are on the Executive Calendar—those which were actually going to be put over by the Republicans initially in the executive markup—I said to the distinguished Senator from Utah, let us go ahead and vote them out so we can get them on the floor. But also the majority leader may not be aware of the fact—at least from some of his statements—that during 17 months we did get through 100 of President Bush's judges and got all of them confirmed on the floor. I know the distinguished Senator from Utah would like to come close to that record, a record that was not achieved when the Republicans were chairing that committee and when President Clinton was here. I know he would want to try for that now. Of course, I would be happy to go forward on those and vote those three out. There will be rollcall votes. I realize that last year sometimes we had 10 or 12 at a time by voice vote. I think that escaped the attention of the press, the White House, the Republican Senate campaign committee, and others.

I yield the floor.

## RESERVATION OF LEADERSHIP TIME

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

## EXECUTIVE SESSION

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

The ACTING PRESIDENT pro tempore. The Senate will now 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.

Mr. HATCH. Mr. President, of course, there are not going to be any games played. Nobody on this side wants to play games. This is important stuff. We understand there are those on the minority side who do not agree with this nomination. They have a right to not agree. But they have a right to vote against Miguel Estrada if that is what they really think is right.

On the other hand, should there be a filibuster it will be the first filibuster in history against an inferior court, the circuit court of appeals or the district court.

With regard to the 100 nominees that made it through in the last few years, that was a very good record, primarily just for judges. I am more interested in how many are left over. I am more interested in how we reduce the number of holdovers. Let us hope we can do that. I am going to do everything in my power to do it, and I hope I will have the cooperation of those on the minority side in trying to do what is really our job; that is, to put the President's—whoever the President is—nominees through. We always have someone on both sides who wants to slow the process down. We understand that. But hopefully we can get people of goodwill to not slow the process down and to not filibuster this wonderful Hispanic judge named Miguel Estrada.

Mr. President, in that regard, I ask unanimous consent that a Washington Post editorial entitled ''Filibustering Judges'' be printed in the RECORD.

There being no objection, the material was ordered to printed in the RECORD, as follows:

[From the Washington Post, Feb. 5, 2003]

FILIBUSTERING JUDGES

''Tell Senators: Filibuster the Estrada Nomination!'' cries the Web site of People for the American Way. The subject is President Bush's nomination of Miguel A. Estrada to a seat on the U.S. Court of Appeals for the DC Circuit. Democratic senators may not need much encouragement. With the Estrada nomination due to come to the Senate floor today, they are contemplating a dramatic escalation of the judicial nomination wars. They should stand down. Mr. Estrada, who is well qualified for the bench, should not be a tough case for confirmation. Democrats who disagree may vote against him. They should not deny him a vote.

Senators have on occasion staged filibusters on judicial nominees, but none has ever prevented a lower-court nominee's confirmation, the White House says. And that's good, It's hard enough to get swift Judiciary Committee action and floor votes for judicial nominees. The possibility of a filibuster probably checks rash or overly partisan nominations; one can imagine candidates so wrong or offensive that the tactic would be justified. but a world in which filibusters serve as an active instrument of nomination politics is not the either party should want.

Mr. Estrada's nomination in no way justifies a filibuster. The case against him is that he is a conservative who was publicly criticized by a former supervisor in the Office of the Solicitor General, where he once worked. He was not forthcoming with the committee in its efforts to discern his personal views on controversial issues—as many nominees are not—and the administration has (rightly) declined to provide copies of his confidential memos from his service in government. Having failed to assemble a plausible case against him, Democrats are now arguing that this failure is itself grounds for his rejection—because it stems from his own and the administration's discourteous refusal to arm Democrats with examples of the extremism that would justify their opposition. Such circular logic should not stall Mr. Estrada's nomination any longer. It certainly doesn't warrant further escalating a war that long ago got out of hand.

Mr. HATCH. I would like to take a few moments this morning to respond to some of the allegations that Miguel Estrada lacks support in the Hispanic community. Nothing could be further from the truth.

Young men and women from Mexico, Central and South America, who come to the United States—sometimes with their parents, sometimes without—have helped to build this country. There is no question about it. They have mined our mines. They have built our railroads. They have worked on the roads. They have advanced themselves in education. They are now doctors, lawyers, and filling positions in virtually every walk of life in this country, and rightly so.

They struggled in a foreign country to make a better life, and the gifts they have brought to this Nation are what has made this Nation a great nation. And they still do today. The Hispanic community leaders I have worked with over the years consider Miguel's success as their success. And they know that all young Latinos across the country—whether they live in border town colonia, a barrio in Chicago, or Miami's Calle Ocho—need role models such as Miguel to emulate.

Miguel arrived in this country with his mother at age 14. He lived in a modest home, and his parents worked hard to send him to private schools. There is no crime in that. In fact, many Latino families work two and three jobs just to be able to send their children to private schools, which are usually Catholic schools. That is no crime. In fact, the Catholic schools are among the best schools in this country. I do not blame any parent for wanting to send their children to Catholic schools. They learn a lot of important things in Catholic schools. It is a sign of a Hispanic parent's love and dedication, and it is a manifestation of Latino values at their best.

Latino groups that oppose Miguel's confirmation—notably, the Mexican American Legal Defense and Education Fund, the Puerto Rican Legal Defense and Education Fund, and the Democratic Congressional Hispanic Caucus—argue that the courts lack Hispanic representation. That is always interesting to me. They are constantly arguing that there are not enough Hispanics on our Federal courts, but they are not looking for diversity—these three groups. They only want Hispanic judges who look, think, and act like them. That is pretty apparent in this case.

A good judge is one who understands that there are competing interests which must be balanced within the rule of law. Miguel Estrada is exceedingly capable of making that assessment. And every Latino in this country—and every person in this country—ought to appreciate that fact and ought to be very proud of what this young man has done with his life. Of course, he wants to administer the law fairly. And I know he will.

A review of the Congressional Hispanic Caucus's statement in opposition is most disappointing to me. It was issued in advance of Miguel Estrada's hearing. My colleagues in the House, who have argued persuasively for a fair process, decided that Miguel Estrada was not so entitled. They pronounced judgment beforehand. But that should not surprise us. That caucus is a Democratic machine, or a Democratic Party machine, to be a little more accurate.

The Republican members of the caucus were forced out because they did not think and act like their Democratic counterparts. So you have a purely partisan Democrat Party machine over in the House that did not even listen to Estrada before they made this pronouncement and this judgment.

There are no Republican members of the Congressional Hispanic Caucus. You would think they would want to get together with Republicans and, in a joint way, in a bipartisan way, work not only for and on behalf of the Hispanic community, but for and on behalf of everybody in this country.

The Democrat Congressional Hispanic Caucus may oppose Miguel Estrada, but the Republican Congressional Hispanic members—LINCOLN DIAZ-BALART, ILEANA ROS-LEHTINEN, HENRY BONILLA, MARIO BALART—they all support his confirmation, and they support him very strongly, as they should—and so should our Democratic friends in the House.

Ordinarily, I would think they would come out of their chairs in leading the charge to try to help Miguel Estrada, but, for some reason, they are not doing it. And I suspect that the reason is Miguel does not look, think, and act like they do.

There is a lesson in this, and it is a hard one to take. Hispanic Americans have fought hard to counter injustices, to demand respect and equality of opportunity. They have fought hard all these years they have been in this country. Indeed, the second oldest Hispanic organization in the country, the American GI Forum, came into existence in 1948, when a fallen war hero was refused a proper burial in Texas because he was a Mexican. Similarly, LULAC, established in 1927, and the National Council of La Raza, established in 1968, came into existence to ensure equality of opportunity for all Hispanic Americans, leaving a legacy for generations to come.

But today that legacy is threatened as this community, once united by a common vision and a shared experience—sadly, one of discrimination—finds itself divided along party lines in what appears to be purely political purposes—at least on the side of those who oppose Miguel Estrada. In the process, it is subjecting one of their own, Miguel Estrada, to a ''Latino'' litmus test, and subjecting him to the very type of discrimination they have fought so hard to eradicate. There is no place in the judicial nomination process for single litmus tests.

I have taken that position the whole time I have been on the Senate Judiciary Committee, or at least have tried to. Others may disagree with me, but I do not believe any single litmus test should stop a person who is otherwise qualified. And Miguel Estrada is not only qualified, Miguel Estrada is one of the most qualified people we have ever seen to come before the Judiciary Committee.

I think the judicial process is one that must remain free of single-issue litmus tests and politicization, in particular. I urge groups such as MALDEF and the Congressional Hispanic Caucus to think back a couple of years to the pending nomination of Richard Paez. I was not happy with the way that was handled, and I was the one who was trying to get him through.

As chairman of the Judiciary Committee, I worked hard to ensure the process was fair. In the early stages it was not fair, in my opinion. He deserved a vote, and I made sure he got one. It took years to get it. And there were some reasons—some legitimate reasons—why some opposed Paez. I do not see one legitimate reason why anybody would oppose Miguel Estrada. Miguel deserves a vote.

Reasonable people can disagree on how one might vote in this instance, but I call upon these organizations to step forward with the same fervor and intensity that drove their campaigns to call for a vote for Richard Paez. I urge them and my colleagues to recommit to a process that is fair, that is free from double standards and partisan politics.

Look at this I have in the Chamber. Yes, there are three organizations—and there may be a few more; they are certainly all the left-wing anti-Bush judge organizations that crop up on every circuit court of appeals nominee—that are opposed to Miguel Estrada. But the Latino people are for him, and they do not like these games being played.

Some have suggested he is not Hispanic enough. That is a joke: He is not Hispanic enough; he has not been in this country long enough—even though he has been here since he was 14 years of age, and earned his way, and graduated with honors from Columbia University, and in the highest part of his class in law school at Harvard University. Not many people can claim that.

He worked for two judges, and yet one of the arguments is that he does not have any judicial experience. We, more or less, blew that away last week when we brought out how many judges, great judges in our country's history, never were judges before they were nominated and confirmed.

But what they ignore is that Miguel Estrada has been a clerk for two judges. His judicial experience is a lot more than that of most people who come through the Judiciary Committee, I will tell you that right now. But it is not critical that a person have judicial experience. It may be helpful in certain cases, but it is not critical. Some of the greatest judges in history—and I will just cite Brandeis as an illustration—never had prior judicial experience other than peripherally. And in Miguel's case, he was actually a law clerk for two major Federal judges.

He clerked for the U.S. Supreme Court. Talk about judicial experience. How many have clerked for the U.S. Supreme Court? Not very many. You can go down through the ridiculous arguments they are using against him, and it is pitiful. This man has the highest rating—I might add it is unanimously the highest rating—of the American Bar Association, which, according to my colleagues on the other side when they were upset about some of the others, was their gold standard.

I have to admit I did not think the American Bar Association did a very good job in bygone days. I have to admit today I think they are doing a better job, and I support them for it. I applaud them for it. But it is not easy to get a unanimously well-qualified, highest rating from the ABA, and that is a lot more than some of the critics would ever get.

Let's go to the Clinton circuit judges with no prior judicial experience:

Judge David Tatel, Judge Merrick Garland, both on the DC Circuit, where Miguel Estrada will go; Sandra Lynch, First Circuit; Guido Calabresi, Second Circuit Court of Appeals; Robert Sack, Second Circuit; Sonia Sotomayor, Second Circuit; Robert Katzman, Second Circuit—these are all pretty darn good judges—Thomas Ambro, Third Circuit; Blane Michel, Fourth Circuit; Robert King, Fourth Circuit; Karen Nelson Moore, Sixth Circuit; Eric L. Clay; Dianne Wood; Kermit Buye; Eighth Circuit; Sidney Thomas; M. Margaret McKowen, Ninth Circuit; William Fletcher, Ninth Circuit; Raymond Fisher, Ninth Circuit; Ronald Gould;

Marcia Berzon; Richard Talman, Ninth Circuit; John E. Rawlinson, Ninth Circuit; B. Robert Henry; Carlos Lucero; William Bryce on Federal Circuit; Arthur Gajarsa; Richard Lynn; Anthony B. Dyk.

Many of these judges were appointed by Democratic Presidents—all without judicial experience and serving well in the circuit courts of this country. That is not even talking about the Judge Brandeis, and others who have served with such distinction throughout the years.

I would like to go to the other chart. I will make one or two points there. I want to talk about those who support Miguel Estrada. These are great organizations:

League of United Latin American Citizens, the oldest Hispanic organization in the country; Hispanic National Bar Association, which works very hard to try to get good Hispanics nominated in both parties; U.S. Hispanic Chamber of Commerce, one of the oldest and most prestigious Hispanic associations in the country; Association for the Advancement of Mexican Americans—they are all important to associations—the Latino Coalition; Mexican American Grocers Association; Hispanic Contractors Association; IntraAmerican College of Physicians and Surgeons; Congregacion Cristiana y Misionera ''Fey Alabanza''; American GI Forum; Casa De Sinaloense; Cuban American National Foundation; Hispanics Business Roundtable; Nueva Esperanza, Inc.; MANA, a national Latino organization; Cuban American Voters National Community; Cuban Liberty Council; Federation of Mayors of Puerto Rico; Puerto Rican American Foundation.

I wonder why there is one Puerto Rican organization that is not for him when the rest are. It is not hard to see why the Democrat-controlled Hispanic Caucus in the House is not for him—because they are partisan, and they are controlled, in large measure, in these matters by left-wing groups in Washington and are continually unfairly interfering with President Bush's nominees. They are against everybody President Bush nominates for the circuit court of appeals—or at least almost everybody. So far, my impression is that they are against every one of his circuit court nominees, unless they have been Democrats.

This President has nominated more Democrats, as I understand it, than any Republican President in recent years, in order to reach out to Democrats and try to bring them along. They have been good people, and I have certainly supported them, as have I think all of my colleagues.

Now, it is outrageous for some of these partisan Hispanic leaders to say that Miguel Estrada is ''not Hispanic enough'' or that he has no judicial experience and therefore he should not serve. Let's just think about that. He has no judicial experience; therefore, he should not serve. What does that say to all of the Hispanic lawyers in this country who don't have any judicial experience and might want to serve in the Federal circuit courts someday? It basically says you don't have a chance, in the eyes of the people who take that attitude, because you don't have any judicial experience—in spite of the fact that many Federal judges didn't have any experience and some of the greatest judges in history have not had judicial experience.

Miguel Estrada had judicial experience in serving two Federal judges, one a Supreme Court Justice. I get a little tired of some of this ''anti-Miguel-Estrada syndrome'' that seems to be going on. I know Miguel Estrada. He is a terrific human being, and he is qualified. He has been given the highest rating the ABA gives. He has the support of virtually all the Hispanic groups in the country, except for the few I have mentioned. Miguel Estrada would make a wonderful Federal Circuit Court of Appeals judge. He would add a great deal to the Circuit Court of Appeals for the District of Columbia, which only has 8 judges of the 12 seats there right now, and they cannot keep up with the workload.

We ought to all be working hard to put Miguel Estrada on the bench. I am afraid there are those who don't want him there because they are afraid he would be on the fast track to the Supreme Court. That may be, but the fact is we are talking right now of the Circuit Court of Appeals for the District of Columbia.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I have listened with interest as my friend from Utah has made arguments against the Democrats using the old thing of the straw man debate. I have heard a lot of arguments the Senator from Utah says we make against Mr. Estrada, but I have not heard them from us. I did hear some interesting things. He has expressed his support for Judge Richard Paez. After blocking it for several years, the Senator from Utah did vote for him. I commend him for that. It is interesting, however, that he does not speak of the strong opposition to Judge Paez by the Republicans. A very large number of their votes were against him, and the fact that he was blocked by the Republicans year after year after year, while the nominee was here, that, the Senator from Utah suggests, is legitimate; whereas there seems to be a strong suggestion that if Democrats were to talk only a few days about Mr. Estrada, and some may even vote against him, that is not legitimate.

I also note that it is easy to accept the arguments if you don't put all the facts forth. For example, the charge of the distinguished Senator from Utah—take one judge, Sonia Sotomayor of the Second Circuit. He puts her down as a Clinton circuit judge with no prior judicial experience. In fact, she did have prior judicial experience. She had been appointed originally by the first President Bush as a Federal court judge.

In an example, when time and time and time again President Clinton nominated people for the court of appeals and other judicial nominees who had been appointed by Republican Presidents—something we have never seen in this administration and probably won't—but I know of at least three members of the Second Circuit Court of Appeals who were appointed by Republican Presidents versus district court judges, two by President Bush, one by President Reagan. All were then elevated to the court of appeals by President Clinton.

Judge Sotomayor, of course, was held up by Republicans for a considerable period of time, even though she had originally been appointed to be a Federal judge by President Bush, contrary to what the chart of my friends, the Republicans, says. It is in absolute contradiction to what they said. She was blocked for a very long time by Republicans, and when she finally was able to get a vote, 29 voted against her.

Let's be honest about what happened. Judge Sotomayor, a superb judge, was appointed first by a Republican to the district court bench, not, as my friends say, someone with no experience, and President Clinton nominated her to the Second Circuit Court of Appeals. She was blocked initially by the Republicans, and they finally allowed it through, but 29 voted against her.

With Judge Paez, 39 voted against him. In fact—this is an interesting fact on Judge Paez. I wonder if everybody is aware of the fact that initially Republicans filibustered a motion to proceed to his appointment to the Circuit Court of Appeals. I heard mention somewhere that this never happened, that there were not any kind of delaying tactics on district court or Circuit Court of Appeals nominees, but on a motion to proceed, something Democrats did not block in any way with Judge Estrada, Republicans did. Fifty-three of them voted against that motion. I am surprised the Senator from Utah does not remember that fact because he is one of the 53 who voted against proceeding to bring up Judge Paez. I say this just to make sure we have accuracy in our debate.

Debate on this nomination began last week on Wednesday, within seconds of the Senate adopting S. Res. 45, to honor the Space Shuttle Columbia astronauts, and after we observed a moment of silence. Many of us were not on the floor Thursday because we were attending a memorial for the space shuttle astronauts at the National Cathedral.

I thank those who did participate in the debate last week. I commend to the Senate and to the American people the remarks of Senator REID, Senator KENNEDY, and Senator SCHUMER, each of whom added important dimensions and perspectives to this debate.

I also wish to take a personal moment to commend the senior Senator from Nevada, HARRY REID. While he is not a member of the Judiciary Committee, he spoke so eloquently on this subject and was able to carry on the debate while others of us, as I said, had to be at the very sorrowful memorial service for our astronauts.

I had hoped that at some point in the last 2 years or so we would have seen an effort on the part of the President and others to seek to unite rather than divide. Instead, we see a continuation of dividing the American people, as deeply as we have seen the 19 members of the Judiciary Committee divided. Many of us would like to know the record, would like to have a strong confidence in the type of judge Mr. Estrada will be, and be able to vote in favor of this nomination.

Since I have been in the Senate, I have voted on hundreds of nominees—Republican nominees—to the Federal judiciary. I suspect I have voted for more Republican nominees to the Federal judiciary than most of my friends on the other side of the aisle have voted for Democratic nominees. I do not need any lectures on how we should be bipartisan. In fact, when I was chairman, we were able to get 100 nominations through the committee and to the floor, any one of which of President Bush's nominees could have been stopped simply by not bringing the person up for a vote. We got through 100. Whether I agreed with or was against the person, I felt that at least we had a record so we knew what this person thought. We are being asked, after all, to uphold our oath of office and vote to confirm somebody to a lifetime position. The reason we are asked to do that is the judiciary is supposed to be outside the political realm. The judiciary is supposed to be independent and is supposed to be for all Americans and is supposed to be lifetime positions, positions for which most of us who vote on them will not be in the Senate for the full terms of these judges. So we have to at least look at the nominees if we are going to answer to the American people. There are 275 million Americans. They expect an independent Federal judiciary. They know this country has a reputation of having the most independent Federal judiciary, and there are only 100 of us, however, who can represent those 275 million Americans and use our imprimatur and our vote to confirm. We put forth an imprimatur for the whole country that this is somebody who will maintain the independence of the judiciary and will not be somebody who comes to the Federal bench with an ideological agenda, and we say that because we have looked at the people.

That is not the record before the Judiciary Committee, and it is not the record before the Senate on Miguel Estrada. I remain concerned he is going to be an activist on the court, especially when one looks at the very determined efforts, not only of the nominee but of the administration, to keep information from the Senate. It is typical of so many of these nominees. The White House has made absolutely no effort—absolutely no effort—to try to work out any kind of a bipartisan understanding on these judges. In fact, it has done just the opposite. They have stonewalled any request for information.

Frankly, I am sorry my friends on the other side of the aisle are willing to accept this with absolutely no information, even to having a vote in the committee with several members of the committee never even having sat in on what hearing there was on Miguel Estrada. It is a case of ''don't ask because we know you won't tell, so we will just go along with it.'' ''Don't ask, you're not going to tell, we'll just go along with it.''

There was an interesting editorial cartoon in Roll Call this morning showing, like a meatpacking business, Federal judges coming down this assembly line and the Republicans on the Senate Judiciary Committee stamping OK, OK, OK, similar to the way beef is stamped for the USDA.

Unfortunately, that does not help the American public. People can vote for or against Mr. Estrada as they want, but they should at least have some idea of on what they are voting, not this ''don't ask because we won't tell.''

We are being asked to consider a nominee with no judicial experience, with little relevant practical experience, who is opposed by many Hispanic leaders and organizations and many other Americans.

While he counts Justice Scalia, former Judge Kenneth Starr, and Ted Olson among his friends and mentors, information about his decisionmaking or what his values are, what he brings to this court, are locked away from any Senate consideration.

Last week I met with leaders of the Congressional Hispanic Caucus, the Mexican American Legal Defense and Education Fund, the Puerto Rican Legal Defense and Education Fund, Hispanic labor leaders, and they all told me they oppose this nomination. I was impressed by that because these are leaders who have come to me and other Senators over the years and have strongly backed Hispanic judicial nominees.

We have 10 Hispanic judges on the courts of appeals now. Eight of them were appointed by President Clinton. I know they were all backed by these Hispanic leaders. In fact, there were a number of other Hispanic judges who were also nominated by President Clinton who were also backed by the organizations, and unfortunately, the Republicans would not allow them to even come to a vote in the committee, say nothing about coming to a vote on the floor of the Senate.

Notwithstanding the number who were blocked by Republicans from ever even coming to a vote, President Clinton did appoint more Hispanics to the Federal bench than any President before him.

I ask unanimous consent to print in the RECORD letters in opposition to Mr. Estrada from MALDEF and other Hispanic organizations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND AND SOUTHWEST VOTER REGISTRATION AND EDUCATION PROJECT,

*January 29, 2003.*

Re opposition to the nomination of Miguel Estrada to the D.C. Circuit Court of Appeals.

Hon. ORRIN HATCH,
*Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.*
Hon. PATRICK LEAHY,
*Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN AND RANKING MEMBER: On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF) and Southwest Vote Registration and Education Project (SVREP), we write you on a matter of great importance to not only the Latino community but all Americans—the nomination of Miguel Estrada to the D.C. Circuit Court of Appeals. As you may know, our organizations weigh in on judicial nominations with varying frequency; although we are consistently and firmly committed to the view that the selection of federal judges for life-long appointments who will serve as the balance to the legislative and executive branches is critically important to our community. As a community, we recognize the importance of the judiciary, as it is the branch to which we have turned to seek protection when, because of our limited political power, we are not able to secure and protect our rights through the legislative process or with the executive branch. This has become perhaps even more true in light of some of the actions Congress and the executive branch have taken after 9/11, particularly as these actions affect immigrants.

After an extensive review of the public record that was available to us, the testimony that Mr. Estrada provided before the Senate Judiciary Committee, and the written responses he provided to the Committee, we have concluded at this time that Mr. Estrada would not fairly review issues that would come before him if he were to be confirmed to the D.C. Circuit Court of Appeals. As such, we oppose his nomination and urge you to do the same.

While the appointment to any Federal bench is important to our community, appointments to circuit courts become even more important when the Supreme Court accepts fewer than 100 cases a year to hear. Thus, circuit courts are often the last arbiters on determining the rights of individuals and communities. The D.C. Circuit is perhaps even more important than the other circuit courts because of the role it plays in reviewing an extensive amount of Federal agency actions, from regulatory actions to the orders and decisions of various Commissions and Boards. It has been reported that nearly half of the D.C. Circuit's caseload consists of appeals from federal regulations or decisions.

In the memorandum attached, we outline a number of the areas which lead us to oppose Mr. Estrada's nomination. Our research and analysis cover a wide array of constitutional legal issues that affect not only the Latino community, but all Americans, including the First Amendment, the Fourth Amendment, the Fifth Amendment (Miranda), and due

process clauses of the U.S. Constitution. Our review also covers such additional issues as racial profiling, affirmative action programs, immigration, and abusive or improper police practices, particularly when those practices are adopted under the ''broken windows'' theory of law enforcement. Finally, our critique of Estrada includes an analysis of his views on such issues as standing for organizations representing minority interests, claims by low-income consumers, labor rights or immigrant workers, and the right of minority voters under the Voting Rights Act.

MALDEF sent the full Senate Judiciary Committee and the White House a memorandum outlining these concerns prior to Mr. Estrada's hearing. We believe the burden to address the concerns we raised rested with the nominee, Mr. Estrada, and the Judiciary Committee gave Mr. Estrada ample opportunity to address them. Ultimately, Mr. Estrada had the affirmative obligation to show that he would be fair and impartial to all who would appear before him. After reviewing the public record, the transcript of the hearing, and all written responses submitted by Mr. Estrada, we conclude that he failed to meet this obligation. He chose one of two paths consistently at his hearing and in his written responses: either his responses confirmed our concerns, or he chose not to reveal his current views or positions.

We must in good conscience oppose the nomination of Miguel Estrada to the D.C. Circuit Court of Appeals. Based on the record available, we conclude that he would not fairly review matters before him as a judge in a number of areas that will have a great impact on our community. We urge you to oppose this nomination to a life-long appointment to the second most important court in the country. The power is too great to place in the hands of someone who has not shown that he would be fair in all cases that come before him.

Sincerely,

ANTONIO GONZÁLEZ,
*President, Southwest Voter Registration and Education Project.*
ANTONIA HERNÁNDEZ,
*President and General Counsel, Mexican American Legal Defense and Education Fund.*

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MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND,
*Washington, DC, January 27, 2003.*

PRESS STATEMENT BY MARISA J. DEMEO, REGIONAL COUNSEL, DC

MALDEF EXPRESSES SERIOUS CONCERNS ABOUT STATE OF FEDERAL JUDICIAL NOMINATIONS—ANNOUNCES OPPOSITION TO NOMINATION OF MIGUEL ESTRADA TO THE DC CIRCUIT COURT OF APPEALS

(WASHINGTON, DC).—The U.S. government system is set up as a checks and balances system, among the executive, legislative and judicial branches of our government. Since the founding of this country, the interests and rights of minorities, whether they be religious minorities, racial minorities, or other groups of people who do not have the power of the majority on their side, have been difficult to protect. During the civil rights struggle in this country, it was the courts which ensured that the values contained in our Constitution were preserved even for those who did not have equal representation or an equal voice in the legislative or executive process.

Today, Latinos number 37 million residents in the U.S. Despite this growing demographic presence, we have never had someone serve as the President of this country, and we remain the only minority group that is underrepresented in our federal work force. We have no Latinos serving in the Senate, and only twenty-two Latinos in the House of Representatives. At the state level, we have a little more representation but still are significantly underrepresented. For example, out of all the Governors in this country, only one is Latino.

MALDEF serves as the lawyer for the Latino community across this country in our courts. As such, we have established two major goals for our community to shape the federal judiciary—often, the only place where we have a chance to be heard and have our rights protected. The first goal is to increase the presence of Latino lawyers on the federal bench. Only about 5% of those serving as judges in our federal courts are of Hispanic background. When we number 12.5% of the population, there is a lot of room for improvement. On this score, President Bush has to do a better job.

Our second goal, which is as important as the first, is that we want judges appointed to the federal courts who will be fair to our community and the issues we must bring before the courts. The issues we must bring to the court are often complex and controversial—including such issues as discrimination, affirmative action, racial profiling, and use of excessive force by law enforcement. We need judges who will approach these issues by objectively and fairly evaluating the law and the facts, and not judges who come to the courtroom already convinced that our arguments are without merit. President Bush has failed our community on this score as well, as too many of his nominees come to the process with set ideological beliefs that they cannot set aside.

The most difficult situation for an organization like mine is when a President nominates a Latino who does not reflect, resonate or associate with the Latino community, and who comes with a predisposition to view claims of racial discrimination and unfair treatment with suspicion and doubt instead of with an open mind. Unfortunately, the only Latino who President Bush has nominated in two years to any federal circuit court in the country is such a person. President Bush nominated Miguel Estrada to the D.C. Circuit Court of Appeals. After a thorough examination of his record, his confirmation hearing testimony, and his written answers to the U.S. Senate, we announce today our formal opposition to his nomination. We cannot in good conscience stand on the sideline and be neutral on his nomination or others like his. We oppose his nomination and that of others that will prevent the courts from serving as the check and balance so desperately needed by our community to the actions being taken by the executive and legislative branches.

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WASHINGTON, DC, *May 1, 2002.*

Hon. PATRICK LEAHY,
*Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: As national Latino civil rights organizations, we write on a matter of great importance to U.S. Latinos, and all Americans—the nomination of Miguel Estrada to the D.C. Circuit Court of Appeals. Although historically we have expressed our views on judicial nominees with different levels of frequency, we are united in our view that all federal judicial appointments are important because they are life-long appointments, because they are positions of great symbolism, and because federal judges interpret the U.S. Constitution and federal laws serving as the balance to the legislative and executive branches of the federal government. While the Supreme Court is the highest court, the appellate courts wield considerable power. During its most recent term, the Supreme Court heard only 83 cases, while the circuit courts decided 57,000 cases. As a practical matter, circuit courts set the precedent in most areas of federal law.

We are united at this time around our belief that Mr. Estrada's nomination deserves full, thoughtful, and deliberate consideration. The President proposes to place Mr. Estrada, who has no judicial experience, on arguably the single most important federal appeals court to decide a myriad of statutory and regulatory issues that directly affect the Latino community. Every appointment to a powerful court is important as we recently witnessed in the Supreme Court's 5–4 decision in Hoffman Plastics that stripped undocumented workers of certain labor law protections. This decision, which inevitably will result in increased exploitation of the undocumented, as well as weaker labor standards for all low-wage workers, underscores the importance of nominations such as this one, not just to Hispanics, but all Americans.

This decision comes on the heels of a series of Supreme Court decisions which, in our view, have unnecessarily and incorrectly narrowed civil rights and other protections for Latinos. While we look to see if judicial nominees meet certain basic requirements such as honesty, integrity, character, temperament, and intellect, we also look for qualities that go beyond the minimum requirements. We look to see if a nominee, regardless of race or ethnicity, has a demonstrated commitment to protecting the rights of ordinary U.S. residents and to preserving and expanding the progress that has been made on civil rights, including rights protected through core provisions in the Constitution, such as the Equal Protection Clause and Due Process Clause, as well as through the statutory provisions that protect our legal rights.

We are aware that some are demanding a commitment from you and the Judiciary Committee to announce a date certain for action on Mr. Estrada's nomination. We agree with the proposition that every nominee deserves timely consideration. For this reason, we urged the Senate to act on the nomination of Judge Richard Paez to the Ninth Circuit Court of Appeals, who was forced to wait for four years before being confirmed. We also believe, however, that if a nominee's record is sparse the Judiciary Committee should allow sufficient time for those interested in evaluating his record, including the U.S. Senate, to complete a thorough and comprehensive review of the nominee's record. We therefore respectfully request that you consider scheduling a hearing no earlier than August, prior to the scheduled recess. This leaves sufficient time for action prior to adjournment if his record is strong enough to receive substantial bipartisan support.

In the interim, we pledge to conduct a fair and thoughtful assessment of Mr. Estrada's record, and to communicate our views on his nomination to you, Ranking Member Hatch, and other Committee members in a timely manner.

Sincerely,

ANTONIA HERNANDEZ,
*President and General Counsel, Mexican American Legal Defense and Educational Fund.*
MANUEL MIRABAL,
*President, National Puerto Rican Coalition.*
RAUL YZAGUIRRE,

*President, National Council of LaRaza.*
JUAN FIGUEROA,
*President and General Counsel, Puerto Rican Legal Defense and Education Fund.*
ARTURO VARGAS,
*Executive Director, National Association of Latino Elected and Appointed Officials.*

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CALIFORNIA LARAZA LAWYERS & MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND,
*September 24, 2002.*

Hon. PATRICK LEAHY,
*Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: On behalf of Latino legal and civil rights organizations, we write you on a matter of great importance to not only the Latino community but all Americans—the nomination of Miguel Estrada to the D.C. Circuit Court of Appeals. As you may know, our organizations weigh in on judicial nominations with a variety of frequency; however, we are all firmly committed to the view that the selection of federal judges for life-long appointments who will serve as the balance to the legislative and executive branches is critically important to our community. As a community, we recognize the importance of the judiciary, as it is the branch to which we have turned to seek protection when, because of our limited political power, we are not able to secure and protect our rights through the legislative process or with the executive branch. This has become even more true in light of some of the actions of the legislative and executive branches after 9/11 as these actions affect immigrants in particular.

After an extensive review of the public record that was available to us, we have concluded at this time that we have serious concerns about whether Mr. Estrada would fairly review issues that would come before him if he were to be confirmed to the D.C. Circuit Court of Appeals. While the appointment to any federal bench is important to our community, appointments to circuit courts become even more important when the Supreme Court accepts fewer than 100 cases a year to hear. Thus, circuit courts are often the last arbiters on determining the rights of individuals and communities. The D.C. Circuit is perhaps even more important than the other circuit courts because of the role it plays in reviewing an extensive amount of federal agency actions, from regulatory actions to the orders and decisions of various Commissions and Boards. It has been reported that nearly half of the D.C. Circuit's caseload consists of appeals from federal regulations or decisions.

Some of us have stated during the previous Administration that we believe in a nominee's right to have a hearing. Many of us pushed in the past for hearings, with mixed success, for such Latino nominees as Richard Paez, Sonia Sotomayor, Enrique Moreno and Jorge Rangel. We still believe it is right to give a nominee a hearing once his or her public record has been explored to the fullest extent possible. That is why we support the Judiciary Committee's decision to have a hearing on Mr. Estrada. This public hearing will give Mr. Estrada, the Senate and the public a chance to hear from Mr. Estrada himself about the concerns that we and others have about his nomination.

In the memorandum attached, we outline a number of the areas which lead us to have our grave concerns about Mr. Estrada's nomination. Based on our research, but is unclear whether he would be fair to Latino plaintiffs as well as others who would appear before him with claims under the First Amendment, the Fourth Amendment, the Fifth Amendment (Miranda), and the process clauses of the U.S. Constitution. Further, we found evidence that suggests that he 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 where those practices are adopted under the ''broken window theory'' of law enforcement. We also have concerns about whether he would fairly review standing issues for organizations 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 the labor rights of immigrant workers or the rights of minority voters under the Voting Rights Act.

We believe the burden to address these concerns lies with the nominee, Mr. Estrada. The Judiciary Committee should ask questions about these issues and give Mr. Estrada an opportunity to address the concerns. Ultimately, Mr. Estrada has the affirmative obligation to show that he would be fair and impartial to all who would appear before him. We hope you will be able to gather information at the hearing as to whether he meets this affirmative burden.

We look forward to the hearing and anticipate we could have further recommendations to you once we have had a chance to fully evaluate the answers that Mr. Estrada provides to the Committee at the hearing and afterward.

Sincerely,

CHISTOPHER ARRIOLA,
*California LaRaza Lawyers.*
ANTONIA HERNANDEZ,
*Mexican American Legal Defense and Educational Fund.*

Mr. LEAHY. Latino labor leaders made this point: They say Mr. Estrada is a stealth candidate whose views and qualifications have been hidden from the American people and from the Senate. He has refused to answer important questions about his views and his judicial philosophy. They say it would be simply irresponsible to put him on the bench, and that is true.

To go back to some of the judges my good friend from Utah, the senior Senator from Utah, has talked about, Judge Richard Paez was a man strongly supported by his home State Senators. He was supported by every single Hispanic organization, and he was made to wait 1,500 days for a vote. I think a lesser person would have said: I am not going to stand, I am not going to do it. But with the very strong support he had from the Hispanic community, he did not want to let them down. He did not want to let down his family.

I talked with him many times during that time and encouraged him to stay with it. Elections came and went and he held on. Finally, he was given a vote. President Clinton had to get reelected as President to have this happen. When we hear how great it was that they put him through finally, after 5 years of total humiliation, and that is 5 years during which he was endorsed by every single Hispanic organization that spoke, he was allowed to come to a vote, but almost 40 Republicans voted against him.

I talked about Judge Sonia Sotomayor. This is somebody who had a unanimous well-qualified rating from the ABA, the highest rating possible. One would think this would have been a slam dunk. She was supported by every Hispanic organization. She had first been appointed to the Federal bench by the first President Bush. This should have been very easy, but every time we wanted to bring her up for a vote on the floor, there was an anonymous hold on the Republican side. Nobody wanted to step forward.

I will step up and state my opposition to Miguel Estrada. I feel that is only fair. I do not believe in anonymous holds. But every time we tried to bring up Sonia Sotomayor, a person who is listed by my friend from Utah as being one of the marks of excellence, a Republican would put on an anonymous hold, not even come forward and say, look, I want a debate against this person.

She finally came to a vote. Twenty-nine Republicans voted against this outstanding person. To his credit, my friend from Utah voted for her. I do appreciate that, and I complimented him at that time.

Even though President Clinton appointed 80 percent of the Hispanic circuit judges that are now on the court, there would have been more. He appointed two from Texas to the Court of Appeals for the Fifth Circuit, Jorge Rangel and Enrique Moreno of Texas. What happened? No Republican voted against them, to their credit. But why? They never received a hearing or a vote. They were never allowed to come to a vote. So nobody had to vote against them. They were backed by every single Hispanic group that I know of.

Before we say, oh, my gosh, what are we doing to this poor Hispanic American, here are two who were backed by every single Hispanic group, had high ratings, nominated to the Court of Appeals for the Fifth Circuit, and they were never allowed to have a vote.

Christine Arguello of Colorado was nominated to the Tenth Circuit. As I recall, she was backed by every single Hispanic group there was. She was never allowed to have a vote.

What I tried to do during the slightly over a year I was able to be chairman of the Judiciary Committee, I wanted to bring back some fairness to the confirmation process. I tried to address the vacancies we inherited as a result of a refusal to have votes on President Clinton's nominees. I brought a number of them forward. I also said I would not agree to this idea of anonymous holds, something that had blocked so many of these Hispanic judges.

Late last week President Bush nominated one more Hispanic American to the Fifth Circuit. That is good; he has now nominated two, which is, of course, a fraction, two-thirds, of those

who were blocked from votes during the last administration.

It is not Senate Democrats who have created a confrontation over the Estrada nomination. It begins on the other end of Pennsylvania Avenue. I told this to the distinguished majority leader again this morning, that I have tried to work with the White House to see if there is some way we might move this process back to the kind of bipartisan process it was when I first came to the Senate, and that it was under both Republican and Democratic leadership for a long time but which it is not now.

I have urged the White House to make an effort to unite rather than divide and then we might go somewhere, but there is a deafening silence from the other side of the Pennsylvania Avenue. I do not think they really care. I think they see court packing as being an answer to right-wing ideologues. I think they see that there should be a political move on the major Federal courts that, even though that would destroy their independence, even though that would diminish substantially the integrity of the Federal courts, they think it should be an ideological court packing.

We see this coordinated effort to impose a narrow ideology on our Federal courts. The President campaigned saying that Justices Scalia and Thomas are his model nominees, and that is what he would use as a model for whomever he appoints. The Estrada nomination is evidence of that. Justice Scalia particularly was a nominee who is not only strident in his views but refused to share them with the Senate before his confirmation. Senators on both sides of the aisle stood up and said they were concerned with this stonewalling and they would not stand for it in the future. At least one side of the aisle has stuck with that.

Now, last year there was a panel discussion at the Federalist Society luncheon in which Lawrence Silberman and others discussed the strategy of saying nothing in confirmation hearings. The report was that Judge Silberman offered the same advice he had given Antonin Scalia when Scalia was nominated to the Supreme Court in 1986: Keep your mouth shut. Mr. Estrada has followed that to the letter.

I ask, why is the record for the Senate's consideration being kept so thin? The answer is, so the White House can have it both ways. They choose nominees based on narrow judicial ideology but insist the Senate proceed without considering it and, if possible, without knowing it. Secrecy and intimidation are the preferred methods of operation.

Anyone who had any remaining doubt about the criteria used by the White House to select judicial nominees need only consider the admissions, including news reports over the last couple of weeks following the reports in late January of Robert Novak and White House Counsel Alberto Gonzales's role in crafting the administration's brief opposing the University of Michigan affirmative action case. There have been a series of reports of a ''loud whispering campaign'' in which right-wing conservatives touted Miguel Estrada as a safer, more reliable, conservative Hispanic for the President to nominate to the Supreme Court in lieu of Alberto Gonzales.

Why? Pure and simple: Ideology; and a belief that you can nominate somebody who will vote not as an independent member of the Judiciary but as a Republican and—more than that—be part of the small, very conservative coterie of the Republican Party, and do it consistently and predictably.

I went to law school. As a lawyer, I argued a lot of cases before Federal courts. You assume the judge will be independent and will not treat anyone one way or the other depending upon their political party, but that he or she will decide the case based on the facts. This apparently is no longer enough for this administration. They want a Republican judge who will vote as a Republican who will be consistent and predictable. In other words, if you are a Democrat coming before the Federal court or if you do not eschew a particular Republican ideology when you come before that court, you are not going to get independent treatment. That is wrong.

USA Today noted that when the Bush administration did not go as far as GOP hardliners wanted in opposing the University of Michigan's affirmative action program, some blamed Gonzales. That has led to an unusually aggressive whispering campaign. Conservative activists have been successful in persuading President Bush to nominate hardline candidates, but lower courts made it clear to reporters that George W. Bush and others do not believe Gonzales is Supreme Court material. They go on to report conservatives also touting Miguel Estrada, native of Honduras and former Justice Department lawyer, who has been nominated by President Bush to serve on the U.S. appeals court in Washington, DC.

The administration seeks to have it both ways. They want to take credit with the Federalist Society when they nominate ideological nominees, but they also want to pretend to the American public that ideology does not matter.

I ask this: If ideology does not matter to the Republicans, why did they obstruct scores of President Clinton's nominees to the courts, including several to the DC Circuit? If ideology does not matter, why did Republicans vote in lockstep against Justice Ronnie White of Missouri to be confirmed to the district court? If ideology does not matter, why did Republicans filibuster the nominations of Justice Rosemary Barkett to the Fifth Circuit, Judge H. Lee Sarokin to the Third Circuit in 1994, Judge Richard Paez and Marsha Berzon to the Ninth Circuit in 2000? To say we would never do this obscures the record and blurs the rationale.

Let me share with the Senate an account of Republican use of ideology in connection with judicial nominations. There was a column in the Wall Street Journal in the summer of 1998 explaining the anonymous Republican holds on the nomination of Judge Sonia Sotomayor to the Second Circuit Court of Appeals. I worked hard for 2 years on that nomination. It is my circuit. It is the circuit court I argued in front of when I was in private practice. I was astounded when Republicans held her up for months without a vote. I could not understand why such an outstanding nominee was being stalled by Republicans. After all, she initially was appointed to the Federal bench by a Republican President. Not only that, she had an outstanding record as a judge and, before that, an outstanding record in private practice and an outstanding record as a prosecutor.

What was not to like about this Hispanic woman appointed initially by a Republican and now nominated by a Democrat? She had been confirmed by the Senate to the U.S. District Court for the Southern District of New York in 1992 after being nominated by the first President Bush. She started in a housing project in the Bronx. She then attended Princeton University and Yale Law School. She worked for more than 4 years at the New York District Attorney's Office as assistant district attorney. She was in private practice in New York.

So then Mr. Gigot explained to all what was the problem behind the closed doors of the Republican Cloakroom. Republicans were fearful, if she were confirmed quickly, she could be in line to be nominated to the U.S. Supreme Court. Mr. Gigot wrote:

> If liberals do prevail, the president could turn to 43-year-old district court judge Sonia Sotomayor. She's every Republican's confirmation nightmare—a liberal Hispanic woman put on the district bench by George Bush.

That was what the Republicans and the Wall Street Journal editorial writers said.

Then the Wall Street Journal followed up, based on what they had been told by the Republican Cloakroom. They editorialized a few days later and issued these instructions. I recall, when we were issued instructions and the majority leader, George Mitchell, put together a plan that brought about a balanced budget, they said it would bring about economic ruin. We then had 8 years of the most spectacular rise in our economy and the highest employment we ever had.

They issued instructions on June 8, 1998. We would like to think the Republicans may be having second thoughts and are deliberately delaying her confirmation to see whether Justice Stevens announces his retirement when the current Court term ends this month.

The reason for the delay was confirmed by a subsequent report in the New York Times. That is just one of

scores of nominations the Republicans have delayed or stalled or defeated because of ideology in recent years.

I ask unanimous consent to have printed in the RECORD the May 29, 1998, column and the June 8, 1998, editorial in the Wall Street Journal.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, June 18, 2002]

VISIBLE ABSENCE OF LATINOS ON FEDERAL COURTS

(By Antonia Hernandez, President and General Counsel, Mexican American Legal Defense and Education Fund, Los Angeles

Your editorials claim that Senate Judiciary Chairman Patrick Leahy is taking too long to confirm Miguel Estrada to the D.C. Circuit Court of Appeals position that is often viewed as a stepping stone to the Supreme Court (''No Judicial Fishing,'' June 11 and ''The Estrada Gambit,'' May 24).

Yet no mention was made of the delays for Latino-nominated judicial candidates to the circuit courts during the Clinton administration under a Republican-controlled Senate. It took four years to confirm the nomination of Judge Richard Paez to the Ninth Circuit Court of Appeals, and he had to be nominated three times. In two instances, the Senate did not even schedule a hearing for two eminently qualified Latinos to the Fifth Circuit Court of Appeals: Enrique Moreno and Jorge Rangel, whose nominations languished and died in the Judiciary Committee.

The Mexican American Legal Defense and Education Fund (MALDEF) believes it is unfortunate the federal judiciary remains predominantly white and male. Latinos are visibly absent from the Supreme Court and many of the federal appellate courts. but just being Latino is not enough. At the end of the day, the decisions made by these individuals apply to all regardless of race, ethnicity, gender or immigrant status.

The fact that a nominee is Latino should not be a shield from full inquiry, particularly when a nominee's record is sparse, as in Mr. Estrada's case. It is vital to know more about a nominee's philosophies for interpreting and applying the Constitution and laws.

It is also important for Latinos to raise questions about how a nominee's views might affect our community. MALDEF is not seeking to stall Republican nominees. During President Bush's first year, two Latinos whom MALDEF supported were nominated and have been confirmed. We have met with White House officials and asked them to nominate more Latinos. To date, President Bush has nominated only one Latino to the circuit court.

We firmly believe that all judicial nominees should have hearings once their records have been adequately examined in a fair and impartial manner.

Individuals appointed to the federal bench, a lifetime appointment, must meet basic requirements such as honesty, integrity, character and temperament.

But the inquire must not stop there. We must also look to the nominee's record as it reflects his/her demonstrated understanding and commitment to protecting the rights of ordinary residents and to preserving and expanding the progress that has been made on civil rights, including rights protected through core provisions in the Constitution, such as the equal protection clause and the due process clause, as well as through the statutory provisions that protect our legal rights.

Since 9/11, America has been embroiled in a serious public debate about who we are as Americans and what are the limits of our freedoms, who should enjoy the protections of our laws, and what rights are to be extended or denied to Latinos.

When the Supreme Court recently stripped immigrant workers of important employee protections (*Hoffman Plastics*), Latinos inquired why their voices mattered so little when so much was at stake. Many asked why Latinos have had so little representation in a judiciary that has the power to shape their lives. Legitimate debate is integral to the judicial selection process, and therefore it is legitimate to have this debate within the context of confirming individuals who are supposed to serve as impartial referees in this public debate.

[From the Wall Street Journal, May 29, 1998]

SUPREME POLITICS: WHO'D REPLACE JUSTICE STEVENS?

(By Paul A. Gigot)

President Clinton could soon make his third Supreme Court appointment, and his political play will be to trump Senate Republicans by naming the first Hispanic justice.

Such speculation is in high gear among Republicans because the White House is already floating the names of potential replacements should Justice John Paul Stevens pack it in when the high court's term ends in the next month.

Retirement for the flinty, independent 78-year-old justice is no sure thing. Merely hearing such speculation could cause him to stay on, and by all accounts he's in good mental and physical health. It's also clear from his Clinton v. Jones opinion that he's no great admirer of this president.

But friends who've spoken with Justice Stevens say that for the first time he seems like a man seriously contemplating retirement. He already spends much of his time in Florida, where his wife wouldn't mind seeing him more. He's also talked about the subject with more than one of his bench colleagues.

The timing would certainly make ideological sense for the court's ranking liberal. By retiring this year, he'd shelter his successor's confirmation from the presidential politics that will be going strong next summer. A Clinton nominee next year would also probably face a Senate with even more Republicans than the current 55.

If Mr. Stevens waits until the summer of 2000, he'd run the risk that his successor would be named by a conservative president. While the justice appointed by Gerald Ford likes to claim GOP credentials, you can bet he doesn't want to be replaced by another Antonin Scalia. If he wants to preserve the current court's precarious liberal-conservative balance, this is the year to depart.

The biggest beneficiary would be Mr. Clinton, who is eager to pad his lackluster legacy. That argues for naming the first Hispanic justice, an act of symbolic politics that would enhance Democratic ties to the nation's fastest growing ethnic group.

The move would also mousetrap Senate Republicans, who will be loathe to oppose anyone with a Hispanic surname. Still smarting from the backlash against their anti-immigration idiocy of 1994–96, some Republicans would vote to confirm Geraldo Rivera.

And the problem is, they might have to vote on the judicial equivalent. The lineup of qualified Hispanic Democratic judges is shorter than admirers of Monica Lewinsky's lawyer William Ginsburg. A list submitted to the White House (and delivered in person to Vice President Al Gore) by the Hispanic National Bar Association contains only six mostly minor-league names.

Voters recalled Cruz Reynosos from the California bench along with Rose Bird in 1986. Vilma Martinez has been a liberal civil-rights litigator. Gilbert Casellas ran the Equal Employment Opportunity Commission but has been passed over by Mr. Clinton for the appellate bench.

The list's one genuine legal heavyweight is Jose Cabranes, a Puerto Rican immigrant named to the federal Second Circuit by Mr. Clinton in 1994. A former Yale general counsel, Judge Cabranes was advertised as a finalist when the president made his last Supreme Court pick. He's a judicial moderate and his confirmation would be a bipartisan breeze.

But his very moderation is making him less acceptable to many Clintonites this time. White House aides are already telling Senate sources and others that Mr. Cabranes isn't reliably liberal enough to replace Justice Stevens. He's especially suspect on the liberal orthodoxy of classifying everyone by racial and ethnic identity. He's no conservative, but he's spoken out publicly for the ''Western civilization curriculum'' attacked by the left.

Liberals also fret about the influence of Mr. Cabranes's daughter, whose sin is to have belonged to the Federalist Society and to have clerked for Judge Ralph Winter, a Reagan appointee. It may seem odd to blame a father for the beliefs of his daughter, but Clinton liberals believe in guilt by conservative association.

If liberals do prevail, the president could turn to 43-year-old New York district court judge Sonia Sotomayor. She's every Republican's confirmation nightmare—a liberal Hispanic woman put on the district bench by George Bush (at the request of Democratic Sen. Pat Moynihan).

Her willingness to legislate from the bench was apparent in her recent decision that a private group giving work experience to the homeless must pay the minimum wage. Never mind if this makes them that much harder to employ. Mr. Clinton has nominated Judge Sotomayor to join Mr. Cabranes on the Second Circuit, and she's said to be a favorite of Hillary Rodham Clinton.

All of which means that a Stevens retirement would put a large political burden on the protean shoulders of Judiciary Chairman Orrin Hatch. His own choice would probably be Judge Cabranes. And the Utah Republican has privately explained his brisk approval of Clinton lower-court nominees as a way to gain leverage and credibility for the more significant Supreme Court pick. But Mr. Clinton has fooled Republicans before. Maybe Republicans are better off begging Justice Stevens to stay.

Mr. LEAHY. When the Republicans now protest that the Senate can only look at where a person went to school, and the rating the newly compliant ABA provides, they are disregarding their own past practices. A young conservative activist spilled the beans quite explicitly recently on the ''Crossfire'' television program in which he said:

. . . the second [he] gets in there he'll overrule everything you love—

Everything moderates have worked to enact over the years.

That seems to be the badly kept secret, as to why the White House chose Mr. Estrada for this nomination—precisely because of his ideology. Keeping that secret is apparently what motivated the strategy that resulted in his extraordinary lack of responsiveness to substantive questions regarding his views and judicial philosophy.

Nobody can look at opinions of the Supreme Court and believe that Justice Scalia and Justice Thomas do not have an agenda, the two stated by the President to be his model for nominees. But I am left with a fear that Mr. Estrada, likewise, comes to this nomination with a hidden agenda.

Maybe it is the nature of the beast, but I have never seen so many crocodile tears in my life from the other side of the aisle as they ask: Why are we asking these questions? How can you possibly question this man? How can you possibly question this man?

I am going to tell the Senate a secret as to why it is we asked for this. I know my friends on the other side may not want to let this out, so I will tell it just to those in this room where we learned to look into this. We heard it from a speech given to the Federalist Society in which the Senator speaking said:

[T]he Senate can and should do what it can to ascertain the jurisprudential views a nominee will bring to the bench in order to prevent the confirmation of those who are likely to be judicial activists. Determining who will become activists is not easy since many of President Clinton's nominees tend to have limited paper trails . . . Determining which of the President's nominees will become activists is complicated and it will require the Senate to be more diligent and extensive in its questioning of a nominee's jurisprudential views.

I read that speech. In a sense of bipartisanship, I want you to know that I agree exactly with what Senator HATCH said in Utah when he gave that speech to the Utah branch of the Federalist Society. When Senator HATCH said that we have to prevent the confirmation of those who are likely to be judicial activists; the Senate must be more diligent and extensive in its questioning of nominees' jurisprudential views, I think my friend from Utah had it absolutely right and, guess what, that is exactly what we are doing here.

In fact, when a Democratic President was sending judicial nominees to the Senate, the man who would later become the principal Deputy White House Counsel for the President, the man who played a significant role in the selection of President Bush's judicial nominees, Tim Flanigan, said, the Judiciary Committee and the Senate must be extraordinarily diligent in examining the judicial philosophy of judicial nominees.

This man, who went on to help the current President Bush pick judicial nominees, said:

In evaluating judicial nominees, the Senate has often been stymied by its inability to obtain evidence of a nominee's judicial philosophy. In the absence of such evidence, the Senate has often confirmed a nominee on the theory they could find no fault with the nominee. I would reverse the presumption and place the burden squarely on the judicial nominee to prove that he or she has a well-thought-out judicial philosophy, one that recognizes the limited role of Federal judges. Such a burden is appropriately borne by one seeking life tenure to wield the awesome judicial power of the United States.

I agree with that. What I do not agree with is that we say we must have a standard of impartiality on judges, that they cannot be activists, that they must answer their questions—we can say that is the standard if it is a Democrat referring them to the Judiciary Committee, but that all goes out the window when it is a Republican.

I agree that we must ask what their judicial philosophy is and they must answer the questions. That is the standard that the Republicans set over and over again, both those who went on to serve in the White House and my friend from Utah when he was chairman of the Senate Judiciary Committee. It is a standard on which we should all agree.

But what I do not agree on is when it is a Republican making the nomination, no standards are required—no standards are required. We can't ask about philosophy. We can't ask about temperament. We can't ask what they are going to do with this lifetime appointment.

In this case specifically, Mr. Estrada refused to provide us the answers about the types of jurisprudential views that Chairman HATCH and Mr. Flanigan said they must—they must—answer. At least they said they must answer when it was a Democrat nominating them. But I guess if it is a Republican nominating them we get kind of a pass; that there is going to be jurisprudential purity.

Extensive questioning of this nominee's jurisprudential views have been forestalled and short circuited. He does have a paper trail but it has been kept secret by the White House. There is a paper trail that says what his jurisprudential views are, but the White House has kept it secret.

We want judges to be fair and impartial. That is what I believe most Americans want. An independent judiciary is a bulwark against us losing our rights and our freedoms. I say it again. The vast majority of people, if they go into Federal court, want to be treated fairly. They want to look at that judge and say, it doesn't make a difference whether I am Democratic or Republican, conservative, liberal, rich, poor, what my color is, or what my creed is, or anything else; I am now before the Federal courts, the most respected judicial system in the world, and I am going to be treated fairly.

But, whether they know it or not, whether they think of it or not, they have that sense that it is going to be a fair treatment because historically the Senate has maintained that integrity and independence of the Federal judiciary.

From the first part of our Nation's history when the Senate even turned down judges nominated by President George Washington, the most popular President in our history, the Senate has maintained the integrity and independence of the Federal judiciary.

As I said before, I have voted on hundreds of judges. I voted for hundreds of judges of Republican Presidents—President Ford, President Reagan, former President Bush, and the current President Bush, just as I have for Democratic Presidents. I have also voted against judges, those nominated by Democratic Presidents as well as by Republican Presidents. I do this because I know it is a lifetime appointment and we want to make sure of what we do. Most I voted for confirmation.

As I said before, we set an all-time record—certainly the record for the last 10 or 15 years—during the year and a half or so that I was chairman of the Senate Judiciary Committee, sending out 100 Federal judges, both circuit and district, including, I say to the Senator from Alabama and the Senator from Utah who is in the Chamber, judges from their States—not Democrats. They were Republicans. I think a lot of their philosophy is different than mine. I trusted their integrity, and they answered the questions.

But here, the little record we have calls into question whether this person can be a neutral referee or an advocate and activist from the bench. That is really where we are.

We have a duty to the American public to say when we give our imprimatur by voting to confirm somebody to a lifetime position on the Federal courts that we have made every effort possible to make sure we are going to maintain the integrity and the independence of the Federal judiciary; that we are not going to turn the Federal judiciary into a political arm.

We elect Presidents. In electing them, we say they can be political. I said I wish Presidents would be uniters and not dividers. In this case, they have been a divider and not a uniter—but the nature of it is they are expected to be political.

We elect men and women to the House of Representatives and to the Senate to carry a political agenda, but we put people on the Federal judiciary to be independent and nonpolitical. Here we are being told that we are going to fill out a political agenda.

My friend from Alabama wishes to speak. I will speak further but give him a chance to speak.

Mr. President, I ask unanimous consent that several editorials and letters opposing Mr. Estrada's nomination be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 29, 2003]

AN UNACCEPTABLE NOMINEE

The Senate Judiciary Committee is scheduled to vote tomorrow on Miguel Estrada, a nominee to the D.C. Circuit Court of Appeals. Mr. Estrada comes with a scant paper trail but a reputation for taking extreme positions on important legal questions. He stonewalled when he was asked at his confirmation hearings last fall to address concerns about his views. Given these concerns, and given the thinness of the record he and his sponsors in the administration have chosen to make available, the Senate should vote to reject his nomination.

Mr. Estrada, a native of Honduras and graduate of Harvard Law School, has a strong legal resume. But people who have worked with him over the years, at the solicitor general's office and elsewhere, report that his interpretation of the law is driven by an unusually conservative agenda. Paul Bender, a law professor and former deputy solicitor general, has called Mr. Estrada an ideologue, and said he ''could not rely on his written work as a neutral statement of the law.'' In private practice, Mr. Estrada defended anti-loitering laws that civil rights and groups have attacked as racist.

Unlike many nominees who are named to an appeals court after years as a trial judge or professor, Mr. Estrada has put few of his views in the public record. One way to begin to fill this gap, and give the Senate something to work with, would be to make available the numerous memorandums of law that Mr. Estrada wrote when he worked for the solicitor general's office, as other nominees have done. But the White House has refused senators' reasonable requests to review these documents.

Mr. Estrada, now a lawyer in Washington, also had an opportunity to elaborate on his views, and assuage senator's concerns, at his confirmation hearing, but he failed to do so. When asked his opinion about important legal questions, he dodged. Asked his views of Roe v. Wade, the landmark abortion case, Mr. Estrada responded implausibly that he had not given enough thought to the question.

Senators have a constitutional duty to weight the qualifications of nominees for the federal judiciary. But they cannot perform this duty when the White House sends them candidates whose record is a black hole. Mr. Estrada's case is particularly troubling because the administration has more information about his views, in the form of his solicitor general memos, but is refusing to share it with the Senate.

If Mr. Estrada is confirmed, he is likely to be high on the administration's list for the next Supreme Court vacancy. The D.C. circuit is a traditional feeder to the Supreme Court, and it is widely thought that for political reasons the administration would like to name a Hispanic.

The very absence of a paper trail on matters like abortion and civil liberties may be one reason the administration chose him. It is also a compelling—indeed necessary—reason to reject him.

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[From the Los Angeles Times, Jan. 13, 2003]

BUSH'S FULL-COURT PRESS

There are at least two explanations—one even more cynical than the other—for President Bush's renomination last week of Judge Charles W. Pickering, a man the Senate rightly rejected last year for a seat on the federal appeals court.

Perhaps Bush really didn't mean it last month when he denounced as ''offensive . . . and wrong'' Mississippi Sen. Trent Lott's nostalgic musings about the segregated South. The Republican Party has long tried to have it both ways on race: ardently courting minority voters while winking at party stalwarts who consistently fight policies to establish fairness and opportunity for minorities. Even Bush has not always been above such doublespeak, encouraging African Americans to vote GOP and touting his Spanish-language facility on the campaign trail as a come-on to Latino votes even as he dropped in at Bob Jones University, which, until three years ago, barred interracial couples from sharing a pizza.

Bush's renomination of Pickering, a man whose law career is unremarkable but for his longtime friendship with Lott and his dogged defense of Mississippi's anti-miscegenation laws, throws another steak to the far right and sand in the eyes of most Americans.

There could be another explanation for Bush's decision, just weeks after denouncing Lott, to again shove Pickering on the American people. Perhaps the president doesn't really care whether Pickering, Whom he's indignantly defended as ''a fine jurist . . . a man of quality and integrity,'' is confirmed.

Maybe Bush calculates that Sens. Edward M. Kennedy (D–Mass.), Charles E. Schumer (D–N.Y.) and others, justly incensed that the judge is back before them, will embarrass a Republican or two into joining them and defeat his nomination a second time. The president may be figuring that if they can call in enough chits on Pickering, the Democrats won't have the votes to stop the many other men and women he hopes to place in these powerful, lifetime seats on the federal bench.

None of those nominees can be tarred with Pickering's in-your-face defense of segregation. But many, including Texas Supreme Court Justice Priscilla Owen, lawyers Miguel Estrada and Jay S. Bybee, North Carolina Judge Terrence Boyle and Los Angeles Superior Court Judge Carolyn B. Kuhl, share a disdain for workers' rights, civil liberties guarantees and abortion rights. Their confirmations would be no less a disservice to the American people than that of Pickering, who now has been nominated two times too many.

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[From the Los Angeles Times, Feb. 5, 2003]

LATINO WOULD SET BACK LATINOS

(By Antonia Hernandez)

It is ironic the President Bush, whose lawyers excoriated affirmative action at the University of Michigan, would nominate Miguel Estrada, an unqualified Latino, to the U.S. Court of Appeals for the District of Columbia in order to achieve diversity. The full Senate takes up the nomination this week.

The Mexican American Legal Defense and Educational Fund, or MALDEF, and other Latino and civil rights organizations believe that in a nation of more than 37 million Latinos, the federal judiciary should not remain overwhelmingly white and male. The nation needs judges who understand us, the Latinos are visibly absent from the Supreme Court and many of the federal appellate courts. The judiciary is the branch of government to which we have turned to seek protection when, because of our limited political power, we are not able to secure and protect our rights through the legislative process or the executive branch.

However, Estrada has neither demonstrated that he understands the needs of Latino Americans nor expressed interest in the Latino community. A thorough review of his sparse record indicates he would probably make rulings that roll back the civil rights of Latinos. Simply being a Latino does not make one qualified to be a judge.

The decisions made by judges apply to all, regardless of race, ethnicity, gender or immigrant status. Individuals appointed to the federal branch, a lifetime appointment, must meet basic requirements such as honesty, open-mindedness, integrity, character and temperament. They must also go a step beyond that and affirmatively demonstrate that they will be fair to all who appear before them in court.

Estrada's lack of qualifications has prompted many prominent Latino organizations and others to oppose him, including MALDEF, the Puerto Rican Legal Defense and Education Fund, the Southwest Voter Registration and Education Project, Latino union leaders, the Leadership Conference on Civil Rights and Congress' Hispanic and Black causes.

The available record of Estrada's legal positions raises grave concerns about how he might rule on constitutional matters affecting Latinos. For example, his work in the area of criminal justice raises serious doubts as to whether he would recognize the 1st Amendment rights of Latino urban youths and day laborers, and it casts serious doubt on whether he would fairly review Latino allegations of racial profiling.

In 1977 he worked pro bono to defend the city of Chicago's ban on loitering, which was designed to curb gangs and drug activity. Instead, the ban resulted in police harrassment of Latino and African American youths. After the Supreme Court struck down the ordinance as unconstitutional, Estrada volunteered to defend a similar one in Annapolis, Md., which was also found to be unconstitutional.

As a government attorney, he argued that police discretion was wide, that officers could execute a search warrant in a felony drug investigation without knocking and announcing who they were. This indicates his disdain for the protections of the 4th Amendment.

In other areas, Estrada has stated that he has never raised the issue of diversity in any of his workplaces and that he would not seek to help Latinos by hiring them as clerks, and he dismissed concerns about the lack of diversity among Supreme Court law clerks. In 2001, in the Annapolis anti-loitering case, Estrada argued that the NAACP had no standing to represent the interests of African Americans. This indicates he probably would question the right of access to the courts of groups that have historically represented the interests of Latinos.

Our opposition is not partisan. MALDEF has supported President Bush's nomination of well-qualified Latinos who are conservative and will continue to do so. However, when a nominee, like Estrada, is an ideologue who hides his views and who is so lacking in experience, we have little choice but to oppose the nomination. The courts and the job of justice are too important.

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

The ACTING PRESIDENT pro tempore. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I believe Senator KYL was in the line to speak next. I think probably he will be here shortly.

I would like to say one thing about this issue of ideology. We had hearings on it. I know Senator SCHUMER advocated that we ought to consider ideology—I guess he meant politics—of the nominee. Some of my friends across the aisle asked: Why do Republicans nominate Republicans and Democrats Democrats, if ideology doesn't matter?

We voted for those nominees. President Clinton had confirmed during his tenure as President of the United States 377 Federal judges. This Senate voted down one judge. That is all we voted down on the floor of the Senate. None were blocked in committee. All were voted out of committee, unless they had objections from home State Senators and came up until the last of the administration. And 41 judges had been nominated and were pending either in committee or on the floor when President Clinton left office. Comparing that to when President Bush

left office and the Democrats controlled the Senate, there were 54 nominees pending and unconfirmed.

I think all of us need to take a deep breath and to remember that the judiciary is made up of human beings. They are appointed by the President. Our President believes in judicial restraint. He believes that judges should not enact political agendas from the bench. That is the criteria he has used—that and excellence and integrity. Miguel Estrada, probably as much as any nominee we have ever had, represents excellence, integrity, and experience that would qualify him for the job. Indeed, he unanimously won the highest rating from the American Bar Association, ''well qualified.''

But I will just say that we did, in fact, vote overwhelmingly for President Clinton's judges—377, and one we voted down. Only 41 were left pending when he left office, which is well within the tradition of this Senate.

Frankly, if people get nominated late, they don't have time for hearings. Sometimes the Senate will think, let's see how the election comes out and leave some hanging. That has always happened here. That can be criticized. But we do that. What we are seeing now is a slowdown of nominees at the beginning of the process.

I also note that as we considered these nominees we had hearings on the burden of proof. A group of liberal professors met with the Democratic leadership soon after President Bush was elected President. They made a proposal that the ground rules of judicial nominations should be changed. They didn't propose it while President Clinton was nominating his nominees, many of which were ACLU members, and many of which were strongly proabortion, and those kinds of things. They didn't raise that then. But as soon as the election was over, they proposed changing the ground rules, according to the New York Times report of that event. One of the things was that they would consider ideology. Another one was that they would change the burden of proof—that for the first time in history the burden would be on the nominee to somehow prove that they were worthy of the appointment instead of having the Senate review the presumptive power of the President to make the nominee and then if disagreeing object to them. That was a big deal. We had hearings on that in the court subcommittee of the Judiciary, of which I am a member.

Senator SCHUMER was an advocate of both of these positions. But the hearings he held were fair, and we had an interesting debate about it.

I will just say, being the ranking Republican during that time, that the witnesses and the evidence we took to me clearly did not support changing the ground rules. People such as Lloyd Cutler, who was counsel to the White House under Presidents Carter and Clinton, opposed that. He believed that nominees should be given also the presumption of confirmation. I thought it was pretty successful in how we handled it, and that the evaluations we considered on the issue should not be changed. The rules ought not to be changed to going to a different way of considering nominations.

Senator HATCH—I have to agree, and I think my colleague, Senator LEAHY, would agree with this—set forth a principal position for evaluating judges. He said we should consider judicial philosophy. He did not say we should consider their politics. He talked about judicial philosophy and the danger. The issue that concerned him and concerned most Americans was the question of judicial activism. This was a philosophy taught in law school for many years. I think maybe hopefully that it is a little less prominent today than it was 15 or 20 years ago—that good judges shove the envelope, good judges should be activists, they should promote good causes and use the power of their office to further causes which they believe are just and to strike blows for the poor, and that kind of thing. It was a strong philosophy.

But the truth is that is a dangerous philosophy. When you are talking about a lifetime appointment of a person to the Federal bench, they should understand that they are not empowered to render rulings that go beyond the plain meaning of the law. They should not render rulings that twist the meaning of words—giving words new and different meanings than were intended when the Congress passed legislation, or when the Constitution was written. That is a very important issue to me.

On this question of activism, when you give an unelected judge and an unelected court lifetime appointments with no accountability to the people, the power to redefine the meaning of words and to change historic understandings of our clauses and phrases in our statutes and in our Constitution, we have diminished democracy because they are democratically accountable. If we changed the law, they can vote us out of office. The next group of Senators or Congressmen can change the law if we vote badly. But if they declare that the Constitution says you can't do this or you must do that, then it is much, much more difficult to deal with.

Certainly, in this Congress we do not want to impeach judges because we disagree with their opinion. What we need are judges on the bench who are honorable, intelligent, capable, and who understand their role, which is to enforce the law as written. And that is the kind of judge we ought not have fear of, as one witness said.

Why should we fear a judge who shows restraint? Our liberties are not at risk by a judge who shows restraint. Our liberties are at risk when we have a judge who believes they have the ability to go beyond what statutes say and to do what they think is right. You have heard them say: Well, the legislature would not act, so the judges had to act. That is not legitimate. If the legislature did not act, that is a decision of the legislature, a decision not to act. It is no less valid than a decision by a legislature to act on a matter.

Judges ought to follow the law as written. They ought to understand the great power of that branch of Government. They ought to be independent. They should strike down laws that are unconstitutional. That is not being activist. If a law is in violation of the Constitution, a conservative or liberal judge, I hope, will strike it down. We have accepted that since Marbury v. Madison, since virtually the beginning of this country. But that is not activist.

What is activist is to misrepresent what the Congress intended, to twist the meaning of the words of the Congress, or to alter the meaning of the words of the Constitution to promote a short-term political agenda. I really think that is our problem. Activism can be defined in a number of ways, but it is quite different from a person's political philosophy.

To me, the high water mark of judicial activism was when we had two members of the U.S. Supreme Court dissent on every single death penalty case. Their dissent was, they believed the death penalty was cruel and unusual punishment and the Constitution prohibits the imposition of cruel and unusual punishment. They said, according to the changing standards they live in today, this was no longer compatible with humane or legal systems or modern thought, and therefore they just found it cruel and unusual to execute anyone by any means, and therefore the whole death penalty statute should be struck down.

The reason that was particularly ill advised, in my view, is that at the time the Constitution was adopted, it had the cruel and unusual punishment language in it but it also had six or eight references in an approving way to a death penalty. They talked about capital crimes and what the rules should be in a capital crime. And capital crimes are death penalty cases. They said life, liberty, and property cannot be taken without due process of law—you can't take life. That means a death penalty.

Every State in the Union at the time the Constitution was written had a death penalty, and so did the Federal Government have death penalties. So for those two judges to actually dissent in case after case after case, to me, was merely imposing their personal views at one moment in time over the established will of the legal system that had been from the beginning. It is also contrary to the views of the majority of the States in the United States. And the polls have shown—if they want to go to evolving standards of decency that the American people oppose the death penalty—that, in fact, overwhelmingly they favor the death penalty. So I think we do need to watch that.

(Mr. CHAMBLISS assumed the chair.)

Mr. SESSIONS. One of the big issues we have before us, as we consider President Bush's nominees, is: Are we looking to have people on the bench to further our political agenda, or are we just looking for a neutral arbiter, someone who can evaluate the cases between litigants and make a fair and just rendering of an opinion on it? That is what it is all about.

One of the things that was raised in complaint about Miguel Estrada was he would not answer all their questions about his views on cases and lawsuits, and so forth. They said he would not produce his internal memoranda when he was a part of the Solicitor General's Office of the Department of Justice. Every living former Solicitor General of the United States, Republican and Democrat, to my knowledge, has written that he ought not to do that. Lawyers ought to be encouraged to write to their clients, the Department of Justice superiors, and give their opinions.

Let me add one thing about that issue. The memoranda that he wrote were not to John Mitchell. The memoranda that he wrote were for Janet Reno and the Clinton Department of Justice. He was in the Solicitor General's Office during that time. And he was evaluated and given the highest possible evaluation by the Clinton Department of Justice attorneys. One of them specifically noted in that evaluation that he followed the procedures and policies of the Clinton Department of Justice. So I do not see how it can be suspected that he was writing right-wing extremist memoranda within that Department of Justice while having the kind of respect and high evaluations that he had. So I believe that is important.

There is a real reason that judicial nominees—and I know the Presiding Officer is a lawyer and understands these issues—why someone thrown into a hearing ought to be reluctant to answer questions about complex cases when we have a hearing on the confirmation of a nominee to the Federal courts of the United States. If they are confirmed, they will be given important cases on which to rule. I hope and I pray they will spend many hours reading the briefs of the parties, reading personally the major cases in the country that deal with that issue, and they give it sincere thought and prayerful consideration before they render a verdict. That is what we want.

To throw somebody in a hearing and to start asking them how they are going to rule on this matter or that matter is improper. And asking them that would bind them, if they got in. In other words, let's say that they said: Well, I favor this, Mr. Senator; I hope that makes you happy; and I agree with you. And then they become a judge, and they get a stack of briefs, and they start reading the opinions, and they come back out with the belief that that is wrong. What have they done then? No. The history of our confirmation process and the strong opinion of the American Bar Association, an independent arbiter in these matters, is that they should not be lured into expressing opinions on cases that are likely to come before them on the bench. That is so fundamental and so sound a principle that I cannot imagine anyone would suggest it be changed.

Lloyd Cutler, White House Counsel to Presidents Clinton and Carter, wrote this:

> Candidates should decline to reply when efforts are made to find out how they would decide a particular case.

That was his testimony in our hearing as we discussed these issues in the Judiciary Committee. That certainly is correct to me. I believe that is sound policy, whether we have a Republican President or a Democratic President. I do not recall that Senator HATCH ever insisted a judge tell him how he was going to rule.

My good friend Senator LEAHY, he likes to talk about the Federalist Society and Senator HATCH making a speech at the Federalist Society. They take no position over any of these legal issues. They are a forum for debate. Most of the members, perhaps, believe in a restrained judiciary, but they have a lot of different ideas and vigorous debate, and they publish articles that disagree with one another.

But we confirmed a host of Federal judges under President Clinton who were members of the American Civil Liberties Union. You may say: Well, you know the American Civil Liberties Union. They do some good work. I don't think we should just vote against them for that reason. And we didn't. We confirmed almost all of them. As a matter of fact, I am not sure any of them who were members did not get confirmed.

Look at the Web site of the ACLU. It takes positions on issues. The ACLU believes there should be total separation of church and State. I am sure they agree with the proposal that we ought to take ''under God'' out of the Pledge of Allegiance. They believe in the legalization of drugs. They believe pornography laws should not be on the books and are unconstitutional. They believe even that child pornography laws are unconstitutional. That is a stated position.

Out of deference to President Clinton's nominees and his power and prerogative of appointment, we confirmed a bunch of them who were members of the ACLU, one of whom was a litigation committee chairman for the ACLU. Others had been State directors of the ACLU.

What did we do? We asked them in the hearing: Do you personally support all those views? They would usually say they didn't.

We would say: Well, whether you agree or not on drug legalization, let me ask you this: If we pass a law that says drugs are illegal, will you enforce it? Will you take your office as judge and use it to undermine the established law of the land? And they would all say: We will enforce the law.

That is how they came to be confirmed. I hope and trust to this day they are complying with that. Our system would not work were it otherwise.

I reiterate my growing admiration for Miguel Estrada's capabilities. He came here as a teenager, was an honors graduate, the highest possible honors at Columbia College. He went to Harvard Law School where he finished at the top of his class and was chosen editor of the Harvard Law Review. For a graduating law senior from a law school to be editor of the Law Review is one of the highest, probably the highest, honor that can be received. He was chosen that by his fellow members.

He didn't clerk for a Second Circuit Court of Appeals judge. They say he doesn't have judicial experience. He sat at the right hand of a Federal circuit judge, doing the kind of work he will be doing as a judge today, for 2 years. Not only that, he was such an astoundingly qualified and capable young lawyer, he was chosen to be a law clerk for Justice Anthony Kennedy on the Supreme Court of the United States. Anybody who knows anything about the legal profession knows being chosen as a law clerk by a Supreme Court judge is a great honor, something very few people ever get the opportunity to do. It is considered a matter of great significance.

Of course, Justice Kennedy is considered one of the swing justices on the Supreme Court, not one my colleagues like to talk about as an extreme conservative. That is who he clerked for, and remains close to Justice Kennedy to this day. He is admired by him.

Then he went to the Department of Justice to the Solicitor General's office. The Solicitor General's office is the law firm for the United States before the Supreme Court. It is within the Department of Justice. They prepare the arguments before the Supreme Court, the appellate courts. Of course, that is what Miguel Estrada will be considered for, an appellate court judge, not a trial judge, but an appellate court judge. He did a remarkable job there, receiving the highest possible evaluations by the Department of Justice.

After that, he went into practice with one of the premier law firms in the world in Washington, DC, and was evaluated by the American Bar Association. The American Bar Association takes its evaluation seriously. They do an independent background check. They make the nominee submit a list of their most significant cases. They have to give the names and addresses of the judge who tried the case, names and addresses of the opposing counsel, and maybe even cocounsel, and to summarize the case.

When that is done, the ABA interviews them. They don't interview just their friends. They interview the lawyers on the other side of the cases.

They want to know, was this person a fair litigator; did he understand the law; were his arguments coherent; did he have integrity; did you respect him in the course of this litigation. Out of that evaluation, the American Bar Association unanimously voted he was well qualified for the court of appeals, and ''well qualified'' is the highest evaluation given.

We are proud of his achievements. President Bush has nominated an extraordinary judge. As I study more about Miguel Estrada and see more of his record, the more confident I am he will be not just a good justice but a great one. I believe that strongly.

I see Senator KYL is here. We have been going back and forth, so if you were able to allow him to speak at this time, that would be good.

Mr. LEAHY. Mr. President, if the Senator from Arizona has something else, of course, I will be here a lot longer, I believe. If it would accommodate him, I would be more than happy to do that. And then if we could go back to this side, I would appreciate it.

Mr. SESSIONS. I thank Senator LEAHY. I yield to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. I thank Senator LEAHY. I was hoping I would be able to speak a little bit earlier because there are specifically some things the Senator from Vermont said, so I am pleased he is here and I can respond to couple of comments he made. He is someone who, as chairman of the committee and now as ranking member, has important remarks about this process. I want to specifically relate to some of the things he did have to say.

There are two aspects of this nomination of Miguel Estrada that should catch our attention. The first has to do with the qualifications of this extraordinary American. The second has to do with the process by which he is being considered. If we are not careful, this body could set a very bad precedent. If Senators actually decide to filibuster the nomination of Miguel Estrada, something I understand is being considered by the leadership on the other side, if the decision were made to filibuster him and his nomination failed as a result, it would be the first time in the history of the Senate. It would drastically change the way nominations for high judicial office are considered by the Senate, essentially substituting a 60-vote majority required for confirmation for the 50-vote majority that has heretofore been the standard.

We can talk later about situations in which motions for cloture have been filed for one reason or another, but there has only been one real filibuster in the Senate in the past, and that was the filibuster of Justice Abe Fortas. His nomination was withdrawn after a cloture petition failed. In other words, debate was not cut off. The filibuster did continue. But that was a bipartisan filibuster, almost evenly divided between Republicans and Democrats. It was not a concerted effort by one side or the other to galvanize their members into speaking as long as it took to cause the withdrawal of the nomination by the leader.

If the minority leadership decides to engage in that tactic with respect to Miguel Estrada, it would be not just unfortunate but permanently damaging to the relationship between the Senate and the executive and to the process by which we confirm nominations.

It is both a matter of tradition and comity. I know there are some who make the argument that there is a requirement the Senate's confirmation process be by majority vote. I don't think that case has been definitively established, but it certainly has been a matter of tradition.

There is a reason for it. That goes to the second. It has been a matter of comity. The way our separation of powers works is each branch respects the power of the other.

Now, when the Founding Fathers set it up, they were clear to provide jurisdiction, but they left a lot of gray area between the jurisdiction of the three branches; and over the course of 200-plus years, the three branches of Government have accommodated to each other's jurisdiction in a way with which the Supreme Court has infrequently, but importantly, dealt.

The Supreme Court, as a matter of fact, exercising that degree of judgment and comity, generally has stayed out of what it calls political issues, for example. Part of that comity is that the Senate has always believed it important to consider the most important nominees of a President and that the votes on those nominees be determined by a majority vote rather than extraordinary majorities or special procedures of the Senate.

That is because, in the modern idiom, ''what goes around comes around,'' which is a crude way of saying we know that, over the long haul, all of us are going to be in the majority and in the minority and each will serve under Presidents of different parties. If we are to cooperate over the long haul in the Government to ensure that the judiciary is made up of people who are the very best qualified candidates and that we respect the judgment of the American people in electing a President, the Senate is required to give those nominees its very best judgment, thorough consideration, but at the end of the day a vote to confirm by 51 rather than a supermajority.

In fact, no less an expert in the area than the distinguished Senator from Vermont, the former chairman and now ranking member of the committee has been among what I would call the very responsible members of his party who have spoken out on this issue in the past and have urged against the use of filibuster as a technique for holding up the nomination of judicial nominees; in fact, have even voted for cloture but against the nominee on the merits. I have done the same thing with respect to two nominees President Clinton nominated. It is quite possible to oppose someone on the floor but to understand that we should never get the Senate in a position where filibustering a judge is the order of the day and, therefore, a 60-vote majority is required for confirmation.

Since Senator LEAHY is here, because I think he said it very well, in two different contexts, I will quote his own words on the subject. On June 18, 1998, Senator LEAHY said:

> I have stated over and over again on this floor that I would object and fight against any filibuster on a judge, whether it is somebody I have opposed or supported.

I think that is the essence of the tradition of this body: That while we may have disagreements sometimes and we are each free to cast a vote against a nominee, we understand that a filibuster to prevent a nominee from being voted on would be very wrong; it would set a very bad precedent.

I think Senator LEAHY was exactly correct when he uttered those words. In fact, he also said a year later, on September 16, 1999:

> I do not want to get into having to invoke cloture on judicial nominations. I think it is a bad precedent.

He said it more succinctly than I have tried to say it here, but I agree with the distinguished ranking member of the committee that a filibuster on a judge, whether you oppose or support a nominee, is wrong and it should be fought. I hope Senator LEAHY will fight it. Many in his party would like to see a filibuster. Nobody disagrees that everybody should have a complete say on the matter. I agree with that. We are willing to talk about Miguel Estrada for as long as it takes. Because he is so well qualified, it is fun to talk about him, and it is going to be good to get him confirmed. When the talking is over, we need to have a vote up or down.

May I also turn to a couple of other things the Senator from Vermont said. He talked about uniting and not dividing. I don't think there is anything divisive about Miguel Estrada. He is one of the kindest appearing people you can ask for. The ABA has given him a unanimous well-qualified rating. They take into account judicial temperament as well as qualifications. He has a great life story. He is certainly not a controversial person. So I personally don't think words such as ''narrow, ideological court-packing'' and the like are the way to describe the President's approach to this.

The President is certainly not trying to divide the country in nominating a very well qualified Hispanic judge such as Miguel Estrada. Actually, I think the concern is more to another point the Senator from Vermont made, which is that, in some people's view, there is not enough of a record on Miguel Estrada, that maybe he is a

closet ideologue. I have heard that phrase bandied about. Again, the ABA's rating—considered to be the gold standard by many colleagues—would demonstrate that he is not an ideologue. There is no evidence of that. I think some are searching for that evidence, and they don't have anything against him, so they are saying the record is incomplete. So it is a catch-22.

I also note that the Judiciary Committee itself, then including under the leadership of the Senator from Vermont, has always submitted a questionnaire to our judicial nominees. One of the questions goes right to the point of trying to determine whether or not anybody is applying a litmus test to the nominee. I can remember back in Ronald Reagan's days there were opponents of President Reagan who said: You are applying a litmus test on the abortion issue. Reagan said: I never asked anybody their view on the question.

The Judiciary Committee wanted to make sure nobody was trying to find out what a nominee's positions were on issues they would be confronting on the court. That would be wrong. Therefore, one of our questions to every judicial nominee is: Has anybody ever asked you about your specific views on issues or about cases and how you might rule on cases that might come before you? And, if so, please state the circumstances and the names.

The committee, in other words, wanted to make sure nobody was trying to find out from candidates how they would rule on particular issues, or what their particular ideology was, because we didn't believe that to be appropriate in judging nominees. Now it appears that there are some who believe exactly the opposite, that indeed we must find out everything we can about the ideology of a candidate, and if it is not considered ''mainstream enough'' by some, that would be grounds for denying the confirmation of the candidate. That has never been the test and should not be now.

I hope we can continue to apply the questionnaire from the Judiciary Committee and ensure that candidates are not punished for not answering questions that we ourselves don't think it appropriate to ask.

The Senator from Vermont made one rather astonishing claim, and that was that—I believe I have the quotation—Miguel Estrada has had ''little relevant experience.'' My goodness, if it hasn't been put in the RECORD, I ask unanimous consent that the op-ed in the New York Post today by Rudolph Giuliani be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Post, Feb. 10, 2003]

AN UGLY STALL

(By Rudolph Giuliani)

A 17-year-old named Miguel Estrada immigrates to this country from Honduras, speaking only a few words of English. He attends Columbia College, making Phi Beta Kappa and graduating magna cum laude, then Harvard Law School, becoming editor of the Law Review.

Next, he serves as a clerk first to U.S. Court of Appeals Judge Amalya L. Kearse (a President Carter appointee), and then to Supreme Court Justice Anthony M. Kennedy. From there, he joins the Solicitor General's Office, serving as assistant to the solicitor general of the United States for a year under President George H.W. Bush and for four years under President Clinton.

Then Estrada becomes a partner in a prestigious private law practice—yet finds the time to perform significant pro bono service, including some four hundred hours representing a death row inmate before the Supreme Court.

In recognition of his special abilities and achievements, President Bush nominates Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit. He is supported by no fewer than 16 Hispanic groups, who express enormous pride at the prospect of the first Hispanic joining one of America's most prestigious courts. Also supporting him are numerous prominent Democrats, including President Clinton's solicitor general and Vice President Gore's counselor and chief of Staff.

Sounds pretty good? Well, here's where this story run the risk of a most unhappy—and unfair—ending.

For nearly two years, Senate Democrats have delayed action on the nomination of Miguel Estrada.

Citing no specific issues, Democratic senators vaguely alluded to Estrada being ''way out of the mainstream.'' Others raised equally hollow charges—all of which have not only kept Estrada from getting the vote he deserves, but denied the American people of a talented and effective jurist.

Obviously, the fact that the Judiciary Committee was controlled by the Democrats until this year helped delay action. Last week, the committee finally voted to approve Estrada's nomination, hewing strictly to party lines. But now a few Democratic senators want to prevent a vote before the full Senate by way of a filibuster.

Despite all the racket, the knocks against Estrada are so easily dismissed that it is difficult to see them as anything other than a thin veil disguising his detractors' true motives. Let's take a look at them:

Some note that Estrada lacks judicial experience. Yet five of the eight judges now on the D.C. circuit had no previous judicial experience—including Chief Judge Harry Edwards, who when President Carter appointed him in 1979 was even younger than Estrada is now. Indeed, several Supreme Court justices—including Byron White and Chief Justice William Rehnquist—had never been judges when they were named to the land's highest court.

Estrada is no rookie. He has argued 15 cases before the Supreme Court and was a highly respected Assistant U.S. Attorney in my old office, the Southern District of New York. And the American Bar Association unanimously gave him its highest rating—''well qualified,'' a designation that some of the very senators who now oppose him have called the ''gold standard.''

Some object that the Bush administration won't produce memoranda from Estrada in the Solicitor General's Office. Bear in mind the Solicitor General's function: His office represents the United States in court—in other words, the government is his client. Why would a client or his attorney choose to reveal their private and privileged communications?

The zeal to read a nominee's private memoranda seems to apply only to this nominee. Seven past nominees to the Courts of Appeals had worked in the Solicitor General's office—yet not one was asked to disclose attorney-client memoranda. And every living former Solicitor General—including Democrats Archibald Cox, Seth Waxman and Walter Dellinger—signed a letter to the Judiciary Committee stating that sharing these confidential memos would damage the Justice Department's ability to represent the United States before the Supreme Court.

Some civil-rights groups complain that in private practice, Estrada defended anti-loitering laws. In truth, he was retained by the Democratic City Solicitor of Chicago to defend the constitutionality of the anti-gang ordinances of Democratic Mayor Richard M. Daley.

Miguel Estrada brings a proven ability to work with others in a fair and constructive way, and his appeal is not limited to any set of ideological backers. President Clinton's Solicitor General, Seth Waxman, called his former colleague a ''model of professionalism and competence'' and described his ''great respect both for Mr. Estrada's intellect and for his integrity.'' Ronald Klain, former Counselor to Vice President Gore, wrote: ''Miguel is a person of outstanding character, tremendous intellect, and with a deep commitment to the faithful application of precedent.''

The Senate must fulfill its duty to consider the appropriateness of judicial nominees. But that ''advice and consent'' was never meant to empower special-interest groups to hijack the appointments of abundantly qualified, eminently decent nominees.

If senators who feel it's their right to let special-interest agendas derail Estrada, the judiciary will lose a wonderful opportunity. Far worse, the entire system will have fallen victim to narrow and misguided attempts to thwart the Constitution.

The stalling of Miguel Estrada's confirmation has been not only unseemly and demeaning, but a perversion of the system of judicial selection. It is also the escalation of a dangerous trend. In their first two years in office, Presidents Bill Clinton, George H.W. Bush and Ronald Reagan saw more than 90 percent of their nominees to federal appeals courts confirmed. In the first two years of this administration, the figure is barely 50 percent.

Some say that's because President Bush isn't nominating qualified individuals. But Miguel Estrada clearly puts the lie to that suggestion.

I urge the Senate to allow this worthy man a vote. I urge the Senate not to underestimate what a fair vote will mean to Hispanic all across America.

I feel certain the result will be a confirmation—another wonderful chapter in a true American success story.

Mr. KYL. Mr. President, in this wonderfully written piece, Rudy Giuliani talks about the astonishing record of this immigrant from Honduras, speaking only a few words of English, who attended Columbia, made Phi Beta Kappa, graduated magna cum laude, then went to Harvard Law School, and became editor of the Law Review. He clerked on the U.S. Court of Appeals and then for Justice Kennedy on the U.S. Supreme Court. He joined the Solicitor General's Office, serving as an assistant under two Presidents, a Republican and a Democrat, and he was a partner in a prestigious law firm. He has argued 15 cases before the Supreme Court. And he has ''little relevant experience''?

The courts are full of judges who were not judges before they were appointed to the court. At some point, a person has to go from being a lawyer to a judge before he can be a judge. Certainly, there are a lot of non-lower-court judges, district court judges, who have been appointed not only to the circuit court of appeals to which this nominee is nominated, but also even to the U.S. Supreme Court. In fact, I believe that in this piece Giuliani points out that on this very circuit, Chief Judge Harry Edwards who, when President Carter appointed him—and he was even younger than Miguel Estrada—did not have previous judicial experience, nor did five of the eight justices now on the court. So that is not a predicate for serving on this court.

This is hardly a rookie candidate. I think you carry this argument too far. I urge my colleagues to consider this. With respect to many minorities, they are almost saying, you are not going to get a chance because we don't have that many minorities who serve on courts today. If the requirement for service on a higher court is that you already are a judge, we are going to cut off a lot of minorities from consideration. That is a glass ceiling, Mr. President, which we should not impose.

Finally, the Senator from Vermont talked about a lot of candidates he supported who had not been confirmed. But that is not relevant to Miguel Estrada. The question before us today is: should Miguel Estrada be confirmed? I know the Senator from Vermont is not saying he opposes Mr. Estrada for spite or for retribution because of candidates he supported. That would not be appropriate. I know the Senator does not mean that.

Let's get back to Miguel Estrada and talk about his qualifications. It boils down to two things, it seems to me: Is this person qualified to serve on the DC Circuit Court of Appeals? To that, there can be no answer but as the American Bar Association unanimously said, he is very well qualified. To the second point, after we are done talking about Miguel Estrada, after everything has been said, should we call for an up-or-down vote, or is this going to be the first time in the history of the Senate where we kill a nominee for circuit court by a partisan filibuster? That would be, as the Senator from Vermont pointed out, a very bad precedent, and I hope all the rest of my colleagues join the Senator from Vermont in objecting and fighting against any filibuster on a judge, whether it is somebody they oppose or support.

If we approach this nominee in this way, I think we will confirm Miguel Estrada, and it will do the Senate proud and it will do the Nation proud.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, if the Senator will withhold for a moment, I ask unanimous consent to print in the RECORD a number of items.

The PRESIDING OFFICER. Does the Senator want to say what they are?

Mr. LEAHY. Why don't I read them into the RECORD? I will read them and there will be no question. Will Senator GRASSLEY yield time? It will take 15 minutes to read them.

The PRESIDING OFFICER. The Chair will be glad to insert them without objection. The Chair thought the Senator would want to identify them.

Mr. LEAHY. I am sorry, Mr. President, I was following the procedure followed by the other side this morning of putting items in the RECORD without identifying them.

Why don't I read them all so there will be no question, if the Senator from Iowa does not mind waiting 20, 30, 40 minutes for me to do that, or if there is no objection, I will renew my request that the Puerto Rican Legal Defense and Education Fund position statements regarding Mr. Estrada be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FOR IMMEDIATE RELEASE, JANUARY 27, 2003

Puerto Rican Legal Defense and Education Fund—Reissues Its Position Statement Opposing the Nomination of Miguel A. Estrada to the United States Court of Appeals for the District of Columbia Circuit

We previously expressed our strong opposition to the candidacy of Miguel Estrada for a Judgeship on the D.C. Circuit Court of Appeals. The hearing which Mr. Estrada was given by the Senate Judiciary Committee in September 2002 did nothing to address our grave concerns about his fitness to serve as an Appellate Judge. In fact, the hearing raised more questions then it answered. Accordingly, we are reissuing our position statement in strong opposition to Mr. Estrada's nomination. In our review, it is clearly not in the best interests of Hispanic Americans or for that matter all Americans, to appoint an individual about whom there are serious and for that matter unanswered doubts concerning his ability to render justice in a fair and impartial manner.

PIERRE M. LARAMÉE,
*Executive Vice President.*

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*Reissued: January 27, 2003.*

POSITION STATEMENT ON THE NOMINATION OF MIGUEL A. ESTRADA TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I. BACKGROUND

On May 9, 2001, Miguel A. Estrada was nominated by President George W. Bush to the United States Court of Appeals for the District of Columbia Circuit. That court is widely considered to be the second most powerful court in the nation and traditionally has served as a launching pad for judges to be appointed to the United States Supreme Court. Mr. Estrada has been touted as the first Hispanic-American nominated to the DC Circuit, and many believe that he is being groomed to be the first Hispanic-American Supreme Court Justice. Because of the tremendous importance of this nomination to our nation's nearly 40 million Latinos, and to all Americans in general, the Puerto Rican Legal Defense & Education Fund (PRLDEF), has decided to take a position on his nomination.

Since Mr. Estrada was nominated, PRLDEF has sought to learn as much as it could about his background and qualifications for the important, life-tenured position of Circuit Judge. Because our offices are located seven blocks away from ''Ground Zero'' in New York City, our diligent efforts were interrupted by a six-month delay to mourn, reflect, and recover after the tragic events of September 11. Thereafter, we resumed our extensive examination of Mr. Estrada's history and record. We reviewed his available writings, although such writings are extremely limited. We conducted dozens of interviews with individuals familiar with Mr. Estrada, including those who have studied and worked with him as well as those who have lived in the same communities with him. We also surveyed all available news media reports and other public materials concerning Mr. Estrada. Finally, we interviewed Mr. Estrada himself.

As a national civil rights organization primarily concerned with advancing and protecting the civil and human rights of the Latino community and all Americans through litigation, policy analysis, and education, we sought to answer several questions in evaluating Mr. Estrada's nomination. First and foremost, is Mr. Estrada sufficiently qualified? Second, are or should Mr. Estrada's reportedly extreme views by disqualifying? third, would Mr. Estrada's life experiences bring to the D.C. Circuit the unique sensitivities and perspectives of Hispanic-Americans? Finally, does Mr. Estrada possess the proper judicial temperament required for appeals court nominees?

For the reasons stated below, we believe that Mr. Estrada is not sufficiently qualified; that his reportedly extreme views should be disqualifying; that he has not had a demonstrated interest in or any involvement with the organized Hispanic community or Hispanic activities of any kind; and that he lacks the maturity and judicial temperament necessary to be a circuit court judge. Accordingly, we oppose his nomination and urge the United States Senate Judiciary Committee to reject his nomination.

II. CONCERNS ABOUT HIS QUALIFICATIONS

While the positions Mr. Estrada has held and his intellectual abilities may initially appear impressive, they are neither as complete nor as impressive in depth and scope as those of many others who have been or could be appointed to the elevated position of Circuit Judge. Mr. Estrada seems to us to have had insufficient experience for the position of United States Circuit Judge, especially in the powerful D.C. Circuit. His experience is not as extensive as that of others who have been appointed to the federal appellate courts and have had greater depth and breadth of experience.

Historically, both judicial experience and academic experience have been given great weight in considering nominations for circuit court judgeships. Perhaps most due to his relatively young age of 39 when he was nominated, however, Mr. Estrada had not had any judicial experience whatsoever. Nor has he had any academic or teaching experience. Much of his legal experience has been devoted to handling criminal law matters. In addition, he simply has not developed a sufficient record upon which one could fairly evaluate his positions, fairness and reasoning skills.

Traditionally, the written record from either scholarly works or judicial opinions has historically served as the best basis upon which candidates for appellate courts have been evaluated. Where a written record does not exist, life experiences and activities have been relied upon to help measure fairness and reasoning skills. Mr. Estrada's record provides a wholly inadequate basis upon which to conclude that he can be a fair and impartial court judge. This is especially relevant and important given the fact that a

number of his colleagues have said unequivocally that Mr. Estrada has expressed extreme views that they believe to be outside the mainstream of legal and political thought. Unfortunately, we could not fully test these strong impressions against Mr. Estrada's very limited record. If Mr. Estrada first served as a district court judge or in another judicial capacity, we would have a much more complete record upon which to assess his later nomination to the court of appeals.

III. CONCERNS ABOUT HIS VIEWS

Despite the absence of a written record of Mr. Estrada's views, concerns over whether Mr. Estrada could impartially serve on an appellate court have been heightened because individuals who have worked with and even supervised him have both privately and publicly stated that he is an ideologue with extremely strong ideological views, and would have difficulty keeping those views from affecting his judgment when deciding cases as an appellate judge. He has reportedly made strong statements that have been interpreted as hostile to criminal defendants' rights, affirmative action and women's rights. Additionally, he has clearly chosen to be actively engaged principally with ideological causes and organizations, such as the Federalist Society and the Center for the Community Interest. Members of these groups have been outspoken on the issues we believe are of concern to minorities, the very groups Mr. Estrada should be sensitive to. It is also particularly noteworthy that some of the most ideologically extreme organizations in our nation have endorsed his nomination.

Because of Mr. Estrada's very limited written record, coupled with his refusal to answer detailed questions about his ideological views, the public and private reports of his extreme ideological views were not effectively rebutted, and should therefore be disqualifying.

The Senate Judiciary Committee asked Mr. Estrada to provide information on the ten most significant litigated matters that he personally handled and whether he had played any role in a political campaign. Curiously, Mr. Estrada failed to include two important activities in his response. He neglected to mention that he participated in the preparation of a brief in the Bush v. Gore election recount litigation, and that he served on the Bush Department of Justice Transition Team.

When questioned on whether the Supreme Court has hired enough minority law clerks, Mr. Estrada's response was ''if there was some reason for underrepresentation, it would be something to look into . . . but I don't have any reason to think it's anything other than a reflection of trends in society.'' He said that he does not know whether he has been a beneficiary of affirmative action or not. He explained that he may be for or against affirmative action depending upon the particular issues at hand.

Bush Administration supporters of Mr. Estrada tout his nomination by stressing that he is the first Hispanic to be nominated to the D.C. Circuit Court of Appeals, and could become the first Hispanic Supreme Court Justice. This ''Hispanic'' touting is at odds with Mr. Estrada's clearly expressed desire to be judged only ''on the merits.'' Mr. Estrada's views on the ethnic dimension of his candidacy notwithstanding, it is clear that the Bush Administration fully intends this to be a ''Hispanic'' nomination to the Court. This intent is what compels our interest in and underscores both the importance of this nomination and the relevance of this issue to the Hispanic community.

IV. CONCERNS OF THE HISPANIC-AMERICAN COMMUNITY

Of greatest concern to the Latino community is Mr. Estrada's clear lack of any connection whatsoever to the issues, needs, and concerns of the organized Hispanic community. It is indeed ironic that someone promoted as a Hispanic has neither shown any demonstrated interest in, nor has had any involvement with many Hispanic organizations or activities throughout his entire life in the United States. Nor has he been involved with, supportive of, or responsive to issues of concern to Latinos.

Some have attempted to portray his story as a compelling one of a Hispanic who came to this country speaking little to no English. In stark contrast with this story, however, the reality is that Mr. Estrada appears to have come from a privileged background and received English training and education prior to his arrival in the United States. This training enabled Mr. Estrada to participate fully in the educational opportunities afforded to him in the United States. As the son of a lawyer and a bank vice president who had the resources to finance superior educational opportunities for him, Mr. Estrada has not lived the educationally or economically disadvantaged life his proponents would have others believe. Nor have Mr. Estrada's life experience resembled or been shared with those of Latinos who have experienced discrimination or struggled with poverty, indifference or unfairness.

Knowledge of people and of their aspirations for fairness and justice should be possessed by all candidates for judicial office. Mr. Estrada has lived a very different life from that of most Latinos—a life isolated from their experience and concerns. Once he made it, he both disappeared from and never became connected or committed to the Hispanic community. As a result, we believe that he lacks the sensitivity and perspectives shared by the majority of Hispanic-Americans in our country. During our interview with him, he took offense at the view that he is disconnected from the Hispanic community, but he countered those concerns merely by asserting that he listens to Hispanic music and reads Spanish language books. We believe that he is disconnected from the real-world activities that would enable him to contribute uniquely to the development of the law and the enhancement of the administration of justice, as have other Hispanics who have served as judges before him.

V. CONCERNS ABOUT HIS JUDICIAL TEMPERAMENT

We have serious concerns about Mr. Estrada's judicial temperament. Simply put, he has been described as one who is arrogant and elitist. It has been reported that he ''harangues his colleagues'' and ''doesn't listen to other people.'' We witnessed these qualities first-hand during our interview.

Based largely on our personal observations, we now firmly believe that Mr. Estrada lacks the maturity and temperament that a candidate for high judicial office should possess. In our view, he does not have the humility or the demeanor typical of worthy nominees to our nation's federal bench. He does not appear to us to be even-tempered. While Mr. Estrada may have been understandably apprehensive about the opportunity to meet with PRLDEF to allay its concerns, he was surprisingly contentious, confrontational, aggressive and even offensive in his verbal exchanges with us.

He made several inappropriately judgmental and immature comments about PRLDEF. He characterized some of PRLDEF's president's comments as ''boneheaded.'' He indicated that were it not for his quasi-public status as a judicial nominee, our comments might otherwise be actionable. He stated that we ''had probably already made up [our] minds to oppose his nomination because the person [we] had supported had lost the presidential election.'' In fact. PRLDEF had not made up its mind nor had it endorsed any presidential candidate. Mr. Estrada also made a fleeting reference to ''[our] Democratic senator friends on the Hill.'' In fact, PRLDEF has Republican senator friends on the Hill as well. He also challenged PRLDEF's board chair on how [we] could say that ''there is a strong consensus among Hispanic attorneys and Hispanics in general that they do not want to see a Hispanic Clarence Thomas on the U.S. Supreme Court.''

VI. CONCLUSION

For all of the above reasons, we strongly believe that Mr. Estrada's nomination should be opposed and rejected. Potential nominees who aspire to such important positions as circuit judges should be better qualified and possess the unquestioned ability to be fair, open-minded and committed to equal justice for all Americans. They should be connected to the real-world concerns of the people who will be governed by their decisions. They should also be even-tempered. In our view, Mr. Estrada clearly does not possess the qualities necessary to be placed in such an important position of trust—for a lifetime—interpreting and guarding the rights of ordinary Americans.

For more information contact the offices of Pierre M. LaRamée, Executive Vice President Puerto Rican Legal Defense and Education Fund.

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Mr. LEAHY. Mr. President, very briefly, we were going back and forth. I agreed to let the Senator from Arizona go out of order. I see the Senator from Iowa waiting, and he will also be out of order. I know the Senator from California is coming to the Chamber. Will the Senator from Iowa give me some idea how much time he wants? I have no objection to him going out of order.

Mr. GRASSLEY. I have no objection coming back at 5:30 p.m.

Mr. LEAHY. The Senator from Iowa is here, and the Senator from California is not here. Why doesn't the Senator from Iowa go forward and then yield to the Senator from California after she arrives? Will the Senator from Iowa have any objection to that?

Mr. GRASSLEY. In other words, if she comes in, I would stop and let her speak?

Mr. LEAHY. How much time?

Mr. GRASSLEY. I think 20 minutes.

Mr. LEAHY. Mr. President, why doesn't the Senator just go ahead.

Mr. GRASSLEY. Like I said, I can come back at 5:30 p.m.

Mr. LEAHY. The Senator should feel free to go ahead. When he is finished, then if the Senator from California can be recognized next.

I might also note the Senator from Arizona was speaking of stopping a filibuster; otherwise stopping somebody from being heard on the floor. I note there are many ways of doing this. For example, the Senator from Arizona is one who voted against even the motion to proceed on Judge Richard Paez and then also voted against him. That is

one of the many well-qualified or highest qualification nominees of President Clinton's against whom he voted. That is one of the many ways of stopping a nomination.

Mr. KYL. Mr. President, since the Senator from Vermont just mentioned my name, may I briefly respond?

Mr. LEAHY. Mr. President, the Senator from Arizona mentioned my name about 20 different times. If we are going to respond to each one, I will be glad to do it. I am trying to yield so the Senator from Iowa can have the floor.

Mr. KYL. Mr. President, will the Senator from Iowa give me 15 seconds, and I will be happy to respond.

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

Mr. KYL. I voted for invoking cloture on the Paez nomination because, of course, I agree with Senator LEAHY that we should not filibuster a judge nominated by the President.

Mr. LEAHY. As I recall, we all voted for cloture. The motion to proceed to even get there was the crucial vote when the Senator from Arizona voted against the motion to proceed.

I yield to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. KYL. Will the Senator yield me 10 seconds?

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

Mr. KYL. There were several votes against cloture that did not pass unanimously.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. I thank the Chair. Mr. President, I thank Senator LEAHY for his consideration. Obviously, since I voted for this nomination out of committee and I argued last year that the nomination should have come up last year, I am strongly in support of President Bush's nominee, Miguel Estrada. I think he is a very qualified judicial nominee and will make an excellent member of the U.S. Court of Appeals for the DC Circuit.

Not only is he regarded as one of the Nation's top appellate lawyers, but the American Bar Association, which I think Democrats consider the gold standard of determination of a person's qualifications to be a judicial nominee, has given him a unanimous rating of, in their words, ''well qualified.'' This happens to be the highest American Bar Association rating. It is a rating they would not give to just any lawyer who comes up the pike. According to the American Bar Association, quoting from their standard:

> To merit a rating of well qualified, the nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, breadth of experience, the highest reputation for integrity and either have demonstrated or exhibited the capacity for judicial temperament.

Just think of some of those words: ''The highest reputation for integrity'' and having ''demonstrated or exhibited the capacity for judicial temperament.'' This was from the American Bar Association's rating of well qualified.

We ought to demand that more of these people be appointed to the bench rather than fighting their nomination. Mr. Estrada then certainly deserves the American Bar Association's most qualified rating.

As my colleagues know, I am not a lawyer. There is nothing wrong with going to law school, but I did not. I have been on the Judiciary Committee my entire time in the Senate. I know some of the qualifications that are needed to be a Federal judge and particularly a Federal judge on this DC Circuit that handles so many appeals from administrative agencies and is often considered, by legal experts, to be the second highest court of our land.

Mr. Estrada's academic credentials are stellar. He earned his juris doctorate from Harvard University, magna cum laude, where he was editor of the Harvard Law Review. Mr. Estrada did not just attend Harvard Law School; he graduated with honors. He also served as the editor of the Harvard Law Review.

To be selected as the editor of a law review is a feat that only the most exceptional of law students attain. Not only did he excel in law school, but he graduated from Columbia University with his bachelor's degree magna cum laude and was also a member of Phi Beta Kappa.

Mr. Estrada certainly has the intellect required to be a Federal Court of Appeals judge. His professional background also gives testament to his being qualified for a Federal Court of Appeals judgeship as opposed to just any judgeship.

After law school, Mr. Estrada served as a law clerk to the Second Circuit Court of Appeals, and to Justice Kennedy, on the United States Supreme Court. Subsequently, he served as an Assistant U.S. Attorney and Deputy Chief of the appellate section of the U.S. Attorney's Office of the Southern District of New York, and then as assistant to the Solicitor General of the United States of America, officed in Washington, DC.

Mr. Estrada has been in the private sector as well. He is a partner with the Washington, DC, office of the law firm of Gibson, Dunn & Crutcher. So for a very young lawyer, I think I can give my colleagues a person who can truly be labeled an American success story. In fact, instead of downgrading his ability to serve as a circuit court judge, we should all be proud of Mr. Estrada's many accomplishments.

We are hearing that the Democrats are considering a filibuster of this exceptionally qualified lawyer. In all my years on the Judiciary Committee—and that has been my entire tenure in the Senate—Republicans never once filibustered a Democratic President's nominee to the Federal bench. There are many I may have wanted to filibuster, but I did not do it—we did not do it—because it is not right.

This nominee, like all nominees, deserves an up-or-down vote. Anything less is absolutely unfair. I hope my colleagues on the other side of the aisle will strongly consider this proposed filibuster before they cross this Rubicon and establish new precedent for confirmation.

Mr. Estrada's opponents claim he has not answered questions or produced documentation, and so he should not be confirmed to the Federal bench. I can think of a number of Democratic nominees who did not sufficiently answer even my questions, but that did not lead me to filibuster. As far as I know, Mr. Estrada has answered all questions posed to him by the Judiciary Committee members, and that the Justice Department has directed certain in-house memos not be turned over because this is the policy of the Department and this documentation has never been produced to the Judiciary Committee. This is not just the policy of this administration, the Bush administration, a Republican administration. This has also been the policy under Democratic Presidents.

So once more, we see a coalescing of liberal activists circling the wagon around a very talented, very principled, highly qualified legal mind to defeat Mr. Estrada's nomination solely because these activists have determined that he may not comply with some sort of liberal ideological agenda. These liberal interests only want the Senate to confirm judicial nominees who will be sure to implement a left-wing agenda, and if there is any question they will not do their bidding, then those judges and those nominees better watch out.

As far as I can see, the concerns raised about Mr. Estrada are pure speculation and, most importantly, highly politically motivated. This is a disgrace. It is an outrage, but we must put a stop to these unfounded political attacks and get on with the business of confirming to the Federal bench good men and women who are committed to doing what judges should do, interpret law as opposed to those who make law from the bench, because it is our responsibility to make law as members of the legislative branch.

Additionally, we have concerns materializing out of thin air that Mr. Estrada may not have the right judicial temperament for the job. Of course, that goes contrary to the analysis made by the American Bar Association committee which gave him a well-qualified determination, and that well-qualified determination only goes to those people who have judicial temperament.

This determination against Mr. Estrada, by these activists, goes to the point that he is some right-wing ideologue who will impose his own views and cannot be trusted to follow the law written by Congress. In my opinion, these concerns and these allegations

are fabrication and pure speculation. They have no basis in fact. To the contrary, numerous present and former coworkers, as well as individuals who know Mr. Estrada and his work very well, have written letters to the Judiciary Committee expressing strong support for Mr. Estrada. They go on to say he will take the law seriously, apply Supreme Court precedent faithfully, and not rule based upon personal views and political perspectives.

If a judge has the law in front of him, if a judge is willing to follow the interpretation of the Supreme Court, and if a judge leaves out his personal views and leaves out his own political perspectives, then what he has in front of him is only the language of the law and the precedent. That is what a judge is supposed to make his decision on. That is what he said he would do. More importantly, people who have known him over a long period of time are convinced he will so do.

Letters from Republicans and Democrats have highly praised Mr. Estrada's intellect, judgment, integrity, and ethics. Yet we still have some who are quick to lend credence to unfounded attacks which appear to have been generated primarily by Paul Bender, a former politically appointed supervisor in the Solicitor General's Office during the Clinton administration.

Clearly, Mr. Bender's allegations are politically motivated. Not only is Mr. Bender a liberal activist, his own out-of-the-mainstream views on matters such as pornography cast serious doubts on his ability to fairly judge Mr. Estrada's qualifications. Need I remind my colleagues of the Clinton administration where they had a flip-flop fiasco in the Knox case, where Mr. Bender had a heavy hand in formulating a very extremist position that directly ran counter to a child pornography statute and to clear congressional intent about that child pornography statute.

Need I remind my colleagues that Mr. Bender's position would have resulted in the freeing of a twice-convicted child pornographer who had demonstrated a tendency to lure underage girls into criminal relationships. Need I remind my colleagues of the resolution they themselves voted on in the House and Senate that soundly rejected Mr. Bender's position in the Knox brief? I highly doubt Mr. Bender's own judgment is unbiased enough to provide an accurate recommendation of Mr. Estrada's ability to be a judge on the DC Circuit, particularly when these statements contradict Mr. Bender's own contemporaneous, glowing evaluations of Mr. Estrada when Mr. Estrada was one of those he supervised at the Solicitor General's office. Mr. Estrada was given glowing evaluations by Mr. Bender.

I also point out that Mr. Bender appears to be the only one of Mr. Estrada's former colleagues at the Department of Justice that now questions Mr. Estrada's ability to be a good judge. In fact, as far as I know, everyone else who has worked with Mr. Estrada has praised his record to the high heavens and believes he is more than qualified for this judgeship. It is obvious that Mr. Estrada's record and his integrity have been unfairly and baselessly attacked by a political hatchet person.

To whom are we going to listen? To whom do we 100 Senators listen? The American Bar Association, which interviewed scores of people and gave Mr. Estrada a unanimous ''well-qualified'' rating. The colleagues who know and who have observed Mr. Estrada's work over the years? Or are we going to listen to an advocate for freeing child pornographers, a man who is so extreme that his outrageous legal views were universally condemned in that vote on child pornography in the House and Senate?

In addition, last week, in a Democratic caucus press conference held by the Senator minority leader, a representative of the Mexican American Legal Defense and Education Fund criticized the statement that I made in the Judiciary Committee's consideration of Mr. Estrada when I was speaking for his name to be voted out of committee. This is what I said: If we deny Miguel Estrada this position on the DC Circuit, it would be to shut the door on the American dream for Hispanic Americans everywhere.

I said that because I believe it. Mr. Estrada is an example and a role model for all Americans, but he is a particularly bright and shining light for the Hispanic and immigrant communities in the United States of America. I don't happen to be alone in that belief. The League of United Latin American Citizens agrees with me because in a letter to Senator LEAHY, the League of United Latin American Citizens expressed its strong support for Mr. Estrada, saying: Few Hispanic attorneys have as strong educational credentials as Mr. Estrada, who graduated Phi Beta Kappa from Columbia College and magnum cum laude from Harvard, where he was editor of the Harvard Law Review.

Continuing: He also served as a law clerk to the Honorable Anthony M. Kennedy in the U.S. Supreme Court, making him only one of a handful of Hispanic attorneys to have had this opportunity. He is truly one of the rising stars in the Hispanic community and a role model for our youth. That is from the League of United Latin American Citizens.

The Latino Coalition, a national Latino organization, also agrees that Mr. Estrada should be approved. They expressed in a press release last April that ''to deny Latinos, the Nation's largest minority, the opportunity to have one of our own serve on this court in the Nation's Capital is unforgivable.'' I agree.

We also have the National Association of Small Disadvantaged Businesses. In another letter to Senator LEAHY, the president of the National Association of Small Disadvantaged Businesses said: Mr. Estrada's appointment as a first Hispanic member of the DC Circuit will be a benefit to us in further illustrating the wide range of talent in the minority community just waiting to be effectively and fully used.

Mr. Estrada was not nominated just because he is Hispanic. The President nominated him because he is one of the most qualified lawyers in the country to serve in this position, not one of the most qualified Hispanic lawyers. However, because he is Hispanic, his nomination sends the clear message that with hard work anyone can achieve success. It speaks all about opportunity, the offering of opportunity for all kinds of people in America. In this case, especially, to Hispanics. He absolutely is the kind of role model that Hispanic youth should look up to, and we ought to encourage that opportunity.

Unfortunately, some in the Hispanic community do not believe Mr. Estrada is Hispanic enough. I don't know where they are coming from—Hispanic enough? What does that mean? According to the National Review at last week's Democratic press conference, representatives of the Congressional Hispanic Caucus, an organization I referred to before with the acronym MALDEF, and then another organization, the Puerto Rican Legal Defense and Education Fund, criticized Mr. Estrada for not being authentically Hispanic. If you are Hispanic, who is going to say whether or not you are authentically Hispanic? He is Hispanic as a result of his birth and the background of generations before him. Is that somehow supposed to fit people into a class that you isolate yourself and you have to have certain aspects about you that are uncompromising, or is it OK in America, whether you are German, Italian, African American, Hispanic, don't you have a right to be an individual? Can't you just be Mary Smith and Joe Smith and Mr. Estrada and anybody else you want to be as an individual? What is there about being authentically Hispanic?

I ask unanimous consent that an article from the National Review entitled ''Dems to Miguel Estrada: You're not Hispanic Enough'' be printed in the RECORD after my statement.

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

(See exhibit 1.)

Mr. GRASSLEY. Also at that press conference, remarks were made that one had to have more than a Hispanic surname to be considered Hispanic. I find these remarks do not make any sense. What they are saying is, unless you think as they do, you are not really Hispanic. In other words, if you do not think as they do, you cannot possibly be Hispanic. What an outrageous idea in 21st century America. The tag line that Mr. Estrada ''isn't Hispanic enough'' is code words for ''he isn't liberal enough.'' Yet at this Democratic

press conference, participants describe the underrepresentation of Hispanics in the legislative and executive branches of the Federal Government.

The President has nominated one of the most qualified attorneys in the country to be a judge on the second highest court of the land, and this person, of outstanding capabilities, with degrees from Columbia and Harvard, happens to be a Hispanic. Not only is he Hispanic, but he is an immigrant to this country who at the age of 17 came here from Honduras speaking little English. He learned the language, worked hard, rose to the top of his legal profession. One would think these groups would be happy with this nomination. But no, they stand in firm opposition to Mr. Estrada. You see, these groups believe a person is only Hispanic when he or she believes what these groups believe.

That is intellectual prejudice. I urge my colleagues to resist the rhetoric of ideological prejudice and to overwhelmingly support the confirmation of Miguel Estrada to the U.S. Court for the DC Circuit.

I yield the floor.

EXHIBIT 1

[From the National Review, Feb. 6, 2003]

DEMS TO MIGUEL ESTRADA: YOU'RE NOT HISPANIC ENOUGH

(By Byron York)

The headline from Senate Minority Leader Tom Daschle's news conference Wednesday was his threat to filibuster the appeals-court nomination of Miguel Estrada. ''There is overwhelming opposition within our caucus to Mr. Estrada,'' Daschle said. ''Because we're in the minority, we have no other option in some cases . . . than to filibuster nominations. We don't take that responsibility lightly, but we hold it to be an important tool that we will use.'' Daschle said he will make the filibuster decision next week.

But the more interesting story from Daschle's appearance was the strange disconnect between the reasons he gave to oppose Estrada and the reasons cited by a number of Hispanic interest-group leaders who appeared with Daschle.

To hear Daschle tell it, Estrada's alleged refusal to answer questions at his confirmation hearing had virtually forced Democrats to vote against him, and perhaps to filibuster the nomination. Democratic senators take their advise-and-consent role very seriously, Daschle said, and, ''In our view, we have been thwarted from fulfilling our constitutional obligation.''

But to hear representatives from the Congressional Hispanic Caucus, the Mexican American Legal Defense and Education Fund, the Puerto Rican Legal Defense and Education Fund, and others tell it, the Estrada nomination should be killed not because of Estrada's alleged refusal to answer questions or because of constitutional obligations but because Estrada, who was born and raised in Honduras before coming to the United States and learning English at the age of 17, is simply not authentically Hispanic.

''Being Hispanic for us means much more than having a surname,'' said New Jersey Rep. Bob Menendez, a member of the Congressional Hispanic Caucus. ''It means having some relationship with the reality of what it is to live in this country as a Hispanic American.'' Even though Estrada is of Hispanic origin, and even though he lives in this country, Menendez argued, he falls short of being a true Hispanic. ''Mr. Estrada told us that him being Hispanic he sees having absolutely nothing to do with his experience or his role as a federal court judge. That's what he said to us.'' Menendez found that deeply troubling.

But Menendez was relatively kind to Estrada compared to the representatives of Hispanic interest groups. Angelo Falcon, an official of the Puerto Rican Legal Defense and Education Fund, railed about the ''Latino Horatio Alger story that's been concocted'' about Estrada's success and, more generally, about the ''concocted, invented Latino imagery'' of Estrada's life.

''As the Latino community becomes larger and larger in the country, as we gain more political influence, as we become more diverse, the issue of what is a Hispanic becomes more problematic,'' Falcon explained. ''It's not good enough to simply say that because of someone's genetics or surname that they should be considered Hispanic.''

Marisa Demeo from the Mexican American Legal Defense and Education Fund went even farther. Not only is Estrada not authentically Hispanic, Demeo argued, but his elevation to the federal bench would ''crush'' the American dream for millions of genuine Hispanics in the United States.

Demeo was particularly angry at Republican Judiciary Committee member Sen. Charles Grassley, who last week said that, ''If we deny Mr. Estrada a position on the D.C. Circuit, it will be to shut the door on the American dream of Hispanic Americans everywhere.'' ''Actually, the reverse is true,'' Demeo said. ''If the Senate confirms Mr. Estrada, his own personal American dream will come true, but the American dreams of the majority of Hispanics living in this country will come to an end through his future legal decisions.''

Through it all, Daschle stood by impassively. He couldn't very well cite Estrada's alleged lack of authentic Hispanic-ness as a reason to filibuster and kill the nomination; even the most partisan Democratic senator would have a hard time making that argument. Yet he remained quiet while his allies bashed Estrada in the most personal terms.

It made some observers question just why Democrats are opposing Estrada. Do they really believe their words about their ''constitutional obligations,'' or are they going along with the angry interest groups who are pushing them to do it?

The PRESIDING OFFICER. The Senator from California.

Mr. GRASSLEY. Mr. President, could I read something for the administrative staff?

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I assume this is without objection from the other side. I thank the Senator from California.

I ask unanimous consent that at 5 o'clock today the Senate proceed to the consideration of the following nominations en bloc: Executive Calendar Nos. 28, 29, 30; provided further that there be 15 minutes of debate equally divided between the chairman and ranking member. I further ask unanimous consent that following that debate, the Senate then immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening action or debate; provided further that, following those votes, the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to explain my position on the nomination of Miguel Estrada and to speak more generally on the state of the nomination process in today's Senate.

This is a difficult time for all of us in the Senate and, indeed, the Nation. We stand on the brink of war, with an economy that is sputtering, and the threat of international terrorism as close at hand as it has ever been. These are serious issues, issues the American people have sent us here to debate and to try to solve. In doing so, it is vital we come together as a Government, not as Democrats versus Republicans, or Congress versus the White House, but as one Government and one Nation. As best we can, we should work together, consult each other, debate the issues forthrightly and with strength of purpose, and then come to agreement on how to solve the problems that confront us.

One of the reasons this issue is so important is because the judges we confirm over the next few years will help decide whether acts of Congress will stand or will be struck down. They will decide how far the law will go to protect the safety and rights of the American people. They will have the power to limit or expand civil rights protections. They will have great leeway to interpret the laws protecting or limiting a woman's right to choose. They will be able to expand or limit gun control laws, laws against child pornography, campaign finance laws, and many more. In a real sense, these judges will have as much power, or more, than any of us in this body. Clearly, the court with the biggest impact will be the Supreme Court. But the District of Columbia Circuit Court is a close second and is often cited as the most powerful court in the Nation. It is no coincidence that the DC Circuit has produced more Supreme Court Justices than any other circuit. Three of the nine current Justices—Justice Scalia, Justice Thomas, and Justice Ginsburg sat on the DC Circuit. In fact, it is hard to overstate the importance of an appointment to the United States Circuit Court of Appeals and particularly the DC Circuit.

The Supreme Court of the United States is our Nation's court of last resort. But it heard less than 80 cases in the 2000–2001 session. In contrast, the Federal courts of appeal considered over 27,000 cases during the same period. For so many of the legal injuries for which people seek redress, the courts of appeal are the last stop, the ultimate decisionmaker. And the DC Circuit is the most important of all circuit courts because it is the court that most closely oversees the actions of Federal agencies; actions that have

real, everyday impact on the lives of all Americans. The DC Circuit reviews appeals regarding decisions by the Federal Communications Commission, the National Labor Relations Board, the Federal Election Commission, the Americans With Disabilities Act, the Federal Energy Regulatory Commission, the Endangered Species Act, and the Environmental Protection Act, including the Resource Conservation and Recovery Act; the Superfund, the Clean Water Act, the Clean Air Act, and countless other agencies and statutes.

Because the Supreme Court reviews so few cases, the DC Circuit essentially has the last say on whether decisions by these agencies will stand or will not stand. In recent years, the DC Circuit has become a hostile forum for environmental protections. Since 1990, the DC Circuit has struck down or hindered a long list of crucial environmental protections, including clean air protections for soot and smog, habitat protection under the Endangered Species Act, clean water protection for millions of acres of wetlands, fuel efficiency standards known as CAFE standards, designation of sites on the Superfund National Priorities List, and guidelines on treatment of petroleum wastewater.

As Senator KENNEDY pointed out in Miguel Estrada's hearing, the recent case of Maryland/DC/Delaware Broadcasters Association v. the FCC, the DC Circuit found a portion of the FCC's equal opportunity policy unconstitutional. Specifically, the court struck down a policy of broad outreach for minority broadcasters. This decision, right or wrong, will have a significant impact on the ability of the FCC to encourage minority participation in the broadcast industry.

Incidentally, Mr. Estrada essentially refused to comment on this case when asked to do so.

Steffan v. Perry involved a young man at the U.S. Naval academy, Joseph Steffan, who admitted to two of his classmates that he was gay, although he never admitted actually performing any homosexual acts. Steffan was discharged under Department of Defense regulations indicating that homosexuality is incompatible with military service. Steffan argued his dismissal was impermissible, as it was based on status—being gay—not conduct. The DC Circuit held, in 1994, that the Defense Department regulations were permissible, however, and that the Steffan dismissal would stand.

I could go on and on with cases—United States v. Bailey, for instance. Or AKA v. Washington Hospital Center, where the court ruled in favor of an orderly who, after 19 years of work, was forced to have heart surgery and who was then denied the right to transfer to another job within the hospital that would not require the same level of physical activity.

The District of Columbia Circuit is also the court that most often reviews terrorism cases on appeal.

All in all, it is quite clear that the District of Columbia Circuit is constantly at the center of complex key issues of the day.

Currently, there is a delicate balance on this court. There are four Republican appointees, four Democratic appointees, and four vacancies. Therefore, this nominee effectively tilts the balance on that court. That is why many of us believe it is so important to learn how this nominee thinks, what his judicial temperament would be, and so on.

During the last several years of the Clinton administration, two highly qualified Clinton nominees were blocked permanently. Some believe its purpose was to initiate a concerted, planned effort to keep vacancies open on that court so they could be filled with conservatives in the event of a Republican President.

When President Bush took office, he sent us two nominees for the district circuit. One of them is Miguel Estrada. I don't believe it is appropriate for us to simply block all nominees to the District of Columbia Circuit in retaliation for that having been done to Democratic nominees. That is not why I am here today. But at the same time, we cannot ignore the fact that this important circuit is now so closely divided. In deciding whether to confirm a given nominee to such a delicately balanced court, we must ensure that the judges we send to the court can administer the law fairly and impartially. That is the case before us today: Can Miguel Estrada administer the law fairly and impartially?

We have before us a 41-year-old nominee about whom we know very little. To properly discharge our constitutionally derived advise and consent function, the Members of the Senate must be given enough information to make the right decision about a given nominee.

In this case, I have heard many comments on this nominee as a very bright but ideologically driven young attorney, one who would put his beliefs ahead of the law if confirmed to the Federal bench. So I want to try to figure out whether or not that is true. Many who knew him, know him, have supervised him, or have spoken to him believe strongly that he does not have the temperament or impartiality necessary to fairly administer the law.

My office has received literally thousands of calls about this nomination—more than 7,900 phone calls, to be exact. Fewer than 300 of those 7,900 calls were in favor of Miguel Estrada's nomination.

To counteract serious concerns from those who know him and from those whom we represent, we need evidence that would contradict these opinions. Quite frankly, we do not have that evidence.

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

Mr. Estrada is not a prolific writer. So we have no real record of writing to examine. Again, this alone would not be dispositive, but it is strike 2 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 that he could not be trusted.

Mr. Estrada refused to adequately participate in his own confirmation hearings, which I will comment on as a great surprise to me and the reason I changed my view. So we have no real answers to our questions.

Let me expand on this last point because I think it is instructive to examine and contrast our experience with Mr. Estrada and our experience with one other nominee.

At last week's markup, I was struck by the lack of information about this nominee. Yet, as I said, I liked him very much when I met with him personally. But I was startled by his performance at the public hearing.

So I got the transcripts, and I reread the transcripts to try to see if there was anything I missed—something I could zero in on that would let me know he would in fact be fair and impartial.

What came to my mind was the real contrast with another nominee. That nominee is a man by the name of Jeffrey Sutton. He also was controversial. The disabilities community had a lot of concerns about him. But Mr. Sutton at his hearing answered every question put to him intelligently, in a fulsome way, and I thought forthrightly. So I could tell how he would act as an appellate court judge. The committee was able to gauge his intelligence, his manner of thinking, and we can use that back-and-forth to help us predict whether Mr. Sutton would be a good and fair judge or whether he would skew outcomes of cases to meet his own ideological goals.

Mr. Estrada, on the other hand, did his best to keep from putting himself on the record on any issue of real substance. For instance, when Senator SCHUMER asked Mr. Estrada to name three Supreme Court cases in the last 40 years with which he disagreed, Mr. Estrada simply refused to answer.

When I asked him whether he believed Roe v. Wade was correctly decided, he declined to answer on the basis that he had not done what the ''judicial function would require'' to determine whether the Court correctly decided the case.

When Senator LEAHY asked him what he thought of the decision in Romer v. Evans, a case involving discrimination against homosexuals, Estrada responded ''I can't know because I was not a judge in the case.''

When Senator KENNEDY asked Mr. Estrada a written question about a

union retaliation case decided by the DC Circuit in 2001 and reversed by the Supreme Court last term, Estrada responded ''Although I have read the Supreme Court's opinion . . . I have not read the briefs in the case, was not present at the oral argument, and have not independently researched the issue decided by the Court. For those reasons, I am not in a position to know how I might have resolved the issue . . . nor am I in a position to answer the question whether the Supreme Court acted appropriately.''

When Senator KENNEDY asked him in writing whether another case involving diversity outreach had been decided correctly, Estrada again fell back on the argument that because he had not heard oral arguments and had not read the briefs, he could not answer.

When Senator KENNEDY asked Estrada about yet another Supreme Court case, American Trucking v. EPA, where the Supreme Court reversed the District of Columbia Circuit, Estrada again fell back on the argument that he had not been present for oral arguments and could not, therefore, comment on whether the case had been correctly decided.

That kind of answer makes it truly difficult to get a sense of where a nominee is coming from in terms of thoughtful process, analysis, and legal expertise.

When it comes to the most important circuit court in the Nation and there is no record and there is no writing, the Senate of the United States is entitled to know these answers.

It strains credibility that a nominee for the circuit court of appeals would still have no opinion on whether a case such as Roe was correctly decided or whether any case in the last 40 years was incorrectly decided.

Finally, it is troubling to get these answers from a nominee about whom we know so little and who is nominated to a court that will decide so much for so many.

Taken as a whole, I could not, in good conscience, vote for this nominee, with so little information, recommending him to such an important lifetime appointment. And I cannot help but wonder: Why didn't the President appoint him to a District court? He is younger than my daughter. Give him an opportunity to produce a record and then move him on to an appellate court when that record could, in fact, be examined.

A few days after I cast my committee vote against Mr. Estrada, White House Counsel Al Gonzales sent a letter addressed to me personally criticizing my vote and asking me to reconsider. Because Judge Gonzales has made the letter available to others, and it has now appeared in the press, I find it necessary that I correct the record. And I would like to do so.

Mr. President, I ask unanimous consent that this letter from White House Counsel Alberto Gonzales, dated February 3, 2003, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
*Washington, DC, February 3, 2003.*

Hon. DIANNE FEINSTEIN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR FEINSTEIN: I write in response to your vote in the Judiciary Committee on the nomination of Miguel Estrada and to respectfully urge that you reconsider this important nomination when you vote on it in the full Senate. I write in particular because it appears from your statement in the Committee (and on your web site) that you may possess inaccurate or incomplete information on certain issues that you have deemed important to the Estrada nomination.

First, it appears you relied on the fact that Estrada has no previous judicial service. But five of the eight judges currently serving on the D.C. Circuit had no previous judicial experience when appointed. That includes two of President Clinton's nominees, Merrick Garland, whose Justice Department record was quite similar to that of Miguel Estrada, and David Tatel. In addition, Judge Harry Edwards had no prior judicial experience when he was nominated by President Carter in 1979, and he was younger than Estrada. In addition, several Ninth Circuit judges from California who were appointed by President Clinton, and had your support, had no prior judicial experience. That includes Judge William Fletcher, Judge Raymond Fisher, and Judge Marsha Berzon.

The American Bar Association, which Democrat Senators Leahy and Schumer have referred to as the ''gold standard,'' unanimously rated Estrada ''well qualified'' for the D.C. Circuit, the ABA's highest possible rating. We think the ABA rating was quite appropriate in light of Estrada's excellent record, including his work as an Assistant Solicitor General in the Clinton and Bush Administrations, his record as a federal prosecutor in New York, his service as a law clerk to Justice Kennedy, and his pro bono work including his volunteer representation of a death row inmate before the Supreme Court. He has argued 15 cases before the Supreme Court of the United States, a figure that few lawyers can match, and particularly impressive for someone who immigrated to this country at age 17 speaking little English.

Second, you also referenced a news report quoting the views of Paul Bender, a former Deputy Solicitor General. Mr. Bender has not written a letter to the Committee or otherwise publicly explained his views, so we are unclear whether this news report was accurate. But more important, as I explained in a September 17, 2002, letter to then-Chairman Leahy and Senator Hatch, Paul Bender in fact signed the performance reviews of Miguel Estrada for the two years that they worked together. The performance reviews for those years gave Estrada the highest possible rating of ''outstanding'' in every possible category. Significantly, the performance reviews that Bender signed also stated the following to support the judgment that Estrada's performance was ''outstanding.''

''States the operative facts and applicable law completely and persuasively, with record citations, and in conformation with court and office rules, and with concern for fairness, clarity, simplicity, and conciseness.''

''[I]s extremely knowledgeable of resource materials and uses them expertly; acting independently, goes directly to point of the matter and gives reliable, accurate, responsive information in communicating position to others.''

''[A]ll dealings, oral and written, with the courts, clients, and others are conducted in a diplomatic, cooperative, and candid manner.''

''[A]ll briefs, motions or memoranda reviewed consistently reflect no policies at variance with Department or Governmental policies, or fails to discuss and analyze relevant authorities.''

''[i]s constantly sought for advice and counsel. Inspires co-workers by example.''

Apart from the contemporaneous reviews that Mr. Bender himself signed, it also bears mention that the Committee has received letters from Seth Waxman, President Clinton's Solicitor General, and a bipartisan group of 14 former colleagues of Mr. Estrada in the Solicitor General's office. Seth Waxman wrote to the Committee that Estrada is a ''model of professionalism and competence'' and that he has ''great respect both for Mr. Estrada's intellect and for his integrity.'' He continued: ''In no way did I ever discern that the recommendations Mr. Estrada made or the views he propounded were colored in any way by his personnel views—or indeed that they reflected anything other than the long-term interests of the United States.'' And the bipartisan group of former colleagues from the Office of Solicitor General wrote to the Committee that Estrada ''would be a fair and honest judge who would decide cases in accordance with applicable legal principles and precedents.'' Finally, to the extent Mr. Bender's own personal political and ideological views are relevant, we call your attention to Senator Hatch's opening statement at the hearing on September 26, 2002.

Third, you referenced the fact that Miguel Estrada has been 'accused'' of using an ideological litmus test when assisting Justice Kennedy in the selection of his law clerks. We respectfully do not think this ''accusation'' is credible or supported. In fact, Mr. Estrada explained at his hearing that he in fact has been very supportive, for example, of the hiring of one law clerk for Justice Kennedy who at the time worked for President Clinton, is a strong Democrat, and now works for Senator Leahy on the Judiciary Committee.

Fourth, you noted concern among ''Hispanic organizations.'' In fact, the overwhelming majority of national Hispanic organizations have supported Mr. Estrada. That includes the Hispanic National Bar Association, the League of United Latin American Citizens, the U.S. Hispanic Chamber of Commerce, the Hispanic Business Roundtable, and the Latino Coalition, among many others. To be sure, MALDEF and PRLDEF do oppose Mr. Estrada. As to Hispanic members of the House, we understand that all of the Republican Hispanics support him while the Democrat Hispanics do not. In any event, LULAC's statement is noteworthy, as it states: ''[Estrada] is truly one of the rising stars in the Hispanic community and a role model for our youth.''

Thank you for considering this nominee in light of the above information. This is an historic nomination, as Miguel Estrade would be the first Hispanic to serve on the D.C. Circuit. We urge you to vote to confirm him.

Sincerely,

ALBERTO R. GONZALES,
*Counsel to the President.*

Mrs. FEINSTEIN. Mr. President, in his letter, Judge Gonzales suggested I based my decision to vote against Mr. Estrada on ''inaccurate or incomplete information on certain issues that you have deemed important to the Estrada nomination.''

Needless to say, I disagree with that assessment. It is not because I was misinformed that I voted against this nominee. It is because this nominee did not inform the committee enough. Simply put, Mr. Estrada did not adequately answer the questions put to him in his hearing.

Particularly with a nominee who is so young, has such a very limited or nonexistent written record, and has been accused by so many of being too ideologically driven to serve impartially on the second highest court in the land, it is incumbent on each Member of the Senate, in our advise and consent role, to thoroughly examine the nominee's thought processes and to determine whether the nominee can and will be an impartial judge.

In this case, it was impossible to make such an assessment because the nominee himself would not let us.

Judge Gonzales raised four specific issues in his letter. I would like to take some time to go through the Gonzales charges and to answer them one by one.

First, Judge Gonzales stated in his letter to me ''[I]t appears that you relied on the fact that Estrada has no previous judicial service.''

It is true that Mr. Estrada has no previous judicial experience, but I did not rely on Mr. Estrada's lack of judicial experience, at least not exclusively.

I said in my statement before the committee ''[i]n this case, it is truly difficult to make this decision, because we have before us a fairly young nominee—just 41 years old—who has never been a judge, has little written record to speak of, and who has not given us a real sense of what kind of judge he would be. He, essentially, is a blank slate. And if confirmed, he could serve for 30, 40 or even 50 years on one of the highest courts in this nation. We had better be right about this decision.''

I truly believe this. This is a big decision, as are all our decisions to place nominees in lifetime positions of such power and influence over the lives of people.

I was concerned, and I remain concerned, that given Mr. Estrada's lack of judicial experience, the Judiciary Committee needed to turn to other sources of information to get a better sense—any sense, really—of the kind of judge he would be.

Unfortunately, we had few other sources of information to which we could turn. With so few writings, no record as a professor, no access to legal memos he wrote while at the Department of Justice, our committee was left with little to go on as we contemplated this nominee.

Mr. Estrada's lack of judicial experience was just one factor that made it more difficult to review his way of thinking and to determine what kind of judge he would become if confirmed.

I have supported nominees without judicial experience in the past—I don't want anyone to get the wrong idea—and I would not hesitate to do so again when appropriate. Although I think it preferable, if possible, to have nominees with judicial experience, I also recognize that many brilliant lawyers with no such experience have become excellent and, in fact, even legendary judges.

In this case, it was not the lack of judicial experience itself that concerned me but the fact that this lack of experience, when combined with the lack of information from other sources, left the committee with no real basis to evaluate this nominee.

In his letter to me, Judge Gonzales mentioned a number of specific individuals nominated to the Ninth Circuit by President Clinton, nominees I supported despite their lack of judicial experience. These nominees—Judges William Fletcher, Marsha Berzon, and Raymond Fisher—all had distinguished backgrounds and a wealth of background materials for the committee to review, but no judicial experience.

Since these specific nominees were mentioned, I thought it would be interesting to note the paths they took to confirmation because the nature of the deliberative process the Senate was able to undertake with these nominees is in striking contrast to what we are confronted with today.

William Fletcher, for instance, was nominated on April 25, 1995. His first hearing came on December 19, 1995, about 8 months later. Dr. Fletcher had been a prolific academic writer and a distinguished law professor at the University of California at Berkeley for almost 20 years by the time he was nominated. At his hearing, he had the opportunity—and he took it—to discuss articles he had written that were critical of certain Supreme Court decisions and to explain and discuss other articles he had written on a variety of subjects. The Judiciary Committee had access to a wide range of written materials about or written by Dr. Fletcher. And just as importantly, the committee members also had the opportunity to engage in a back and forth with the nominee to learn about his thought process.

In contrast to the Estrada hearing, Professor Fletcher answered every question forthrightly and fully. Where Estrada stated he could not answer, Fletcher engaged in real discussion.

Despite this, however, William Fletcher's nomination sat without action until April of 1998, 3 years after his first hearing. And after those 3 years, he was not yet given a vote. Instead, he was given a second hearing.

Finally, on October 8, 1998, almost 3½ years after he was first nominated, William Fletcher was finally confirmed. Judge Fletcher, at the time of his nomination, had no judicial experience, but the committee had a wealth of other information about him and written by him to properly gauge his suitability for the Ninth Circuit.

Furthermore, it has been reported that his nomination finally moved forward only after Dr. Fletcher's mother, a Federal judge herself, agreed to take senior status, and after President Clinton and the Republican leadership agreed to appoint a judge, named by Republicans, to a vacancy on the Ninth Circuit. That is a good example of communication and even negotiation between the White House and the Senate on the issue of judicial nominations. I remember it well. And I thank those leaders of our committee who engaged in those discussions.

I am not saying that I believe Judge Fletcher's nomination path should become the norm, but since Judge Gonzales mentioned Judge Fletcher by name, it is interesting to note how that nominee, with no judicial experience, fared under the Republican-controlled Senate back then.

Marsha Berzon, another nominee mentioned in Judge Gonzales' letter, was nominated on January 27, 1998. Her first hearing came 6 months later—not bad—on July 30, 1998. Again, at that hearing Mrs. Berzon answered every conceivable question about her background, her thought process, and her other issues. Right, she had no prior judicial experience. Then almost a year went by with no further action until she underwent a second hearing and again submitted herself to questioning by the committee.

Just to cite one example from that second hearing, Senator SESSIONS asked Mrs. Berzon to expand upon an answer she had given at her first hearing about the death penalty. Quoting Senator SESSIONS now:

> I remember I asked you about Justice Brennan's decision on the unconstitutionality of the death penalty. He believed that the death penalty was unconstitutional. . . . [a]nd I asked you . . . .how you felt about Justice Brennan's view, and you said you did not like to say what you agree with and what you do not agree with when you haven't had time to think about it. Fair enough. Have you had time now and would you like to comment now?

In her response, Mrs. Berzon stated:

> . . . I certainly have had a chance to think about it and go back and look at the Constitution. And having done so, I would certainly agree that the indications of that document are that the Framers of the Constitution understood that capital punishment would be permitted under the Constitution. . . . I was a law clerk to Justice Brennan, as you know, I admire him enormously as a man and a mentor. I did not agree with everything that he said, and I think in particular that I intend to take a more literal view to statutes and to constitutional provisions than he does. It makes me more comfortable, and it is the way I tend to think.

It is this back and forth that gives committee members a sense of how nominees think and, therefore, how they will approach the duties confronting them as Federal judges.

By the time Marsha Berzon was finally confirmed on March 9, 2000, more than 2 years and two hearings after she had been nominated, the Judiciary Committee and the Senate had more than enough of a record to judge her nomination, despite her lack of judicial

experience. This information is simply not there for Miguel Estrada.

Raymond Fisher was the third Ninth Circuit nominee mentioned in the Gonzales letter. Here again is a nominee with no judicial experience but, here again, unlike Mr. Estrada, Raymond Fisher had a depth and breath of other experiences that allowed the committee to fully examine the nominee and his nomination and come to an informed decision.

Raymond Fisher proved himself in many different functions to be impartial, to gain the respect of his peers, and to evidence the temperament required to be a Federal judge. From serving as a Supreme Court clerk to working in private practice, to serving as the head of the Los Angeles Police Department's civilian oversight panel, Fisher was often in the public eye and continuously showed an evenhandedness and ability to work through complex issues that would clearly serve him well from the bench.

Then-mayor Richard Riordan of Los Angeles, a Republican, said that he chose Fisher for the police commission job ''because he did not have a political agenda and called the facts as he saw them.''

That is exactly what we look for in a nominee. And in the case of Miguel Estrada, I am not convinced that we have it.

Additionally, in the Fisher, Berzon, and Fletcher cases, we had volumes of support letters from every conceivable source of every political background and, most importantly, there was not significant opposition as exists in the Estrada case.

Quite frankly, if everyone who knows a nominee comes to the committee with glowing praise and statements that the nominee has perfect knowledge, experience, and temperament to be a judge, it is obviously easier to feel comfortable confirming that nominee regardless of the level of actual judicial experience. Likewise, even a nominee with overwhelming judicial experience might face trouble if a large number of people who had worked with or for that nominee expressed strong concerns about his or her impartiality.

Here, with Miguel Estrada, we have a man with no judicial experience and who has been the subject of a large volume of concern about his temperament and his ability to fairly and impartially judge a given situation. This, in my opinion, presents a problem.

The second issue raised in the Gonzales letter involves Professor Paul Bender, Mr. Estrada's direct supervisor at the Solicitor General's office. Specifically, I mentioned in my committee statement on the Estrada nomination that I was concerned about a statement Professor Bender had made in the press that Miguel Estrada is so ''ideologically driven that he couldn't be trusted to state the law in a fair, neutral way.''

In response to this quote from me, Judge Gonzales cited a number of internal Justice Department evaluations indicating that Professor Bender had given Mr. Estrada positive reviews while at the Justice Department. It is relevant to the decisionmaking process when a nominee's former supervisor feels compelled to comment that he is too ideologically driven to be a fair judge, and it is certainly possible at the very least that an attorney could be both an excellent legal scholar and an excellent advocate but be ill-suited for the judiciary, as suggested by Professor Bender.

In any event, I recently asked my staff to contact Professor Bender by telephone and ask him about his comments to the press and his past evaluations of Miguel Estrada. In doing so, my staff discovered some interesting facts. First, I am told that Professor Bender stands by his statements to the press ''100 percent'' and would say so if asked.

Second, according to Professor Bender, the positive evaluations that Judge Gonzales and others cited consisted merely of boilerplate language next to check marks. He stated every employee received the highest evaluation automatically.

And perhaps of most relevance, Professor Bender indicated to my staff that he was already so concerned about Mr. Estrada's ideological bent while supervising him at the Department of Justice that he learned not to rely on his memos and in fact stopped assigning him important work. In other words, as an employee of the Justice Department whose job it was to advocate to the best of his ability, Miguel Estrada's direct supervisor did not trust him to be fair and impartial.

I asked my staff to call Professor Bender and read this to him, and he stands by it. This was not a last-minute conversion as some have suggested but an ongoing concern.

I have listened to some of the attacks on Mr. Bender. I don't think they reflect well on the Senate. I may not agree with everything Professor Bender has done or advocated within his lifetime, but this is a man with very impressive credentials.

Paul Bender graduated magna cum laude from Harvard Law School in 1957.

He served as a law clerk to Judge Learned Hand of the U.S. Court of Appeals for the Second Circuit and then was a law clerk to Supreme Court Justice Felix Frankfurter before embarking on a distinguished career as a professor and in the U.S. Solicitor General's Office. He spent 24 years as a faculty member at the University of Pennsylvania Law School, and he also served as dean of the Arizona State College of Law. He has argued more than 20 cases before the U.S. Supreme Court.

As a result, I think it is worth taking his comment into consideration as one of many factors we must look at when trying to determine whether Mr. Estrada can be a fair and impartial judge.

The third issue raised in the letter sent to me and published by White House counsel is the fact that I ''referenced the fact that Miguel Estrada has been 'accused' of using an ideological litmus test when assisting Justice Kennedy in the selection of his law clerks.''

This is true. Specifically, I was concerned that two individuals who had tried to get a clerkship with Justice Kennedy believed very strongly that they had been subjected to a litmus test for being too liberal and had been rejected out of hand as a result. Both individuals had been quoted in the press, and while these accusations were by no means dispositive in my decisionmaking, they were yet another example of comments made by those who know Mr. Estrada, or worked with him, that he is simply too ideological for the bench.

When I first heard about these comments, I was concerned but also wary. Because the quotes we were given came from anonymous sources in a news article, I wanted to be sure they were accurate.

But having done a bit more research on the subject, I am confident these two individuals truly believe that a litmus test was applied to them.

Without countervailing evidence, such as a written record or substantive responses to committee questioning, it is difficult to assuage the concerns raised by these applicants and others.

Now that I have outlined some of my concerns about Miguel Estrada, I want to take a few moments to talk about the general state of the nominations process and what I see as a real lack of consultation between the White House and many Members of the Senate in making these nominations. It is this lack of consultation in the nominations process that has led, I think, many in the minority party to become increasingly concerned about individual nominees, about scheduling, and whether or not there will be any real advice and consent for the Senate.

Early on in the Bush Presidency, I sat down with representatives from the White House and we worked out together a system for nominating district court judges in California that works, and works well. Essentially, we set up one nominating committee for each district in California. Each committee is made up of six members, three chosen by the White House and one chosen by me, one chosen by Senator BOXER, and then Senator BOXER and I choose the third representative together. In other words, each committee is made up of three Democrats and three Republicans, an even number. No name can be forwarded to the President for nomination unless a majority of the commission members agree. So this means that at least one member of each party must consent to every name forwarded to the President for consideration. For each vacancy, the commission submits several names, so the President may still choose the

particular nominee. But we have agreed that no individual will be nominated without first receiving at least a majority vote.

This has really worked, Mr. President, and worked well. It is producing well-qualified, nonideological judges for California district courts. These commissions have already worked to produce eight highly qualified, noncontroversial nominees. Five of those have already been confirmed, one more was voted out of committee, and two more were only recently received by the Senate.

Here is the point: The five judges now confirmed spent an average of only 93 days—about 3 months—from the day they were nominated to the day they were confirmed. The process is working.

It was my hope when we established this process that the White House would move quickly to establish similar agreements with other States. After all, the Constitution gives the Senate the responsibility of advising the President on his or her nominees, and consenting or declining to consent to those nominations. It is thus our duty to work with each President in helping to select and to judge the qualifications of nominees to the Federal bench.

This advise and consent role should not be taken lightly. Helping to shape the Federal judiciary may well be one of the most important things any Senator will do during his or her term. The quality and nature of the nominees we pass through the Senate will alter the makeup of the courts for years to come, often long after we have retired from this body.

Too many of my colleagues have found themselves with no ability to consult on nominees to the district court, or even the circuit court. Indeed, in some instances the White House has completely disregarded the advice or even nominated the candidate most opposed by a home State Senator. In other instances, vacancies kept open by the deliberate inaction of the Republican-controlled Senate of recent years may now be filled en masse, with far more ideological nominees, artificially skewing these courts to the right. This is the environment surrounding the nomination of Miguel Estrada. We have before us a nominee who was controversial from the very start.

When the Judiciary Committee tried to find out more about him, we were stymied at every turn: No written record, no work product, and unresponsive answers to our questions at the hearing.

The Constitution established a system of checks and balances, one that has served this Nation well for more than two centuries. The President is the Commander in Chief, but the Congress declares war and funds the military. The President signs treaties, the Senate ratifies them. The President makes nominations, but we advise him in that role and consent to the nominees themselves.

Without any prior advice role, it sometimes becomes necessary for the consent process to become more confrontational, as it has recently. But it is my hope that in coming months we will come together as a Senate—not as Democrats or Republicans, but one body—to work through the nomination issues that have so torn us apart over the last decade.

It is also my hope that this President will work with all Senators, as he has worked with me, to establish a framework for producing moderate, qualified judges for every district court in the Nation. It is my hope that we can make these debates about substance and qualifications, not about ideology or partnership.

I cannot at this time support Miguel Estrada for the D.C. Circuit court. As I pointed out earlier, I might very well support him for a district court position. He is 41. This is a 40- or 50-year position.

This is a debate that will not end today or tomorrow or in the coming months, unless we can all calm the rhetoric, sit down, and discuss how we can move through the process with greater consultation, greater fairness, and a greater respect for the constitutional role of the Senate.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I commend my friend and colleague from California for an excellent presentation to the Senate outlining the historic responsibilities that the executive and the Senate have in meeting all of our responsibilities to ensure we have qualified members on the courts of this country. She gave an excellent analysis of both the past activities of the court and rebutting a number of the misrepresentations that have been made about those who have raised serious questions about this nominee.

I thought the Senator from California summarized in an important way the compelling reasons why many of us have reservations about this nominee. I thank her very much for the statement, and I hope our colleagues will pay close attention to it.

One of the most important functions of the Senate is its constitutionally mandated advise-and-consent role in the selection of judges. This role is meant to ensure the appointees to the Federal courts are independent and fair judges, who hear all cases with an open mind, independent of the political process but also of personal ideology.

We have all asked at one time or another what is the criteria we use in the advise-and-consent role. I have over time supported the idea that, obviously, enormous deference is given at the time a President is elected to the fact that he or she ought to be able to have the advisers of their choice. That is a period of time, before the President's term expires, when there ought to be at least a willingness to give any benefit of the doubt to those nominees.

Then we have independent agencies which go on for a period of time beyond the time of a given President, and we advise and consent on those nominees. And then we have the Federal courts. If we make a mistake in terms of a particular judge, we have the circuit courts to which matters can be appealed, and then ultimately the Supreme Court. Our highest value is focused on the Supreme Court—lifetime appointments, and under the distribution of powers defined in the Constitution, a shared power with the President appointing and the Senate giving its advice and consent. It is a shared power.

Many assume the Senate of the United States should rubberstamp a nominee; if we cannot find something wrong with a nominee, that we should give our stamped approval. That clearly is in conflict with the views of our Founding Fathers and in conflict with the great traditions of this institution.

We have a very high standard when it comes to this particular court because, although it is not the Supreme Court, it is a lesser court, of the very special responsibilities and unique responsibilities it has. Therefore, we have a duty to find out the views and commitments of a nominee to the core values of the Constitution, not expecting that a nominee is going to answer a question about a particular case or a particular outcome, but talk about their views, their developed views, their mature views about constitutional values, issues on civil rights, issues on the first amendment, on the role of the Congress in terms of our responsibilities in meeting the general welfare clause, the separation of church and State, the issues of privacy and other civil rights issues—all of these matters which are of enormous importance and consequence to the people of this country in which we have seen a generation struggle and individuals in a number of instances give their lives to these causes.

We have a very special and important responsibility to make sure those words that are above the Justice Department, ''Equal Justice Under Law,'' are going to be equal justice under law for every person in this country.

There is, I believe, a responsibility, not just to any member of the Judiciary Committee, not just to the Judiciary Committee, but to the American people, that a nominee has because we act as their agents in terms of our votes, and there is a responsibility to the American people that a nominee will at least talk about the Constitution and talk about these fundamental values and what the Constitution means. That has been the time-honored tradition of a nominee, going back for pretty much the history of this country.

In this instance, there is such a complete contrast. There is an individual who will not give any information, or

respond to any of the constitutional issues he was asked, not just by any single member, but by all the members, and also a refusal to provide the material which other nominees for other positions have provided in the past. Judge Bork provided material when he was a nominee for the Supreme Court; Brad Reynolds, when he was being considered as head of the Civil Rights Division, and other nominees, Republicans and Democrats alike. With Mr. Estrada, no; no, we are not going to provide that information to the Judiciary Committee. No, we are not going to answer questions about views on the Constitution. No, we are not going to provide past work. No, we are not going to provide that. No, we are not going to give that information. And yet we expect somehow the Senate will go ahead and give its approval to a nominee who comes to this nomination.

I congratulate Mr. Estrada. He comes to this position on the basis of very humble roots and a life of personal achievement. Does that guarantee one will hold a position on the district court because one has had that experience? Should that entitle someone? Should one think of serving on the courts as an entitlement or as a reward? Clearly not. There are too many issues involving the everyday life experience of American citizens that are being decided by that court and that will affect the lives of individuals in this country. Therefore, this is too important a position for anyone, as talented as they are and as unique as their past experience, to expect they are just going to be in a privileged position and not have to be responsive to the inquiries of the members of the committee.

That is the dilemma in which we find ourselves with this particular nominee. The Senator from California reviewed the facts, and I wish to address them as well this afternoon.

Mr. President, we also heard important testimony about the judgment, temperament, and the commitment to statutory projections and core constitutional values that are necessary to serve as a Federal judge, especially on a court as important as the U.S. Court of Appeals for the DC Circuit. Then we have had the assault and attack on those who question his core commitment to the values of the Constitution, but the fact is, we do not know because he refused to answer the most basic questions.

We heard the pillorying by many who expressed opinions in opposition to Mr. Estrada, and their characters were assaulted as well, I think unfairly and unjustly. We would not have to resort to the opinions of others if Mr. Estrada had been willing to respond to the questions.

Mr. Estrada has refused to answer the basic questions posed to him in the confirmation process. As I mentioned, the White House refused to release the materials necessary for a full review of his qualifications.

With this troubling and inadequate record, I do not believe Mr. Estrada should be confirmed to this important court, the second most powerful court in the Nation.

The Federal courts have the power to make far-reaching decisions affecting lives of people and the life of our Nation. We have the responsibility to ensure that the people who serve on the courts will protect important constitutional and statutory rights. I do not believe Mr. Estrada is such a person.

Although he is a distinguished legal advocate, his commitment to core constitutional values is far from clear. Mr. Estrada prevented us from learning much at all about his legal and constitutional philosophy, and throughout this process he has evaded even the most basic questions concerning how he would serve as a judge. In addition, Mr. Estrada and the administration refused to produce the documents from Mr. Estrada's time in government practice that might have helped us answer questions. So these are very serious problems, and they would require this body to reject any nominee who came before it.

Unfortunately, some of our Republican colleagues have decided it is in their best interest to claim that we are opposing Mr. Estrada because he is Latino. This irresponsible accusation is absurd. It is belied by the strong history of those who are members of our party who have fought for opening the doors for all minorities in America, including Latinos. The Republican accusation is also dangerous and destructive. It has even been said that if we did not confirm Mr. Estrada to the DC Circuit, we would shut the door on the American dream of Hispanic Americans everywhere. Nothing could be further from the truth. As they say in sports, let's look at the record. In fact, President Clinton nominated 11 Latinos to the Nation's most powerful courts. He nominated 21 Latinos to the district courts. For these nominees, achieving the American dream meant being sensitive to the core values that make this country strong, that are embodied in the words at the entrance to the Supreme Court: ''Equal justice under law.''

Nonetheless, Republicans unfairly blocked many of these nominees. Not only these nominees, but I remember Bill Lann Lee who was an Asian American, who was denied the opportunity to have a vote. He was absolutely an extraordinary and distinguished nominee whose life experience in many respects was similar, if not more compelling, in terms of his own personal success. He came from extraordinarily humble beginnings. He did not speak the language. He worked his way through school, was able to get a scholarship, I believe to Yale University. He had an absolutely distinguished record, went on as a lawyer to help knock down the walls of discrimination. He was selected as the head of the Civil Rights Division. He had just about every defendant against whom he had tried a case over the period of his career—a young man came before the committee and said: Look, we differed with Bill Lann Lee on the issues of the facts, but we want to tell this committee that this was an extraordinary lawyer who did a lawyer's job in understanding the law when arguing his case. We had nothing but the highest regard and respect for his presentation, his ability, and the way he conducted himself. Senators testified to this before the Judiciary Committee.

But was Bill Lann Lee able to get a vote in the Judiciary Committee? No, absolutely not. Do you think he was able to get consideration on the floor of the Senate? No, he was denied that. With all of the hopes and dreams there were for hundreds of thousands, or even millions, of Asian Americans and the hopes and dreams of all of his family and relatives, he was denied confirmation and turned back. We will let the other side give the explanations for that. But this outstanding nominee, who eventually had a temporary appointment to the Justice Department and did an extraordinary job, was denied the opportunity to be voted on.

The Bush White House, by contrast, until a short time ago, has nominated only one Latino to the court of appeals, and that is Mr. Estrada.

One of the most important functions of the Senate is constitutional advice and consent. We cannot perform this function if we are not allowed access to the nominee's record, and by refusing to provide the Senate with the most important memoranda produced by Mr. Estrada when he was in the Solicitor's Office, the administration is trying to prevent us from performing our constitutional duty.

The administration's refusal to provide these memoranda is not based in law or precedent. Past administrations have disclosed the legal memos in connection with both judicial and executive nominations. We have repeatedly made the administration aware of the clear precedence on the disclosure of confidential internal documents relating to the nominations of several judges, including Robert Bork to become Associate Justice on the Supreme Court, Brad Reynolds as Assistant Attorney General, Benjamin Civiletti to become Attorney General, Stephen Trott to become a judge on the Ninth Circuit, Justice Rehnquist to become Chief Justice.

In some of those instances, they made those memoranda available only to the members of the committee, and then they asked us for the memoranda back. Agreements were worked out with the members of the Judiciary Committee. But not with regard to this nominee. We were effectively denied all of this. Justice Rehnquist, Bradford Reynolds, Assistant Attorney General for Civil Rights Benjamin Civiletti to become Attorney General, Robert Bork to become an Associate Justice of the Supreme Court—we were able to get

those memoranda. But not from Mr. Estrada. They told us: You cannot have the memoranda. And we have a nominee who will not answer any questions on this. Then Members are asked why they are concerned about this process.

Indeed, the administration has itself disclosed the past memoranda for purposes of evaluating its nominees. The Bush White House disclosed legal memoranda written by an attorney in the White House Counsel's Office in connection with the nomination of Jeffrey Holmstead for the position of assistant administrator at the Environmental Protection Agency. They are prepared to give all of the memoranda to the appropriate committees for Jeffrey Holmstead, when he was in the White House Counsel's Office in connection with a position as assistant administrator of the Environmental Protection Agency, but they will not give it to the Senate for a nominee for the DC Circuit in our Nation's Capital. Why is that? Why do they give it on the one hand and refuse to give it on the other? What is the justification that they do not have to do it?

Then they list a number of prominent figures, many of them Democrats, who say they are under no obligation to do it. But clearly, in the past, under Republicans and Democrats, when there has been an interest in trying to reach accommodation and to have an understanding about the nominees, there has been a willingness to do it. But, no, they are not going to do it.

We can only assume that the Administration's inconsistent position means that it has something to hide in Mr. Estrada's memoranda.

Given the administration's recalcitrance about providing the Estrada memoranda, the Senate is left with very little to review to assure ourselves that Mr. Estrada has the commitment to constitutional and statutory protections necessary to serve on the DC Circuit. What little we do know is very troubling because Mr. Estrada's direct supervisor in the office has raised questions about whether Mr. Estrada had the necessary temperament to sit on the DC Circuit.

As my friend and colleague from California has pointed out, Mr. Bender has stated that those statements he made were entirely true and he still stands by them. We will hear a brutal assault on Mr. Bender and his character. We have heard it previously in the Judiciary Committee, and we have heard it here. He is an outstanding individual, a former clerk to Justice Frankfurter. He argued before the Supreme Court, had an extraordinary and distinguished record, but we will hear him assaulted because he has questioned the temperament of Mr. Estrada.

These serious allegations require some response on the merits and some evidence to the contrary. Instead, some of my colleagues in the Senate have responded by attacking Mr. Bender.

Mr. Bender is not alone in the assessment of Mr. Estrada. It has been reported that some of Mr. Estrada's colleagues have said he is not open-minded and he ''does not listen to other people.''

After an in-depth meeting with Mr. Estrada, a member of the Congressional Hispanic Caucus said he appeared to have a short fuse and did not have the judicial temperament necessary to be a judge. According to the Puerto Rican Legal Defense Fund, with whom Mr. Estrada met, he is not even-tempered and he became angry during their meetings with him and even threatened the group with legal action because they raised concerns about his record.

Now, we have that information, but we are denied any information on the other side. Anyone who has questioned Mr. Estrada finds they are questioned themselves. But we are denied the information that may reflect an entirely different temperament.

Some of our Republican colleagues have said Democrats who oppose Mr. Estrada's nomination are motivated by his ethnic background, but these reports that raise serious concern about Mr. Estrada come from some of the most important Latino organizations in the country. These groups correctly point out that Mr. Estrada had not taken any steps to reflect or serve his community and has never provided any pro bono legal expertise, supported or joined or participated in events of any organization dedicated to serving or advancing the Latino community, never made any efforts to open the doors of opportunity for Latino law students or junior lawyers. Mr. Estrada appears to be committed neither to his community nor to an open, fair, and impartial judicial process.

Mr. Estrada has attempted in the past to limit the first amendment rights of minorities. I have inquired about his standing in this particular case. He sits on the board of the Center for Community Interest which advocates for police tactics that have often led to harassment and racial profiling, and his efforts reflect a lack of concern for important American ideals.

In a case heard by the Supreme Court, Chicago v. Morales, he represented the U.S. Conference of Mayors in an amicus brief defending a tenant-loitering ordinance in Chicago. The Center for Community Interest also submitted a brief in support of the ordinance. The Chicago antiloitering ordinance applied to any group of two or more individuals who gather, with no apparent purpose, in any public place, including streets, parks, restaurants, or any other location open to the public, and mandated if a police officer reasonably believed any of the individuals to be a gang member, he could order all of the individuals, including those not suspected of gang membership, to disperse and remove themselves from the area. The Supreme Court found the ordinance violated the due process clause of the 14th amendment. It held the ordinance was unconstitutionally vague because it did not provide adequate notice of the prescribed conduct and did not set minimum guidelines for law enforcement.

At his hearing, Mr. Estrada suggested that minority lawmakers supported the antiloitering ordinance. This is false. In fact, the ordinance was initiated by residents in a predominantly white neighborhood, and drawn up by several white aldermen. The majority of the African American aldermen on the Chicago City Council voted against it. Several aldermen compared it to an apartheid-era law in South Africa. When the case came before the Supreme Court, many of the civil rights minority groups joined amicus briefs against the ordinance, including the National Council of La Raza, Mexican American Legal Defense, and the NAACP.

Before I come back to that issue, I take a moment to discuss the opposition to Mr. Estrada's nomination that has been voiced by some of these groups. Let me finish with the legal defense. Now we had the holding by the Supreme Court in finding that the Chicago ordinance was unconstitutional. The Supreme Court said the broad antiloitering ordinance in the Chicago-Morales case was unconstitutional. Mr. Estrada devoted man-hours in defending the City of Annapolis following this against the challenges to the Constitution of a similar antiloitering ordinance. When the NAACP challenged the ordinance, he would take the city's case all the way to the Supreme Court, if necessary, free of charge. Mr. Estrada lost that case, too, however, after a district court struck down the law as unconstitutional.

Here he went all the way to the Supreme Court on the antiloitering. The Supreme Court made a finding, and then he takes the time to go right back to another antiloitering ordinance and insists on taking all of that and it was struck down in the district. It is difficult to understand on an issue such as that why he would have been so involved in that kind of continued activity when it reaches issues involving the first amendment.

I am deeply concerned by Mr. Estrada's intense focus on enforcing an antiloitering ordinance. As MALDEF noted, many of the individuals who are targeted under such ordinances are minorities. Often Latino urban youth are harassed by police enforcing such ordinances, and day laborers—most often newly arrived immigrants—congregating on particular streets waiting to be offered a manual labor job are often targeted. Mr. Estrada does not seem to appreciate this effect on the minority population and did not let it affect his defense of those statutes.

Other statements by Mr. Estrada raise additional concern about his commitment to civil rights, expressing skepticism about affirmative action. The DC Circuit has become closely divided on affirmative action and public employment programs, and a narrow

majority of the DC Circuit held the Federal Government cannot require broadcasters to conduct targeted outreach to minorities and women even for the purpose of increasing the pool of qualified applicants.

According to MALDEF, in meetings where Mr. Estrada has answered questions, he has made statements about affirmative action, calling into question whether he would find a compelling interest to justify such programs. Mr. Estrada indicated he has not raised the issue of diversity in places where he has worked and he would not be particularly vigilant about giving opportunities to Hispanic clerks. Mr. Estrada was asked about the possible reason for the lack of minority law clerks by a reporter for USA Today. According to the article, Mr. Estrada dismissed statistics showing little representation of minorities and indicated if there was some reason for underrepresentation, it would be something to look into, but I don't have any reason to see it as other than a trend in society. This is contrasted with quotes of others saying there are a variety of reasons for the lack of minority clerks.

All of these aspects of Mr. Estrada's prior work indicate he would not bring a fair and open mind and sensible judicial temperament and commitment to civil rights and equal opportunity to the bench.

During the course of the hearing on Mr. Estrada, he did little to allay our concerns about his record. In fact, many concerns were actually intensified by Mr. Estrada's unwillingness to respond to even the most basic and innocuous questions about his views. For instance, Mr. Estrada refused to name a single Supreme Court case of which he was critical.

In addition, Chairman LEAHY asked Mr. Estrada whether an employer or school could take race or ethnicity into consideration in hiring admissions and Mr. Estrada refused to give any opinion on the matter. Chairman *Leahy* asked Mr. Estrada what he thought about the Supreme Court decision in Romer v. Evans, a decision he was purported to criticize, and he refused to agree whether he agreed with the decision, stating because he did not hear the arguments he could not have an opinion. At the same time, Mr. Estrada gave contradictory answers in response to a series of questions about whether he had an applied ideological litmus test to clerks.

I take a moment or two again to underline the importance of the DC Circuit Court. Mr. Estrada's nomination is particularly troubling, given the importance of the DC Circuit to issues of concerns for a broad range of Americans seeking to enforce their basic rights. The DC Circuit is widely regarded as the second most important court in the United States, behind only the Supreme Court. With a unique and prominent role among the Federal Courts of Appeal, particularly in the area of administrative law, it has exclusive jurisdiction over many workplace, environmental, civil rights, and consumer protection statutes. Because the Supreme Court grants reviews of only a small number of lower court decisions, most administrative law is established by the DC Circuit. Despite the importance of the DC Circuit to a broad array of Americans, some Republicans have worked to undo any balance on the court. During the Clinton administration, the Senate, controlled by Republicans, refused to approve two of President Clinton's nominees to the DC Circuit, Elena Kagan and Allan Snyder.

Last fall's hearing for Mr. Estrada was the first hearing for a nominee to the DC Circuit in 5 years. No questions were raised about the qualifications of either Ms. Kagan or Mr. Snyder. Both had stellar qualifications. Nevertheless, hearings for these nominations were delayed. After they finally received hearings, they were refused a vote in the committee or on the floor. Many Republicans argued that the DC Circuit did not need any more judges. Yet shortly after President Bush was elected, two judges were nominated for the court.

I see my good friend and colleague from New York here, Senator SCHUMER. I know others want to speak about this important issue.

The DC Circuit Court has a major influence on decisions involving the National Labor Relations Board. The National Labor Relations Board is the arbiter of disputes between workers and employers. We have a process where that board is to work and work effectively. There has been enormous deference given to administrative boards by the circuits generally, and by the DC Circuit in particular, but that is no longer the case. We are finding increasing numbers of decisions that are made by the National Labor Relations Board appealed to the DC Circuit and effectively overturned. This has an enormous impact and affect on workers' rights, with all of the implications that workers' rights have in terms of health care policy, in terms of wages, and in terms of pensions.

This DC Circuit Court has great influence on whether our occupational health and safety laws are going to be enforced.

We have seen over the period of recent times a reduction in funding for the enforcement of these laws. That has been true. But, nonetheless, some of these find their way on up to the DC Circuit Court. Having someone there who is going to understand the law, understand the importance of that legislation, and who can interpret that legislation in a fair and reasonable way is going to be enormously important if we want safety in the workplace. The DC Circuit Court is the court that makes those judgments and decisions.

We have seen what has happened, even since OSHA has been enacted. We have reduced the number of deaths in the workplace by half.

We see a number of other new challenges coming in the workplace in more recent times. Nonetheless, it has been effective legislation.

Do you care about wetlands, do you care about clean air, do you care about clean water? The D.C. Circuit Court is the final court that is going to be making judgments on these environmental issues. We have seen where the administration has gone ahead and cut back on the protection of those environmental issues. We have already seen the appeals working their way through the courts and they are going to end up to the DC Circuit courts. Do you care about clean air? Do you care about clean water? Do you care about the environment? The DC Circuit Court is where these matters are going to be decided.

Do we have anything from Mr. Estrada to indicate whether he has any interest at all in protecting the environment? Whether he has any interest at all in workplace justice? Any interest at all in workplace safety? It just goes on from there.

The D.C. Circuit will also hear cases on civil liberties. In the past, the wiretap issue has come up in the appeals process. Are we going to be a country that protects its Constitution?

The list goes on, issue after issue, defining what this country stands for. In terms of protecting rights, the D.C. Court is the court. To stonewall the committee on each and every one of these subjects, as the nominee has done, refusing to talk about any of them, I think reflects a contemptuous attitude towards the whole nomination process. In that way, he is not worthy to receive the support of the Senate of the United States.

To reiterate, one of the most important functions of the Senate is its constitutionally mandated advice and consent role in the selection of Federal judges. This role is meant to ensure that appointees to the federal courts are independent and fair judges who hear all cases with an open mind, independent not only of the political process but also of personal ideology.

Miguel Estrada does not fit this model. He lacks the judgment, temperament, and commitment to statutory protections and core constitutional values that are necessary to serve as a Federal judge, especially on a court as important as the United States Court of Appeals for the D.C. Circuit. He has refused to answer many basic questions posed to him in the confirmation process, and the White House has refused to release the materials necessary for a full review of his qualifications. On this troubling and inadequate record, Mr. Estrada should not be confirmed to this important court, the second most powerful court in the nation.

We cannot stand by and allow a Republican White House and Republican-controlled Senate to steamroll the confirmation of controversial nominees like Mr. Estrada, who would undermine

the important role of the Federal courts as a place for a full, fair, and impartial hearing. The Federal courts have the power to make far-reaching decisions affecting the lives of our people and the life of our Nation. We have the responsibility to ensure that the people who serve on these courts will protect important constitutional and statutory rights.

Mr. Estrada is not such a person. Although he is a distinguished legal advocate, his commitment to core constitutional values is far from clear. Mr. Estrada has prevented us from learning much at all about his legal or constitutional philosophy. Throughout this process, he has evaded even the most basic questions concerning how he would serve as a judge. In addition, Mr. Estrada and the administration have refused to produce documents from Mr. Estrada's time in government practice that might help us answer questions about his record and the approach he would bring to judging.

These are very serious problems, and they would require this body to reject any nominee who came before it. Some of our Republican colleagues, unfortunately, have decided it is in their interest to claim that we are opposing Mr. Estrada because he is Latino. This irresponsible accusation is absurd. It is belied by a strong history in the Democratic Party of opening doors for all minorities in America, including Latinos. The Republicans' accusation is also dangerous and destructive.

It has even been said that if we do not confirm Mr. Estrada to the D.C. Circuit, we would ''shut the door on the American dream of Hispanic-Americans everywhere.'' Nothing could be further from the truth. In fact, President Clinton nominated 11 Latinos to the Nation's powerful appellate courts. He nominated 21 Latinos to the district courts. For these nominees, achieving the American dream meant being sensitive to the core values that make this country strong, and that are embodied by the words above the entrance to the Supreme Court: ''equal justice under law.'' Nonetheless, Republicans unfairly blocked many of these nominees.

The Bush White House, by contrast, has, until last week, nominated only one Latino to the courts of appeals: Mr. Estrada.

The White House and some Senate Republicans have complained that Senate Democrats have not supported Mr. Estrada because he is Latino. We should not lightly accuse other Members of this body of such prejudice, but make no mistake: That is exactly what some Republicans are accusing Democrats of. The record belies this accusation.

Until last week, President Bush had nominated 130 people to the Federal courts. Out of those 130 nominees, there were only 8 Latinos. Six of these Latino nominees were confirmed last session when Democrats controlled the Senate. The record is clear that Senate Democrats are eager to see the diversity of the Federal bench increased by confirming Latino nominees, even when those nominees come from a Republican White House.

Senate Democrats have eagerly confirmed Latino nominees, even when those Latino nominees are relatively conservative. So when some Members of the Senate say that Democrats have a different standard for Latino nominees, that accusation is unfounded.

Nonetheless, these accusations have continued. It is a dangerous and irresponsible attempt to play politics with important issues of race, and frankly it is beneath the dignity of this body. For example, Senator LOTT has said quite bluntly that Democrats ''don't want Miguel Estrada because he's Hispanic.''

Senator HATCH has said that Democrats are creating a glass ceiling for Latinos, so that ''if they do not think a certain liberal way . . . then they are not good enough.''

Senator DOMENICI has said that he is perilously close to saving our opposition to Miguel Estrada's nomination is because of his race. Senator DOMENICI is right about one thing, these statements are perilous.

They are also just plain wrong. During the last Democratic administration, 23 Latino nominees were confirmed to the Federal court—more than in any prior administration, Republican or Democrat.

It has been Senate Republicans who have unfairly blocked the confirmation of Latino nominees. The Republican-controlled Senate refused to confirm eight Latino nominees. No one accused Republicans of prejudice. Jorge Rangel and Enrique Moreno, both nominated to the Fifth Circuit Court of Appeals from Texas, were not even afforded hearings by the Republicans. Still, no one cried prejudice.

Mr. Rangel and Mr. Moreno each waited more than a year in the Senate. When Senate Republicans refused to give these nominees a hearing, their nominations were returned to the White House. President Clinton renominated Enrique Moreno, but President Bush withdrew his nomination. In his place, President Bush nominated Judge Pickering and Justice Owen, two divisive and controversial nominees with very troubling records on issues such as civil rights.

Just as disturbing, Senate Republicans expressed the notion that Mr. Moreno may not have been qualified for the position. Mr. Moreno, like Mr. Estrada, was a Harvard-educated lawyer who was adjudged well-qualified by the American Bar Association. Mr. Moreno was eminently qualified for the position, but Senate Republicans disparaged him without even affording him a hearing. Still, we did not say this was the result of bigotry.

Other Hispanic-Americans who were never confirmed by the Republican-controlled Senate include Christine Arguello, nominated to the Tenth Circuit Court of Appeals from Colorado; Ricardo Morado, nominated to the District Court in Texas; and Anabelle Rodriguez, nominated twice to the District Court in Puerto Rico. None of these qualified individuals were confirmed by the Republicans.

Mr. Estrada, on the other hand, received a hearing from the Democratic-controlled Senate. We wanted to look into his record and see what kind of judge he would be. But we were blocked at every turn. The Bush administration refused to let us look at some of Mr. Estrada's most important work as a Deputy Solicitor General in the Justice Department. Mr. Estrada himself has refused to answer questions about his views on the law and the courts.

We have serious concerns about Mr. Estrada that have nothing to do with his ethnic background. We have been prevented from learning anything about him. We certainly have not been allowed to learn enough to justify support for this nomination.

Our Republican colleagues also claim that Mr. Estrada ''has tremendous support among Hispanic people.'' In fact, major Latino organizations have raised strong concerns about Mr. Estrada. The Congressional Hispanic Caucus has opposed his nomination. Other Latino organizations that have opposed or raised concerns about Mr. Estrada include: the Mexican American Legal Defense Fund, the Puerto Rican Legal Defense Fund, the National Association of Latino Elected and Appointed Officials, the National Council of La Raza, the California La Raza Lawyers, the Southwest Voter Registration Project and the Illinois Puerto Rican Bar Association.

These groups represent a wide array of views and the broad diversity of the Latino community. Listen to what they say about him, and why they oppose him. The Congressional Hispanic Caucus has said:

> The appointment of a Latino to reflect diversity is rendered meaningless unless the nominee can demonstrate an understanding of the historical role courts have played in the lives of minorities in extending equal protections and rights; has some involvement in the Latino community that provides insight into the values and mores of the Latino culture in order to understand the unique legal challenges facing Latinos; and recognizes both the role model responsibilities he or she assumes as well as having an appreciation for protecting and promoting the legal rights of minorities who historically have been the victims of discrimination.
>
> Based on the totality of the nominee's available record and our meeting with him, Mr. Estrada fails to meet the CHCs criteria for endorsing a nominee.
>
> In our opinion, his lack of judicial experience coupled with a failure to recognize or display an interest in the needs of the Hispanic community do not support an appointment to the federal judiciary.

There is no mention of the fact that Mr. Estrada is conservative. The Congressional Hispanic Caucus did not come out against the other Latino nominees put forward by the Bush administration. Their opposition is grounded in the fact that Mr. Estrada

himself does not reflect the views of the Latino community, and that he has shown to be unable or unwilling to set aside his conservative ideology in his legal analysis.

The Mexican American Legal Defense Fund issued a statement opposing Mr. Estrada last Monday, stating:

The most difficult situation for any Latino organization is when a President nominates a Latino who does not reflect, resonate or associate with the Latino community, and who comes with a predisposition to view claims of racial discrimination and unfair treatment with suspicion and doubt instead of with an open mind. Unfortunately, the only Latino who President Bush has nominated in two years to any federal circuit court in the county is such a person. President Bush nominated Mr. Estrada to the D.C. Circuit Court of Appeals.

After a thorough examination of his record, his confirmation hearing testimony, and his written answers to the U.S. Senate, we announce today our formal opposition to his nomination.

Is this the racism that Senator DOMENICI is perilously close to claiming? No. These groups and others raise serious concerns about Mr. Estrada's ability or willingness to be sensitive to the needs Latino and other minority communities.

Other groups have echoed these concerns. The Puerto Rican Legal Defense Fund also oppose his nomination. They have stated:

We strongly believe that Mr. Estrada's nomination should be opposed and rejected. Potential nominees who aspire to such important positions as circuit judges should be better qualified and possess the unquestioned ability to be fair, open-minded and committed to equal justice for all Americans. They should be connected to the real-world concerns of the people who will be governed by their decisions. They should also be even-tempered. In our view, Mr. Estrada clearly does not possess the qualities necessary to be placed in such an important position of trust—for a lifetime—interpreting and guarding the rights of ordinary Americans.

These groups and others like them raise serious concerns about this nominee. They certainly are not opposed to Mr. Estrada because of his race, and neither are the Senate Democrats who feel that this nominee lacks the judgment and temperament to serve on the Court of Appeals for the D.C. Circuit.

One of the most important functions of the Senate is our constitutional advice and consent role. We cannot perform this function, however, when we are not allowed access to a nominee's record. By refusing to provide the Senate with the important memoranda produced by Mr. Estrada when he was in the Solicitor General's office, the administration is trying to prevent us from performing our constitutional duty.

The administration's refusal to provide these memoranda is not based in law or precedent. Past administrations have disclosed legal memos in connection with both judicial and executive nominations, including the nominations of justice Rehnquist to be Chief Justice of the United States, and of Stephen Trott to be a judge on the Ninth Circuit.

Indeed, this administration has itself disclosed past memoranda for purposes of evaluating its nominees, including the nomination of Jeffrey Holmstead for the position of Assistant Administrator at the Environmental Protection Agency. We can only assume that the administration's inconsistent position means that it has some thing to hide in Mr. Estrada's memoranda.

Given the administration's recalcitrance about providing Mr. Estada's memoranda, the Senate is left with very little to review to assure ourselves that Mr. Estrada has the commitment to constitutional and statutory protections necessary to serve on the D.C. Circuit. What little we do know is very troubling. Mr. Estrada's direct supervisor in the Office of the Solicitor General has raised questions about whether Mr. Estrada has the necessary temperament and moderation to sit on the D.C. Circuit.

Mr. Bender is not alone in this assessment of Mr. Estrada. It has been reported that some of Mr. Estrada's colleagues have said that he is not open-minded and that he ''does not listen to other people.'' After an in-depth meeting with Mr. Estrada, a member of the Congressional Hispanic Caucus stated that Mr. Estrada appeared to have a ''very short fuse'' and that he did not ''have the judicial temperament that is necessary to be a judge.'' According to the Puerto Rican Legal Defense Fund, with whom Mr. Estrada met, he is not ''even-tempered''—indeed he became angry during their meetings with him, and he even threatened the group with legal action because they had raised concerns about this record.

Some of our Republican colleagues have said that Democrats opposed to Mr. Estrada's nomination are motivated by his ethnic background, but these reports that raise serious concerns about Mr. Estrada come from some of the most important and committed Latino organizations in the country.

These groups correctly point out that Mr. Estrada has not taken any steps to reflect or serve his community. He has never provided any pro bono legal expertise to the Latino community. He has never joined, supported, volunteered for or participated in events of any organization dedicated to serving and advancing the Latino community. And he has never made any efforts to open doors of opportunity to Latino law students or junior lawyers. Mr. Estrada appears to be committed neither to his community, nor to an open, fair and impartial judicial process.

Mr. Estrada has attempted in the past to limit the first amendment rights of minorities. He even sits on the board of the Center for Community Interest, which advocates for police tactics that have often led to harassment and racial profiling in minority communities. His efforts reflect a startling lack of concern for important American ideals.

In a case heard by the Supreme Court, Chicago versus Morales, Mr. Estrada represented the U.S. Conference of Mayors in an amicus brief defending an antiloitering ordinance in Chicago.

The Chicago antiloitering ordinance applied to any group of two or more individuals who gather with ''no apparent purpose'' in any public place including streets, parks, restaurants, and any other location open to the public. The ordinance allowed police to disperse any group of two or more individuals, so long as they reasonably believed any of the individuals to be a gang member. The Center for Community Interest also submitted a brief in support of the ordinance. Many civil rights and minority groups joined amicus briefs against the ordinance, including the National Council of La Raza, the Mexican American Legal Defense Fund, and the NAACP.

The Supreme Court found that the ordinance violated the Due Process Clause of the fourteenth amendment.

I want to take a moment here and discuss the opposition to Mr. Estrada's nomination that has been voiced by some of the groups that argued against the Chicago ordinance. These groups, including the National Council of La Raza and MALDEF have understandably opposed Mr. Estrada's nomination. Some of my Republican colleagues would have you believe that this opposition, which I share, is somehow on account of his ethnic background. It is not. One of our colleagues has said of Democrats that ''if you're a conservative and a minority, we hate you.'' In fact, the Democratic-led Senate has confirmed a number of Latino judges who have been nominated by the conservative White House. We confirmed Judge Christina Armijo, Judge Phillip Martinez, Judge Jose Martinez, Magistrate Judge Alia Ludlum, Randy Crane, and Judge Jose Linares.

Mr. Estrada is opposed, not because he is Latino, but because what little record we have been allowed to review shows that he is not concerned with important constitutional rights, and he is unable to separate his ideology from his legal analysis.

Even after the clear rebuke from the Supreme Court about broad antiloitering ordinances in Chicago versus Morales, Mr. Estrada devoted many hours to defending the City of Annapolis against challenges to the constitutionality of a similar antiloitering ordinance. When the NAACP challenged the ordinance, Mr. Estrada ''offered to take the city's case all the way to the U.S. Supreme Court, if necessary, free of charge.'' Mr. Estrada lost that case too, however, after a Federal District Court struck down the law as unconstitutional.

I am deeply concerned by Mr. Estrada's intense focus on enforcing antiloitering ordinances. As MALDEF has noted,

many of the individuals who are targeted under such ordinances are minorities, and

often, Latino urban youth are harassed by police enforcing such ordinances. Day laborers who are most often newly arrived immigrants who look for work by congregating on particular public streets to wait to be offered a manual labor job for the day

are often targeted under these ordinances. Mr. Estrada did not seem to appreciate this effect on the minority population, and he certainly did not let it affect his defense of those statutes.

Other statements by Mr. Estrada raise additional concerns about his commitment to civil rights. For instance, Mr. Estrada has expressed skepticism about affirmative action. The D.C. Circuit has recently been closely divided on affirmative action in public employment programs. A narrow majority of the D.C. Circuit recently held that the Federal Government cannot require broadcasters to conduct targeted outreach to minorities and women even for the purpose of increasing the pool of qualified applicants.

According to MALDEF, in meetings where Mr. Estrada has answered questions since his nomination, he has made statements about affirmative action that call into question whether he would find a compelling interest to justify such programs. Mr. Estrada indicated that he had not raised the issue of diversity in places where he has worked, and that he would not be particularly vigilant about giving opportunities to Hispanic clerks.

Mr. Estrada was asked about the possible reasons for the lack of minority law clerks by a reporter for USA Today. According to the article, Mr. Estrada ''dismissed the statistics showing little representation of minorities'' and stated that ''if there was some reason for under-representation, it would be something to look into, but I don't have any reason to think it is anything other than a reflection of trends in society.'' His quote was contrasted with statements by others that a variety of reasons are to blame for the lack of minority clerks.

All of these aspects of Mr. Estrada's prior work indicate that he would not bring a fair and open mind, a sensible judicial temperament, and a commitment to civil rights and equal opportunity to the bench.

Mr. Estrada's hearing did little to allay our concerns about his record. In fact, many concerns were actually intensified by Mr. Estrada's unwillingness to respond to even the most basic and innocuous questions about his views. For instance, Mr. Estrada refused to name a single Supreme Court case of which he was critical. In addition, Chairman LEAHY asked Mr. Estrada whether an employer or a school could take race or ethnicity into consideration in a hiring or admissions decisions. Mr. Estrada refused to give any opinion on the matter.

Chairman LEAHY asked Mr. Estrada what he thought about the Supreme Court decision in Romer versus Evans—a decision he was reported to have criticized. Mr. Estrada again refused to answer whether he agreed with the decision, stating—incredibly—that because he did not hear the arguments in the case, he could not have an opinion.

At that same time, Mr. Estrada gave contradictory answers in response to a series of questions about whether he had applied an ideological litmus test to clerks. Mr. Estrada, along with other former law clerks of Justice Anthony Kennedy, helps the Justice in choosing clerks by interviewing applicants. Two prospective clerks stated in an article in the Nation last September that Mr. Estrada told them that he screened clerks for Justice Kennedy in order to prevent Justice Kennedy from hiring any liberal clerks, apparently in response to Justice Kennedy's voting to strike down the anti-gay rights statute at issue in Romer versus Evans.

Senator SCHUMER asked Mr. Estrada whether he ''had ever told anyone that you do not believe any person should clerk for Justice Kennedy because that person is too liberal, not conservative enough, because they didn't have the appropriate ideology, politics, or judicial philosophy or because you were concerned that person would influence Justice Kennedy to take positions you did not want him taking?'' Mr. Estrada answered unequivocally that he had not. After the break for lunch, however, Mr. Estrada revised his answer saying:

there is a set of circumstances in which I would consider somebody's ideology, if you want to call it that, in trying to interview somebody for Justice Kennedy, whether on the left or on the right. And that is to say, if I thought that there was somebody who had views that were so strongly held on any subject, whether, you know, the person thinks there ought not to be the death penalty or whether the person thinks that the income tax ought not to be constitutional or anything, if I think that the person has some extreme view that he will not be willing to set aside.

Again, when Senator SCHUMER repeated his earlier question, Mr. Estrada hedged, saying that ''I have taken account the ideological learnings of a potential law clerk only when it appears to me—and this is something that I don't have a final say on, but I do tell Justice Kennedy that this person has a strongly held view on a subject that he would not be willing to put aside in the service of the Justice.''

Mr. Estrada later conceded that ideology was one of the areas he ''would explore in trying to find whether the law clerk candidate was suitable for Justice Kennedy.''

This response is troubling, because it suggests a lack of candor in answering the first, very clear question put to Mr. Estrada by Senator SCHUMER. Clearly, it would be troubling if Mr. Estrada were subjecting clerks to an ideological litmus test in order to ensure that only conservative clerks would gain clerkships with Justice Kennedy and to avoid outcomes that Mr. Estrada found unfavorable.

My Republican colleagues, unfortunately, have decided to react to these serious allegations by simply leveling personal attacks against the individuals who were interviewed by Mr. Estrada. Such personal attacks seem to be a pattern. Our Republican colleagues have attacked Paul Bender, Mr. Estrada's direct supervisor, because they did not like what he had to say about Mr. Estrada's inability to separate his ideology from his legal analysis. They have attacked Senate Democrats, accusing us of opposing Mr. Estrada on account of his ethnic background, when the concerns we raised are legitimate concerns about his ideology. And now they attack these law clerk applicants, whose voices have joined a growing chorus of people who question Mr. Estrada's ability to keep his conservative ideology from affecting his professional judgment. I call upon my Republican colleagues to halt these personal attacks, and talk about Mr. Estrada's qualifications to serve on the D.C. Circuit.

Mr. Estrada's nomination is particularly troubling given the importance of the D.C. Circuit to issues of concern to a broad range of Americans seeking to enforce their basic rights. The D.C Circuit is widely regarded as the second most important court in the United States, behind only the Supreme Court. It has a unique and prominent role among the federal courts of appeals, particularly in the area of administrative law. It has exclusive jurisdiction over many workplace, environmental, civil rights, and consumer protection statutes. Because the Supreme Court grants review of only a small number of lower court decisions, most administrative law is established by the D.C. Circuit.

Despite the importance of the D.C. Circuit to a broad array of Americans, some Republicans have worked to undo any balance on the court. During the Clinton administration, the Senate, controlled by Republicans, refused to approve two of President Clinton's nominees to the D.C. Circuit—Elena Kagan and Allan Snyder. Last fall's hearing for Mr. Estrada was the first hearing for a nominee to the D.C. Circuit in 5 years. No questions were raised about the qualifications of either Ms. Kagan or Mr. Snyder—both had stellar qualifications. Nevertheless, hearings for these nominees were delayed, and after they finally received hearings they were refused a vote in the Committee or on the floor.

Many Republicans argued then that the D.C. Circuit did not need any more judges. Yet shortly after President Bush was elected, two judges were nominated to the D.C. Circuit.

Given the importance of this circuit, and the Republicans' obstruction of President Clinton's nominees, scrutiny of this nominee is particularly warranted.

Mr. Estrada's record is troubling, and his unwillingness to supplement the record with meaningful answers to

questions or the production of the memoranda from his tenure at the Solicitor General's office, preclude his confirmation to the important D.C. circuit. A life-tenure appointment to a court so important is resolving issues involving workers, immigrants, women, and the environment cannot be given to a nominee about whom we know so little.

The Constitution does not contemplate a Senate that acts as a rubber stamp. A genuine advise and consent role is essential. If the administration continues to nominate judges who would weaken the core values of our country and roll back the civil rights laws that have made our country a more inclusive democracy, the Senate should reject them.

Everything we know of Miguel Estrada leads to the conclusion that he would be such a judge. His confirmation should be rejected.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Utah.

Mr. HATCH. Mr. President, I listened to my good friend and colleague from Massachusetts and you would think only Democrats care about clean air, clean water, the environment, workers' rights, civil liberties. I want him to know we care about them, too. But we want them to work. We don't want them all left-wing, one-sided approaches.

I have had questions in committee from some of my friends on the other side asking some of these nominees who have served in judicial positions why they have not found, always, for the worker? And actually they have been criticised because they occasionally—or many times—found for the corporation, as if corporations can't be right and that workers are always right.

We all know, regarding workers' issues generally, the ones that are legitimate and good are generally always settled. Any attorney who has dealt in labor law knows that. The hard cases come to the courts. Many times the corporations are right. But to hear our colleagues, any case that goes against a worker, the judge has to be biased and bigoted and wrong. That just is not true. If we have to have judges just finding for one side, whether they are right or wrong—especially if they are wrong—then what kind of justice would that be in America?

I have heard this antiloitering case business. By the way, the hearing was conducted by the Democrats. They conducted it. They could have made it however long they wanted. They know there are certain questions nobody is going to answer, especially when it comes to issues that possibly could be decided by the court upon which the nominee may sit. Any nominees who do answer those kinds of questions, you really have to question whether they have the judicial standing and the judicial acumen to be able to be on the courts.

We have had top authorities from both sides, both Democrats and Republicans, say you should not be discussing in nomination hearings issues that might possibly come before the court that you will be sitting upon.

We have quoted regularly and with good reason—Lloyd Cutler is one of the great lawyers in this country. He is a Democrat. He has been chief counsel for both Jimmy Carter and Bill Clinton. He had no difficulty at all working with us up here because we all respect him. But he said, regarding judicial nominees, in unequivocal terms ''candidates should decline to reply when efforts are made to find out how they would decide a particular case.''

In Lloyd Cutler's opinion, he says: ''What is most important is the appointment of judges who are learned in the law.''

You are going to have to go a long way to be more learned than Miguel Estrada, who, by the way, has the highest rating, by their own standard, of the American Bar Association—unanimously highest rating. Normally that would put anybody through this process. But it is not good enough for this Hispanic gentleman who they are afraid, if he gets on the DC Circuit Court of Appeals, might not rule the way they want him to rule. Because, No. 1, he is a Republican and he may be conservative. He may even be critical of Roe v. Wade, the great standard that seems to be the underlying problem with all of these so-called moderate to conservative nominees. Lloyd Cutler says:

> What is most important is the appointment of judges who are learned in the law, who are conscientious in their work ethic, and who possess what lawyers describe as judicial temperament.

I have heard some comments about judicial temperament here. The only person who indicated even slightly that Miguel Estrada may have a temperament problem is Paul Bender, who is as far left a law professor as you can find. He is a brilliant man. I have no problems there. What I have problems with is a man who gives him the highest performance ratings while he is serving under him at the Solicitor General's office, ratings that just brag about him and then, when the chips are down and he is up for a nomination, undermines him with comments that he is an ideolog. Paul Bender is the only one I know of who has said that—from the Solicitor's office.

In fact, let me talk a little bit about temperament. I have heard some of my Democratic colleagues say allegations have been raised about Miguel Estrada's temperament. The only person I know who has raised questions about his temperament happens to be Paul Bender. We all know he lacks credibility.

But let me say a word about relying on anonymous allegations about Mr. Estrada's temperament. These allegations certainly should not be believed. These allegations violate not only a basic right to confront one's witnesses, but also longstanding committee policy that prevents the consideration of anonymous allegations against a nominee. These are also grossly inconsistent with Mr. Estrada's superiors' and colleagues' statements that Mr. Estrada's work in the Solicitor General's Office was superb and that he was a well-respected colleague.

Seth Waxman, President Clinton's Solicitor General, a Democrat, but one we all respect, wrote to us that Estrada is a ''model of professionalism and competence'' and that he had ''great respect both for Mr. Estrada's intellect and for his integrity.''

Mr. Waxman, this Democrat, former Solicitor General under the Clinton administration, continued:

> In no way did I ever discern that the recommendations Mr. Estrada made or the views he propounded were colored in any way by his personal views, or indeed that they reflected anything other than the long-term interests of the United States.

But Mr. Waxman isn't the only Democrat who testified to Estrada's fairness and integrity. A bipartisan group of 14 colleagues from the Office of the Solicitor General also wrote to the committee that Estrada ''would be a fair and honest judge who would decide cases in accordance with applicable legal principles and precedents.''

I ask unanimous consent that a copy of this be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SEPTEMBER 19, 2002.

Re nomination of Miguel A. Estrada.

Hon. Patrick J. Leahy,
*Chairman, Senate Committee on the Judiciary, SD–224 Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

Hon. Orrin G. Hatch,
*Ranking Member, Senate Committee on the Judiciary, SD–152 Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN LEAHY AND SENATOR HATCH: We are writing to express our support for the nomination of Miguel A. Estrada to be a Judge of the United States Court of Appeals for the District of Columbia Circuit. We served with Mr. Estrada in the Office of the Solicitor General, and we know him to be a person of exceptional intellect, integrity, and professionalism who would make a superb Circuit Judge.

Miguel is a brilliant lawyer, with an extraordinary capacity for articulate and incisive legal analysis and a commanding knowledge of and appreciation for the law. Moreover, he is a person whose conduct is characterized by the utmost integrity and scrupulous fairness, as befits a nominee to the federal bench. In addition, Miguel has a deep and abiding love for his adopted country and the principles for which is stands, and in particular for the rule of law. We hold varying ideological views and affiliates that range across the political spectrum, but we are unanimous in our conviction that Miguel would be a fair and honest judge who would decide cases in accordance with the applicable legal principles and precedents, not on the basis of personal preferences or political viewpoints.

We also know Miguel to be a delightful and charming colleague, someone who can engage in open, honest, and respectful discussion of legal issues with others, regardless of their ideological perspectives. Based on our experience as his colleagues in the Solicitor

General's office, we are confident that he possesses the temperament, character, and qualities of fairness and respect necessary to be an exemplary judge. In combination, Miguel's exceptional legal ability and talent, his character and integrity, and his deep and varied experience as a public servant and in private practice make him an excellent candidate for service on the federal bench.

We hope this information will be of assistance to the Committee in its consideration of Mr. Estrada's nomination. He is superbly qualified to be a Circuit Judge for the District of Columbia Circuit, and we urge your favorable consideration of his nomination.

Very truly yours,

Thomas G. Hungar, Gibson, Dunn & Crutcher LLP; Richard P. Bress, Latham & Watkins; Edward C. DuMont, Wilmer, Cutler & Pickering; Paul A. Engelmayer, Esq., Wilmer, Cutler & Pickering; David C. Frederick, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.; William K. Kelley, Notre Dame Law School; Paul J. Larkin, Jr., Alexandria, VA 22302.

Maureen E. Mahoney, Latham & Watkins; Ronald J. Mann, Roy F. & Jean Humphrey Proffitt Research, Professor of Law, University of Michigan Law School; John F. Manning, Columbia Law School; Jonathan E. Nuechterlein, Wilmer, Cutler & Pickering; Richard H. Seamon, Associate Professor, University of South Carolina, School of Law; Amy L. Wax, Professor of Law, University of Pennsylvania Law School; Christopher J. Wright, Harris, Wiltshire & Grannis LLP.

Mr. HATCH. Mr. President, the anonymous rumors about his temperament are just that—mean-spirited rumors that have been ginned up by liberal special interest groups that don't want to have a smart minority member of the judiciary who does not toe their special-interest line on the issues. That is exactly what is behind all of this. The fact is Mr. Estrada has overwhelming support among Hispanic organizations and the Hispanic community, and he should. I am ashamed of some of those who have just played partisan politics because they said Mr. Estrada is not Hispanic enough. Can you believe that? Some of his own fellow Hispanics say he is not Hispanic enough. He has only been here since he was 14 years of age. My gosh.

The oldest Hispanic organization, the League of United Latin American Citizens—the oldest one—is behind him. The Hispanic National Bar Association—the Hispanic lawyers in this country—is behind Estrada; the United States Hispanic Chamber of Commerce—very prestigious; the Hispanic Business Roundtable; the Latino Coalition; and many other Latino organizations strongly support Estrada.

I was surprised to see this antiloitering case stuff brought up here. I was surprised that there is a question raised here about antigang-loitering cases Mr. Estrada worked on. Although some have attempted to mischaracterize the statutes that were the crux of these cases as racially discriminatory, the exact opposite is true. These statutes were enacted to protect the quality of life of low-income minorities whose neighborhoods are too often devastated by drug violence. That is what was behind it.

For example, according to a 1997 report issued by the Clinton Justice Department, ''Gangs have virtually overtaken certain neighborhoods, contributing to the economic and social decline of these areas and causing fear and lifestyle changes among law-abiding residents.''

Another Reno-era Justice Department report concluded that:

From the small business owner who was literally crippled because he refused to pay protection money to the neighborhood gang to the families who are hostages within their homes living in neighborhoods ruled by predatory drug trafficking gangs, the harmful effect of gang violence is both physically and psychologically debilitating.

At this hearing, Mr. Estrada told us he got involved in the City of Chicago v. Morales case at the request of the Democratic leadership of Chicago.

If the distinguished Senator from Massachusetts doesn't like the fact he was representing these people in this case, and decries the fact that this may have involved some first amendment principles—which I am sure it did—then he ought to go back to his Democratic friends in the City of Chicago who were concerned about these matters. He tried this case at their request. One of the primary proponents of the Chicago ordinance was none other than Democratic Mayor Richard Daley.

Let me read a few quotes about the ordinance by Mayor Daley, who the New York Times described as the ''law's fiercest advocate.'' If you are going to criticize Miguel Estrada, criticize Mayor Daley, too, except I don't think either deserves criticism. I think these quotes will dispel any notion that the law was somehow intended to hurt rather than help minority residents of Chicago. But then, again, in Miguel Estrada's case, why is it they are stooping to such a level as to criticize him on sincerely-fought cases, and especially this one where he was basically representing the Democrats in Chicago?

But here is what Mayor Daly said.

I might say that in November—we have a chart—Mayor Daley said:

I tell you one thing, those drug dealers and gangbangers are terrorists, too.

In November 2001, Mayor Daley defended his antiloitering law in the Chicago Sun-Times by making that comment.

In October 2000, he observed:

I don't see too many gangbangers on Lake Shore Drive.

Everyone knows Lake Shore Drive is an exclusive area of Chicago.

Mayor Daley is trying to solve some problems for minorities, and here it is being criticized because Miguel Estrada tried the case at their request.

Again, in January 2000, Mayor Daley said:

[T]hese aren't middle-class communities. These are poor communities. People want a right to survive. It is as simple as that.

I could go on and on. But, instead, I ask unanimous consent that a list of quotes by Mayor Daley in support of the antigang-loitering ordinance be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CHICAGO DEMOCRATIC MAYOR RICHARD DALEY ON ANTI-GANG LOITERING STATUTES

''I tell you one thing, those drug dealers and gang-bangers are terrorists, too.'' Chicago Sun-Times, Nov. 23, 2001.

''It's the average person on a block; it's a senior citizen; it's an eight year old girl going to a school or trying to get to the bus stop, or someone trying to go to the store. They can't go there. The gangs and drug dealers own the corner. And that's what this is all about.'' All Things Considered, June 10, 1999.

''We are determined to get those gangs off our streets, where they sell dope, terrorize innocent people and attract drive-by shootings. Chicago Daily Herald, March 29, 2000.

''[W]e have to ask ourselves if it is constitutional for gang-bangers and drug dealers to own a corner. . . . [E]veryone knows that they aren't out there cooking hot dogs and studying Sunday-school lessons.'' New York Times, June 12, 1999.

''I don't see too many gang-bangers on Lake Shore Drive.'' Chicago Tribune, Oct. 1, 2000.

''[T]hese aren't middle-class communities. These are poor communities. People want a right to survive. It is as simple as that.'' Chicago Tribune, January 12, 2000.

''We held hearings all over the city [to find out] what community leaders wanted. Their message was very clear: Do whatever you have to do to satisfy the court, but get those gang-bangers and dope dealers off our corners.'' Chicago Sun-Times, January 12, 2000.

Mr. HATCH. Mr. President, one of the things I like about Mayor Daley is he is a really good mayor who is trying to do the best job he can, and he will do it in a bipartisan way, if he can. And here Miguel Estrada is getting criticized for supporting him. These are ordinances that were supported by members of the minority community.

One thing I find ironic is the persons who criticize the antigang-loitering statutes rarely live in the neighborhoods plagued by chronic gang activity. I am not too sure anybody in the Senate is living in those types of areas. But the ones who complain generally have never had to live in those gang areas. These ordinances were enacted in direct response to pleas by communities that have members of gangs.

As Mayor Daley explained:

We held hearings all over the city to find out what community leaders wanted. Their message was very clear: Do whatever you have to do to satisfy the court, but get those gangbangers and dope dealers off our corners.

Betty Meaks, head of the Southwest Austin Council on Chicago's West Side, lived in a neighborhood where gang members routinely sold drugs on street corners and intimidated passers-by.

According to Meaks:

If we don't use this law as a tool, how are we going to get these guys off the corner? What about the constitutional rights of my neighbors whose kids have to walk by that corner every day on their way to school?

That is a resident of that gangbanger area and that drug-ridden area who is tired of it.

Another Chicago resident, 74-year-old Emmitt Moore, saw his house sprayed with bullets during a gang turf war. Referring to the anti-gang loitering law, he said:

> The Constitution is supposed to protect my rights, too. What is a more basic right than feeling safe on my property or being able to walk on my street?

The fact these cases were lost doesn't take away from the fact these were sincere people living in gang-ridden areas and drug-ridden areas trying to do what they could to get these problems solved. And their rights were being taken away while we talk about esoteric rights of the first amendment. Nobody believes in the first amendment more than I do. But I have to tell you there are other rights involved, too, that are also first amendment rights. These poor people living in these areas have some rights, too.

The Annapolis ordinance was even a more explicit example of the underprivileged taking the initiative to combat crime in their neighborhoods.

What gets me is some of these Hispanic groups that are against Miguel Estrada say he hasn't done enough in the Hispanic community.

Think about these cases where he took them on—yes, in a losing cause, but took them on—trying to help these minority residents in these tough communities. There are not too many people who could have done it.

Under the Annapolis ordinance, an area could be designated as a ''drug loitering free zone'' only if a neighborhood association or resident first submitted a petition to the city council. Some critics have described Mr. Estrada's Annapolis case because it challenged the NAACP's standing to bring the action against the ordinance. But, as Mr. Estrada testified at the hearing, the decision to challenge the NAACP's standing was made by other lawyers—not him—before he ever got involved in the case. Yet they are trying to pin that on him. That is the kind of ''fairness'' we have had in this whole process.

I do not think anybody watching this process would say it is very fair. And you can start with Paul Bender. Either Paul Bender is right when he says Miguel is an ideologue—long after the fact—or he was right when he was ethically giving his opinion that Miguel Estrada is one of the best people who ever worked down there at the Solicitor General's Office. Which is it? I suggest to you that it was the written opinions given in the Justice Department, that are backed up by Seth Waxman and 14 other coworkers, all of whom say Miguel is great and a good person. It is amazing to me that some of these arguments are made.

Although Mr. Estrada's efforts to defend the constitutionality of these statutes were unsuccessful, he may have lost the battle but he won the war, as they say. I am referring to the Supreme Court's decision in Morales. Although the Court held that the Chicago ordinance was unconstitutionally vague, Justices O'Connor and Breyer wrote a concurring opinion that gave municipalities a roadmap on how to enact constitutionally sufficient antiloitering laws. So it was not a battle that was in vain. It was a battle that ultimately will lead to resolution of those inner-city poor people's problems. And it was Miguel Estrada who took them on, took on the gangs, took on the drug dealers—and, I might add, at the request of Mayor Daley. And Mayor Daley took them on—something any good mayor I think would do, but certainly I respect Mayor Daley.

Under Mayor Daley's leadership, in following the O'Connor-Breyer roadmap, Chicago enacted a new ordinance in the year 2000. So, yes, he lost the case before the Supreme Court but won it in the end, in helping these poor people in Chicago to have some protection from gangbangers and drug dealers. And he is being criticized by my colleagues on the other side during these nomination proceedings? No. The thing that is wrong with Miguel Estrada is he is not the right kind of Hispanic. He does not agree with them in everything, maybe. I don't know what his positions are in every degree, but I can tell you this: He is honest, he is smart, he is capable, he answered a lot of questions before our committee—even though he did not please all the Democrats—and he has the highest rating anybody can get, unanimously, from the American Bar Association.

The problem of inner-city gang violence is so pervasive that we in Congress recognized it and addressed it in 1994. Were we bad people because we tried to address this problem that might have curtailed some people's rights to do whatever they wanted to do in our society? That is what criminal laws are about.

Mr. President, 18 U.S.C. 521 mandated additional penalties of up to 10 years imprisonment for individuals convicted in certain gang-related offenses. I note that eight of my Democratic colleagues on the committee, who were Members of Congress in 1994, voted in favor of section 521.

Now, where is the beef? I have been asking that all the way through—borrowing Walter Mondale's comment. Where is the legitimate criticism of this person other than these esoteric and, I think, unfair criticisms that I have been hearing on the floor since this debate began?

Calling for a vote against Estrada because he does not have any judicial experience—oh, he was a law clerk to two Federal judges, one a Supreme Court Justice. If that isn't judicial experience, then I don't know what is. He did not decide the cases, but he helped write the answers, and he sat there and watched all the judicial proceedings. And I have just listed 26 Democratic appointees to the Federal bench, none of whom had any judicial experience before we confirmed them, without raising that ridiculous issue. So the lack of judicial experience is a red herring, as are all of these issues. If you really get into them, if you really go through them, you realize there is not any substance to these arguments.

Now, apparently Paul Bender told Senator FEINSTEIN's staff that he stood by his comments, that he believes Miguel Estrada is an ideologue, and that the personal reviews that he gave, that were so laudatory and commendable about Miguel Estrada, were just boilerplate that they did for everybody. And apparently, according to what he told Senator FEINSTEIN's staff, he stopped assigning important matters to Estrada because he was too ideological.

At the request of the committee, Mr. Estrada provided copies of his annual performance evaluations during his tenure at the Solicitor General's Office. These documents cast serious doubt on Mr. Bender's allegations about Mr. Estrada. The evaluations show that during each year that Mr. Estrada worked at the Solicitor General's Office, he received the highest possible rating of ''outstanding'' in every job performance category. Either Mr. Bender was telling the truth then or he is playing politics now. The rating official who prepared and signed the performance reviews for 1994 to 1996 was none other than Mr. Bender.

I will admit Mr. Bender is a very bright and intelligent man. I will admit he has been a law professor for many years. And I will admit he has many wonderful qualities. But anybody who looks at what has happened here knows he is playing partisan politics right down the line.

Let me read a few excerpts from the evaluations Mr. Bender signed. They say that Mr. Estrada:

> States the operative facts and applicable law completely and persuasively, with record citations, and in conformance with court and office rules, and with concern for fairness, clarity, simplicity, and conciseness.

I do not know any lawyer in the world who would not want to have that set of accolades written about them.

He goes on to say, Miguel Estrada:

> Is extremely knowledgeable of resource materials and uses them expertly; acting independently, goes directly to point of the matter and gives reliable, accurate, responsive information in communicating position to others.

Or this one:

> All dealings, oral and written, with the courts, clients, and others are conducted in a diplomatic, cooperative, and candid manner.

Or this one:

> All briefs, motions or memoranda reviewed consistently reflect no policies at variance with departmental or governmental policies or fails to discuss and analyze relevant authorities.

You see, Miguel Estrada was also working for the Clinton administration.

Another quote: ''is constantly sought for advice and counsel; inspires coworkers by example.''

Either Mr. Bender was telling the truth then or he isn't telling the truth now. Both of them can't be accurate.

These comments represent Mr. Bender's contemporaneous evaluation of Mr. Estrada's legal ability, judgment, temperament, and reputation for fairness and integrity. These comments unmask Mr. Bender's more recent statements made after Mr. Estrada's nomination for what they are—a politically motivated effort to smear Miguel Estrada and hurt his chances for confirmation. I am disappointed in Mr. Bender, or Professor Bender, if you want me to use those terms. I am disappointed that a law professor would play this game, which is what he is doing.

The performance evaluations confirm what other Clinton administration lawyers and virtually every other lawyer who knows Miguel Estrada have said about him—that he is a brilliant attorney who will make a fine Federal judge.

The nature of the request of my Democratic colleagues for unfettered access to the universe of Mr. Estrada's privileged attorney-client work product is really extraordinary and unprecedented. These documents were not requested for the eight previous circuit court nominees who had worked in the Solicitor General's Office. This request was opposed by all seven living former Solicitors General in a letter to the committee citing the debilitating effect it would have on how the Department of Justice does business. Democrats Archibald Cox, Seth Waxman, Drew Days, and Walter Dellinger all signed this letter—as they should have.

The Democrats have failed to show a persuasive precedent for this request. They first claimed that the Department of Justice has a history of disclosing previously confidential internal documents in connection with confirmation proceedings. This is simply not accurate. It is not fair either. In a letter dated October 8, the Department of Justice points out that since the beginning of the Carter administration, there have been 67 former Department of Justice employees, 38 of whom, like Miguel Estrada, had no prior judicial experience. Eight of these nominees had worked in the Solicitor General's Office. The Department of Justice could find no record of having produced internal deliberative materials created by the nominee while the Department of Justice lawyer in any of those cases—in any of those cases.

My Democratic colleagues have mentioned six nominees in connection with whom they claim the Department of Justice released confidential internal memoranda or documents. The Department of Justice has explained in a letter to the committee that of these nominees, the hearings of only one, Judge Bork, involved documents from his service in the Solicitor General's Office.

In that case, the Department of Justice produced a limited number of documents related to specific topics of interest to the committee. They did not allow a fishing expedition into the private memoranda of employees of the Solicitor General's Office, given with good intent to their superiors so they can make decisions on behalf of our country, something that would certainly be chilled if they knew that sometime in the future their documents or these documents with their best advice could be utilized to destroy their chances of being on one of the Federal courts.

As the Department of Justice observed:

> The vast majority of memoranda authored or received by Judge Bork when he served as solicitor general were neither sought nor produced, and the limited category of documents that were produced to the committee did not reveal the internal deliberative recommendations or analysis of the assistant to the solicitor general regarding appeals, certiorari or amicus recommendations in pending cases. This is hardly the unfettered, unprecedented access to privileged work product that has been argued.

In that case, the Bork case, the Department of Justice produced a limited number of documents related to specific topics of interest to the committee. As the Department of Justice observed:

> The vast majority of memoranda authored or received by Judge Bork when he served as solicitor general were neither sought nor produced, and the limited category of documents that were produced to the committee did not reveal the internal deliberative recommendations or analysis of the assistant to the solicitor general regarding appeals, certiorari or amicus recommendations in pending cases.

This is hardly the unfettered, unprecedented access to privileged work product that my Democratic colleagues now seek.

As for the claim that the Department of Justice produced internal memoranda written by Seventh Circuit Judge Frank Easterbrook, DOJ has no record of producing these documents to the committee, and there is no indication that the committee ever requested those documents. So how did they come about? Probably through leaks by people who wanted to scuttle now-Judge Easterbrook's confirmation process.

It is important to note that the Republicans have not used this tactic ever—never once—as much as there have been criticisms and questions about Democratic nominees through the years. In fact, during the last Congress, when Jonathan Adelstein, a former aide to Senator DASCHLE, was a nominee to the FCC, Republicans could have asked for all of the internal memoranda written by him, but we did not.

I would like to respond to a matter that deeply troubled me at Mr. Estrada's hearing which has now been resurrected. I am appealing to my colleagues, to their sense of fairness on this matter, which I think is, frankly, serious and, frankly, outrageous.

At his hearing, Miguel Estrada was asked a series of questions regarding some anonymous allegations about him that appeared in an article in the ultraliberal political magazine, The Nation. These allegations concern comments that he supposedly made to persons who came to him in search of a Supreme Court clerkship with Justice Kennedy. It is bad enough to put a witness in the impossible position of defending against anonymous allegations, but things got worse when Miguel Estrada was asked followup questions about these allegations that were so broadly worded, vague, and compound that he could not have possibly crafted a satisfactory answer under the circumstances.

It has long been the policy of the committee—that is, the Judiciary Committee—instituted under the leadership of Senator BIDEN, chairman at the time, that we will not subject nominees to anonymous charges. Unfortunately, that is just what happened to Miguel Estrada.

It is worth reminding my colleagues about Senator BIDEN's standard when it came to anonymous sources. He said:

> The nominee has the right to be confronted by his accuser so any accusation against any nominee before any committee which I chair that is not able to be made public to the nominee will not be made known to the Senate unless the individual wishes to do it all by themselves. Then it is known to the nominee. This is not a star chamber.

I surely agree with Senator BIDEN.

Here is another example of Senator BIDEN's policy on anonymous sources. In 1992, the Atlanta Journal-Constitution reported:

> Committee Chair Joseph Biden, according to his staff, felt strongly that he was not going to circulate some anonymous charge.

This is a standard of fairness that the committee has always followed, and we have really gone way below the deck here. Some of my colleagues are bullying this nominee into a political game of gotcha. That is what it comes down to. More fundamentally, the anonymous allegations of The Nation are at odds with the overwhelming evidence of Mr. Estrada's fairness that we have received in letters of support and in examples of cases he has argued. I have mentioned letters from Seth Waxman and others.

They are simply not credible on their face, particularly when you consider Mr. Estrada's recommendation to Justice Kennedy that he hire a law clerk who was a colleague of Mr. Estrada's in the Clinton Justice Department and who now works as a staffer for Senator LEAHY, or did work up until recently.

At a fundamental level, these are simply not the actions of a right-wing ideologue. That is just true. It is a shame to try to make something out of anonymous allegations that Mr. Estrada wasn't even given the privilege of trying to answer.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I know my good friend from Utah feels very strongly about this and has spoken for about 30 minutes, so I think it

would be appropriate to go to the other side. But I have spoken to my colleague from Ohio and he only has about 10 minutes of remarks.

I ask unanimous consent that my colleague from Ohio be allowed to go for 10 minutes and then I be given the floor when he has finished.

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

Mr. DEWINE. Mr. President, I rise today in support of Miguel Estrada's nomination. I wish to talk about just one aspect of this nomination, one aspect about this debate. I am very concerned about an argument some have been making regarding their ability to assess this nominee's nomination to the DC Circuit Court of Appeals. Some are arguing that they cannot judge Miguel Estrada's qualifications because they have not seen some memos that he wrote when he worked for the Department of Justice from 1990 to 1997. Some argue they cannot vote in favor of his nomination because they have not seen these memos.

I am here this afternoon because I believe that this line of thinking is really not a prudent way to view the debate on this nomination. This is why. First, Mr. Estrada has nothing to do with whether these memos are released. Under the rules of privilege, it is not the attorney who produces the work who decides whether or not to disclose it. Instead, it is the client for whom the work was produced who has this right. To be blunt, this is not Mr. Estrada's fight. In fact, Mr. Estrada has testified that were it up to him personally, he would be willing to turn over the memos. In fact, let me quote from a transcript of his nomination hearing:

> You are right that I have not opposed the release of those records. I have been a lawyer in practice for many years now, and I would like the world to know that I am exceptionally proud of every piece of legal work I have done in my life. If it were up to me as a private citizen, I would be more than proud to have you look at everything that I have done for the Government or for a private person.

I think it is clear that Mr. Estrada believes he has nothing to hide in those memos and would be willing to turn them over. However, as Mr. Estrada understands, it is not up to him to decide whether or not those memos are released. Instead, it is up to his client—in this case, the Justice Department. It is their decision. So it is clear that Mr. Estrada is not responsible for this dispute. It would be very unfair, I maintain, to hold up Mr. Estrada's nomination because these memos have not been released.

Perhaps more importantly, in terms of the underlying merits of the dispute, it is clear that the Justice Department is correct in refusing to turn over these memos. Precedent is clearly on their side. It is entirely appropriate for the Department to assert its privilege in order to protect work product that was used as part of the Department's internal deliberative process. Mr. Estrada discussed this issue at his nomination hearing, and he put it well when he said the following:

> I do recognize that there are certain interests that have been asserted in this case that go beyond my own personal interest, and those are the institutional interests of the Justice Department.

Mr. Estrada was pressed to ask the Attorney General to release the memos. He was asked: Won't you go to the Attorney General and ask them to release the memos? This is what he said:

> I have been a practicing lawyer for all these years, and one of the things I have come to learn is that a practicing lawyer . . . ought not put his own interests ahead of the stated interests of his client. . . .

The argument has been made that since he is no longer the Assistant Solicitor General, and because he no longer works at the Department of Justice, he doesn't have to protect their internal deliberations. But that argument really, of course, misses the point entirely. What is important is that these privileges do not exist to protect the lawyer. Rather, these privileges exist to protect the client. Accordingly, these privileges simply do not disappear when the lawyer no longer works for his client.

A lawyer's obligation to protect his client's privileges carries on indefinitely, whether that client is a private person, the Attorney General, or a U.S. Senator. In the case of a private person who hires a lawyer, the attorney-client privilege exists to encourage full and frank communication between clients and their attorneys. A client can confidently disclose all relevant information to his attorney so that the attorney can provide informed advice to the client.

If the client thought that the attorney would reveal the client's highly personal information, full disclosure would be significantly chilled. Similarly, it is in the client's interest that a lawyer's advice to him or her remains confidential. Any number of a client's decisions could be undermined if the attorney's advice influencing those decisions were revealed.

In a May 28, 2002, editorial supporting Mr. Estrada's nomination, the Washington Post recognized that:

> Such a request for an attorney's work product would be unthinkable if the work had been done for a private client.

The Washington Post got it right. It seems completely reasonable to support private assertions of privilege. Some, however, will argue that this situation is different. Some will argue that this is a Government lawyer whose client is the people of the United States. Some will argue that all those documents and deliberations should be public because the public is the client. But that simply ignores reality, how the real world works and should work.

The Department of Justice makes difficult decisions about litigating some of the most complex and sensitive cases before our courts. The Department must decide which cases to pursue and what arguments to present in each case. It is in the interest of the public that these issues are fairly debated and vetted internally so that the Attorney General or the Solicitor General can make informed decisions.

Attorney General Ashcroft described the internal second-guessing that a career attorney could go through if the Department of Justice disclosed these internal deliberative memos. That attorney may question: Are these memos somehow going to be used against me later so that I should tone down my response? Should I adjust what I am saying because someday a Senate committee, or someone else, is going to want to look at it? Should I act in ways that are more consistent with my aspirations to be a judge someday instead of my responsibility to serve in a particular case?

Ultimately, we need an environment that allows for a complete discussion of all the arguments, both the pros and the cons. Attorneys have to be able to present all sides of a case. If an attorney who is engaged in a case discussion holds back, it hurts the case, it hurts the free and open exchange of ideas. If an attorney is afraid to talk about all the arguments and angles of a case because he or she is afraid of getting quoted at some future point, it hurts the case. It has a chilling effect on the discussion. It hurts the entire litigation process.

Let's bring this a little closer to home. Most Members of the Senate have attorneys on their staffs. This is especially true for those of us who serve on the Judiciary Committee. We often require counsel on complex legal and policy issues that come before the committee. I have several attorneys on my staff. Other Members do as well. We rely on our staffs, attorneys and non-attorneys, for candid and complete advice.

I insist they provide me with points of view and arguments from all sides of any given policy debate. Often, one of my attorneys will present one side of a debate and the other will take up the other side just so we get a give-and-take. This is a scenario that takes place many times a day every day in the Senate. I must have and other Members must have complete faith that we are getting the entire picture from our staffs and that we are receiving their unvarnished opinions. As it stands now, I am confident that I get such advice because my staff knows anything they communicate to me is completely internal and will not be disclosed.

Imagine the difference if their advice were subject to disclosure. Many staffers are in the early stages of their careers and may find themselves down the road serving the Government in many different capacities. Some may go on to appointed positions that might require Senate confirmation. How could I rely on their work if it were influenced by some fear that their advice would someday be revealed in

the confirmation process? Think about it.

I know I am protected as a Member by the speech and debate clause and that my staff's advice to me will not be revealed because of that protection, but the principles are really the same. Our staff, Congress's staff, needs to be able to do its work without fear of future repercussions for arguments made in good faith, but the same is true of the staff of the Attorney General or the Solicitor General.

I wish to reiterate that this is not Mr. Estrada's fight.

I ask unanimous consent for 1 additional minute.

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

Mr. DEWINE. This is not Mr. Estrada's fight. He should not be punished for a dispute that is really just about disclosure of documents between branches. It is that simple.

I support his nomination. I will be back in the Chamber later to talk about the merits, but I wanted to talk about this one particular aspect of the debate.

Mr. President, later today, in less than 2 hours, we will be voting on several district court nominations. One of them is John Adams from the State of Ohio. I personally know John Adams. John Adams is a very well respected judge from Summit County. He is a very decent human being. He is someone who is well respected in the community. He will bring great common sense to the Federal district court bench. I urge my colleagues to approve his nomination when we vote on it later today.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from New York is recognized.

Mr. SCHUMER. I thank the Chair.

Mr. President, I very much thank my colleagues from Utah and Iowa for going through the order we did. I have spoken about this issue before for what, at least for me, is an uncharacteristically long amount of time. I did not finish what I had to say then. There is more to say. I wish to take up where I left off.

We are beginning to hear that anyone who opposes Mr. Estrada is anti-Hispanic. I have to tell you, Mr. President, I am disappointed in that rhetoric. I think it is low, I think it is not appropriate, and I think it is a way of hiding the real feelings here.

I cannot confine my remarks to such expressions because they do not begin to convey how deeply offensive those statements are. We deserve an apology, the American people deserve an apology, and, frankly, Mr. Estrada today deserves an apology.

This is not a debate about Mr. Estrada's ethnic background, plain and simple, and everyone in this Chamber knows it. It is a cheap argument to invoke.

Let me tell you, Mr. President, what this debate is really about. This debate is about whether the Senate should automatically defer to the President or whether the Senate should fully exercise its constitutional powers and closely examine Mr. Estrada before we hand him a lifetime appointment to the Nation's second most important court. This debate is about whether we should blithely rubberstamp nominees or whether we should insist that when we have questions, they are answered to our satisfaction.

We have been subject to accusations and allegations that would be funny if they were not so demeaning to those who state them and to those they are purporting to defend. Let me quote verbatim some of the remarks the other side has made in the course of debating this nomination.

We have heard it often said of late, but I believe Senator LOTT was the first to say this last year:

> They don't want Miguel Estrada because he's Hispanic.

It is so ludicrous that it is hard to imagine we have to respond to it, but to make sure the record is set straight, I will.

Under Chairman LEAHY's leadership in the last Congress, we considered every other Latino nominee who could be considered, all six of them: Christina Arguello from New Mexico, Judge Philip Martinez from Texas, Randy Crane from Texas, Judge Jose Martinez from Florida, Judge Alia Ludlum from Texas, and Jose Linares from New Jersey. Every one of them was picked by the President, every one of them was confirmed quickly, and every one of them is Hispanic. We moved them on the bench because no red flags were raised suggesting they were extremists and because they did nothing to undermine the Senate's role in the confirmation process.

A seventh Latino nominee, Judge Otero from California, was unanimously supported by the Judiciary Democrats just last week, myself included, and I have every reason to believe the entire Democratic caucus will support his nomination when the majority leader brings it to the floor as scheduled later this evening. So this has nothing to do with Mr. Estrada's race, his ethnicity, or his heritage.

The only ones around here who are claiming that this debate is about race, ethnicity, and heritage are my colleagues from across the aisle, and their position puts them in the ludicrous position of saying the Congressional Hispanic Caucus or the Puerto Rican Legal Defense Fund is anti-Hispanic because they oppose Mr. Estrada. As I said, it is ludicrous. It is demeaning. Let's debate this on the merits but not on anything else.

As I mentioned, Senate Democrats unanimously supported seven Latino nominees already, all candidates offered by the President; all, I presume, sharing a conservative legal philosophy. I do not know if they are Democrats or Republicans, but I doubt all seven were Democrats. So then a lot of people on this side of the aisle supported Republican Hispanics, conservative Hispanics. It seems only when one disagrees with my good friend from Utah and those on the other side of the aisle do, the names get hurled and there is no consistency, there is no measure of appropriateness. It is similar to using a sledgehammer, a bludgeon, to get the nominee through.

None of the seven who have been nominated by President Bush—I do not know if my colleagues know how many are Republican. I do not, but again probably most of them—have raised red flags that they will be activists on the bench. None raised serious concerns that they will try to make law instead of interpreting law.

So when a Republican Senator says if someone is a minority and a conservative, we are against them, that is not only ludicrous, it is wrong; it is dead wrong and it is disproven by the facts of what has happened in the Judiciary Committee and on the floor of this Senate repeatedly last year and even tonight. Those kinds of allegations do not do anything to heighten the quality of dialog and debate. I am saddened by it. It is not a high moment for the Senate, and it is not the way to win a nomination. I wish, probably hope against hope, that we would try to raise the level of this debate, because those kinds of comments debase us, they debase this process, and everyone knows they are false. They are a red herring.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. No wonder people are fed up with Washington. No wonder they do not want to pay attention to the work we are trying to do. Comments like that turn people off. It is a real disservice to the process, to the Senate, and to the country, and it ought to stop.

I will defer for a brief moment to my colleague from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. The Senator has been making the point that no one on his side is making this a racial problem or a Hispanic problem. Is the Senator aware of an important letter I received this morning from Jennifer Braceras, who is a commissioner on the U.S. Commission on Civil Rights? Let me bring it to the Senator's attention, because I know he is a fair Senator. He is tough but fair, and he is my friend. I found him to be honest.

We know there are those in the Congressional Hispanic Caucus of the House who have made comments that certainly have caused a lot of consternation in the Hispanic community. This is a letter I received just this morning from Jennifer Braceras, who is a commissioner on the U.S. Commission on Civil Rights, and I will tell the Senator what Ms. Braceras had to say about what she believes some Senate Democrats are doing to Miguel Estrada's nomination.

Mr. SCHUMER. I am going to reclaim my time.

Mr. HATCH. Could I ask the Senator if he is aware of this? I hope the Senator will give me some time to read this letter. It is from a leading member of the U.S. Commission on Civil Rights. The Senator has made these comments. I know he is fair, and I think this is something that is right on point.

Mr. SCHUMER. I am going to reclaim my time from my colleague, if I might.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I am not familiar with those comments. I will certainly read them, but I do not think one person on a commission—I do not know who she is. I do not know if she is a Republican appointee or a Democratic appointee or anything to that effect.

Mr. HATCH. She is Hispanic.

Mr. SCHUMER. But it does not gainsay the argument that we have repeatedly approved Hispanic nominees in this body, Hispanic nominees nominated by President Bush, Hispanic nominees who are Republican, and Hispanic nominees who are conservative.

I say this to my good friend from Utah: Of the 10 Hispanic appellate judges currently seated in the Federal courts, eight were appointed by President Clinton. Three other Hispanic nominees of President Clinton to the appellate courts were blocked by the other side a few years ago. I did not hear charges from Senators—I do not know what the outside world says, but I do not recall a single charge by a Senator saying that blocking those was anti-Hispanic. If somebody made those charges, they would be wrong.

Mr. HATCH. Will the Senator yield for a point of clarification?

Mr. SCHUMER. Just as my colleague from Utah considers us friends, so do I. I have tremendous respect for him and I say the same as he said about me. He is tough, but he is fair. Please.

Mr. HATCH. I am grateful for that and I very much rely on that friendship on the committee.

The Senator is aware, is he not, that members of the House, specifically Representative MENENDEZ of the Congressional Hispanic Caucus, has said on several occasions that Mr. Estrada is not Hispanic enough and there have been other comments made that are very similar?

I ask unanimous consent that this letter be printed in the RECORD at this point so that my dear friend can read it, because Ms. Braceras is not only a member of the U.S. Commission on Civil Rights but her father is a judge on the Second Circuit Court of Appeals.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. COMMISSION ON CIVIL RIGHTS,
*Washington, DC, February 8, 2003.*

Re nomination of Miguel Estrada.

Hon. ORRIN G. HATCH,
*Chairman, Committee on the Judiciary, U.S. Senate, Hart Senate Office Building, Washington, DC*

DEAR SENATOR HATCH: As an Hispanic American and a member of the United States Commission on Civil Rights, I write to express my outrage over the efforts of the Senate Democratic leadership to oppose by dishonorable means the nomination of Miguel Estrada to the United States Court of Appeals for the District of Columbia Circuit.

Many fellow Latinos and I are disturbed that the Democratic leadership has chosen this moment to apply a new test for judicial nominees—to attack a nominee on the ground that there is no evidence that would otherwise disqualify him—and to choose a Latino candidate as their first target of this disingenuous test.

In the absence of a principled or coherent basis for opposition to this nomination, the Democratic leadership has shamelessly attempted to play the race card against our people—speaking in code words and questioning the ethnic authenticity of one who emigrated from Honduras at age 17, and who, indeed, still speaks with the Spanish accent of his homeland. This effort to paint Mr. Estrada as Hispanic ''in name only'' is an insult to the intelligence of all Americans, but most especially to the dignity of Latinos throughout the country. It has exposed a deep hypocrisy, rooted in racism, on the question of diversity.

Contrary to the assumptions of the Democratic leadership, the Latino community is truly diverse—we come in all colors, religions, and, yes, political inclinations. Yet the Democratic leadership has decided that the only ''genuine'' Latinos are those they can control. Anyone else is simply unacceptable, a renegade to be extirpated as not truly ''Hispanic.''

The Democratic leadership seeks political cover for its despicable actions from the left-wing special interest groups that have assumed the mantle of ''spokesmen'' for our community. But Hispanics are in no sense represented by non-membership organizations such as the Mexican-American Legal Defense and Education Fund (MALDEF)—the true constituencies of these purveyors of victimization are the foundations and donors who bankroll them.

The effort to stigmatize as unfit for public office an eminently well-qualified Latino simply because he has failed to pledge all allegiance to the liberal orthodoxy is an affront to the diverse Latino community of this nation. It promises to do lasting damage to the American polity and ultimately undermine the Democratic party's efforts to maintain a base in the Hispanic community.

Make an mistake about it, Hispanic Americans seek nothing less than full integration into the American system, with prominence in both major political parties. Miguel Estrada embodies these aspirations, and his nomination to one of the most prestigious courts in the land is a source of pride for Latinos across the country. That is why nonpartisan Hispanic organizations like the Hispanic National Bar Association, the Hispanic Chamber of Commerce, and the League of United Latin American Citizens (the nation's oldest and largest Latino membership organization) support the nomination. And that is why I write to lend my unequivocal support to Mr. Estrada's nomination to the District of Columbia Circuit.

Sincerely,

JENNIFER C. BRACERAS,
*Commissioner.*

Mr. HATCH. I might add Ms. Braceras' father is a Clinton appointee to the Second Circuit Court of Appeals, and she is outraged at what is happening to Miguel Estrada.

I thank my colleague for giving me those few minutes.

Mr. SCHUMER. I am happy to read the letter. What I was saying was that of 10 Hispanic appellate judges currently seated in the Federal courts, eight were appointed by President Clinton. Three other Hispanic nominees of President Clinton to the appellate courts were blocked by my friends from the party on the other side, in addition to others for the district courts.

In fact, in contrast to President Bush's selection of only one Hispanic circuit court nominee in more than 2 years, with the second being nominated only last week, three of President Clinton's first 14 judicial nominees were Hispanic. He nominated more than 30 Hispanics to the Federal courts.

I am not saying Clinton's superior record on appointing Hispanic judges makes anyone on the other side or President Bush anti-Hispanic. That claim would be ludicrous, the same as to say those of us who are opposing the nomination of Miguel Estrada are anti-Hispanic. I just want to go over what happened to some Hispanic nominees when the Republicans ran the Senate during President Clinton's tenure. The consideration of Judge Richard Paez was delayed for over 1,500 days. Thirtynine Republicans voted against it, because of his liberalism and their allegations that he was a judicial activist. These allegations were centered around two sentences contained in a lecture he gave to an audience of law students. They ran Judge Paez up and down the ladder. They demanded he answer more questions and produce more documents.

Did my colleagues put Judge Paez through the ringer because they were anti-Hispanic? I ask that to my colleague from Utah. Did his friends, not him—I know he tried to get the nominee through. After 1,500 days, he succeeded. That is close to 4 years. I think it is a little more than 4 years, but some of his colleagues and my friends on that side of the aisle vehemently opposed Judge Paez. Some of the arguments they made were the Ninth Circuit is out of balance, has a very liberal representation, and it does not need another liberal judge. Those arguments can be weighed for whatever they are worth, and different people will think they are worth different things, but it clearly does not make our friends from the other side who held up that nomination anti-Hispanic.

Mr. HATCH. Will the Senator yield on that point?

Mr. SCHUMER. I am going to——

Mr. HATCH. I thought the Senator asked me a question.

Mr. SCHUMER. I yield to my colleague for the last time.

Mr. HATCH. I was disappointed with the Paez nomination.

It took too long. But there were legitimate questions that were raised that had nothing to do with race. There were various questions about cases, but it took too long. I worked very hard to get him a final vote and, as the Senator knows, I voted for him. I have to say I took a certain amount of criticism from some who felt very deeply,

not against Judge Paez as a Hispanic person but because they thought he was a judicial activist, and there were a number of cases that certainly were very questionable cases and even I had problems with that.

I also found Judge Paez, who—after a lengthy period of time I asked him if he would come and see me and I was very impressed with Judge Paez as a human being. It did not hurt him a bit that his family lived in Utah, and they are very good people. That certainly was very persuasive to me, too. And he is a very good person. But there were legitimate legal questions that had been raised that had to be kind of sifted through in order for me to get to a point where we could have that vote.

I agree with my colleague; it took too long. I agree there have been faults on both sides throughout this process, as long as I have been on the Judiciary Committee, and there have always been people who have not made it who have been left over at the end, but I have to tell my colleague during my tenure we put through 377 Clinton judges, the second highest total, only five less than Reagan.

Mr. SCHUMER. I am going to reclaim my time because we do not want to go through a rehash of who put through more judges. I do not think that is helpful.

Mr. HATCH. I agree.

Mr. SCHUMER. I say this to my friend from Utah. He said his colleagues on the other side thought Paez might be a judicial activist. They disagreed with some of the ways Judge Paez thought. Fair enough. I did not agree with them. Nobody called them anti-Hispanic. We have had charges on this floor that to oppose Mr. Estrada makes one Senator or another anti-Hispanic. That is my point. That is demeaning to this process, and it ought to stop. The Senators who are opposing Mr. Estrada are no more anti-Hispanic than those who opposed Mr. Paez.

By the way, there were 39 Republicans who voted against him. Are those 39 Republicans anti-Hispanic? We would laugh at that. If someone on this side of the aisle tried to raise that charge, there would be a fury over there. Correctly so.

If someone had never voted for a Hispanic nominee, if President Clinton had not nominated Hispanic nominees, then maybe there would be someone bringing up this argument. But the record is to the contrary. In terms of the criteria of Hispanic nominees to the bench, this side of the aisle has a far better record than the other side.

I think those comments are demeaning. Those comments are wrong. Some on the outside may make them. We cannot help that. This is a free country. God bless America. They should not be made on the floor of the Senate. I implore my colleagues to cease. They know it is wrong. It is not even an effective debating technique.

Let me go over a few other Latino nominees. There were two Latino circuit nominees, Rosemary Barkett and Sonia Sotomayor, who were also delayed. Judge Sotomayor, who was appointed to the district court by President George H.W. Bush, was targeted by some on the other side for delay or defeat on the grounds of ideology or philosophy. Were they anti-Hispanic when they opposed her? I doubt it. While she was eventually confirmed, 29 Republicans voted against her. Were they anti-Hispanic? I doubt it. Yet we hear from some who voted against Judge Sotomayor and against Judge Paez, from some of those who have held those nominees up, the charge here. It was wrong then. It is wrong now. It ought to stop.

Judge Barkett was targeted for delay and defeat on the claims about her judicial philosophy. Thirty-six Republicans voted against her confirmation. My good friend from Utah—again, a true good friend; that is not just rhetoric, a fine man—said this of Judge Barkett: I led the fight to oppose her confirmation because her judicial records indicated she would be an activist who would legislate from the bench.

I don't doubt for a minute my friend's sincerity. I don't doubt for a minute that Chairman HATCH opposed Judge Barkett because he disagreed with her ideology and thought she would be an activist on the bench. I don't doubt for a minute he does not have an anti-Hispanic bone or atom in his body.

However, I say to my colleague, the same is true, the mirror image is going on here. Some on this side disagree with Mr. Estrada's philosophy. There are some who believe he will be a judicial activist, although none of us know for sure because the record is so thin. So there is an additional argument about the record.

Just as we did not doubt the sincerity of our friends from across the aisle when they opposed Hispanic nominees who they thought would be activist judges—not my words; out of the mainstream, who would legislate from the bench—I hope they will not doubt ours.

When scores and scores of our colleagues delayed Judge Barkett and Judge Sotomayor, when scores of Republicans voted against them, was it about race? Was it about ethnicity? Was it about heritage? Of course not. They had concerns about what kind of jurists Judge Barkett and Judge Sotomayor would be. It was not because they are Hispanic.

By the way, that is, in my judgment, just what the Founding Fathers wanted. They wanted to debate the philosophy and views of potential nominees as well as their legal ability, their probity, and where they came from in terms of judicial philosophy. That is what they wanted.

But it seems there is a double standard in this Senate now. It is OK to say Hispanics on the left are not qualified because of ideology, but it is not OK to say Hispanics on the right are not qualified because of ideology. That is patently unfair. That is wrong. Again, it demeans this great Senate. It is a sad day for the Senate when that happens. It ought to stop.

Enrique Moreno, Christine Arguello, and Jorge Rangel were all nominated to the circuit courts by President Clinton and were never afforded a hearing or vote in the Judiciary Committee when Republicans controlled. In addition, Hispanic district court nominees such as Ricardo Morado and Hilda Tagle of Texas were also blocked. Mr. Moreno and Mr. Rangel were blocked by blue slips. Senator HATCH, my friend and colleague, exercised his legitimate power as chairman of the Judiciary Committee to honor the blue slips from a Texas Senator or Texas Senators. Of course, now that we have someone else appointing the judges, Senator HATCH is changing the blue slip policies. But that is not the point. The point is, when a Texas Senator is blocked, Mr. Moreno and Mr. Rangel and the Republican leadership allowed these well-qualified, widely respected, moderate Hispanic nominations, approved by the bar association, just as Mr. Estrada was, to die on the vine.

I don't recall any claims coming from Senators on this side of the aisle that they they were anti-Hispanic. Again, to bring charges from outside this body, whether it be someone on the civil rights commission or someone in one of what my friend from Utah calls the ''left-wing Hispanic groups''—all the groups he disagrees with are left-wing Hispanics and all the groups he agrees with are fine Hispanic groups. But the point being we should not bring these issues up among ourselves because it demeans this body.

When these nominees were blocked, I assume my colleagues had their reasons. Maybe they were negotiating something. Maybe they had concerns about how the fine men would perform on the bench. But I assume those concerns had nothing to do with their being Hispanics. So why is it when they use procedural powers to block a nominee it is OK, but when we want a nominee to answer questions, disclose written materials and show he is not out of the mainstream, that he is not extreme, we get called vituperative names?

It sounds like a bad joke. I feel as if I traveled through the looking glass. We have a candidate whose picture is permanently on the floor but whose answers are permanently absent, who will not tell us what he really thinks. This is not the way the world really works. The Senate, if we do not watch it, could turn into a nonsensical California Wonderland.

Last week my good friend from Utah, who is doing a fine job defending something he believes in deeply here this afternoon and throughout this week and last weekend, said: I have never seen any Hispanic nominee whose nomination has so resonated with the

Latino community except for the partisans, the partisan Democrats.

That is just not the case. The fact is the opposite. No Hispanic nominee has ever engendered such opposition. Many mainstream Latino leaders and organizations have come to the conclusion that Mr. Estrada should not be confirmed. The nomination is not resonating with them. The nomination is not resonating with the millions of Hispanic Americans represented by the Puerto Rican Legal Defense and Education Fund, the Mexican American Legal Defense Fund, La Raza, and most of all the Congressional Hispanic Caucus.

I have heard that there are some groups of Hispanic lawyers who support Mr. Estrada or Hispanic businesspeople. Good for them. They are participating in the American process. But in my State, Congressman SERRANO and Congressman VELÁZQUEZ represent not only Hispanic lawyers and Hispanic businesspeople, but the whole Hispanic community. They are the two highest elected Latino officials we have. They would seem to me to speak better than any group, left, right, or center, for or against Mr. Estrada—at least talking about Hispanics in New York. They are against him.

So this battle of the organizations is a little silly. But it seems to me that by the very precepts of our democracy, those who have been elected to office are the ones who are probably the most representative, unless there is something so flawed in our democracy that it doesn't work. They seem to be overwhelmingly—not exclusively, but overwhelmingly against Mr. Estrada.

I have sat and talked to the members of the Hispanic Caucus. It is not simply a political issue to them. They feel it passionately. They believe deeply that the views that best represent those of the Hispanic people are not the views of Mr. Estrada.

These are the very organizations, by the way, some of the organizations I mentioned and some of the individuals I mentioned, who have worked vigilantly for years to put more Hispanics on the bench. Not so many of the others, who are claiming someone is not truly representing the Hispanic community. But these are the people who have done it. Do we think they have taken this position blithely, when they take such pride and have spent so much of their time trying to elevate Hispanics in the courts? Of course not. They have serious concerns, concerns about what kind of judge Mr. Estrada would be, legitimate concerns about what Mr. Estrada will do if given a lifetime appointment to the Nation's second highest court.

My friends across the aisle have accused my good friend and colleague—I know he is a friend and colleague of my friend from Utah—Senator LEAHY, of ''playing star marionette to these Hispanic groups.''

That is an insult both to our colleague from Vermont and to these fine organizations. It is absurd, and it ought to stop. They may have a philosophy closer to that of the Senator from Vermont—or to mine, for that matter—but they clearly make up their own minds. It is one of the meanest things I have heard in 30 years in government. Again, it is demeaning. It is demeaning to this body; it is demeaning to the groups; it is demeaning to Senator LEAHY. It ought to stop.

I have not heard a single word on this floor denigrating the groups who have supported Mr. Estrada. I don't know who the Hispanic Chamber of Commerce is, but I am sure they are fine people. I don't know who the Hispanic Lawyers Association is, but I am sure they are fine people. I am not going to denounce them. I am not going to characterize them. So why is it OK to characterize other Hispanic groups, with whom some on the other side disagree, in such derogatory ways? I just assume that the groups on one side, cited by one Senator, and the groups cited by another looked at the same nominee and came to a different conclusion; that is all.

Another thing our colleagues across the aisle said was that we are taking blindfolded swings at Mr. Estrada. Maybe there is a little Freud in there. To the extent that we are blindfolded, it is only because Mr. Estrada will not answer questions, won't give us the memos he wrote, and we are being kept in the dark about what he believes.

I suggest we get this debate out of the low levels where it has been, at least at certain points in time, and back on the merits. Let's stop this foolishness. Let's start talking about whether the Senate should confirm a man about whom so many red flags have been raised, a man who I believe is thwarting the Senate's role in the constitutional process by refusing to answer questions, a man who is asking us to hand to him a lifetime appointment to this Nation's second most vital court without giving us even the slightest inkling as to what kind of judge he would be in terms of how he would rule, in terms of his philosophy.

In the interest of moving the debate along, let me move to the attacks that some have made on our insisting that Mr. Estrada answer the questions we have asked him. Another place where we venture into Alice in Wonderland is this idea, How dare we ask Mr. Estrada to answer questions?

Go back and look. The very ones of our colleagues who are condemning questions being asked of Mr. Estrada asked the most questions of previous nominees. God bless them for it. That is their right. It helped the debate. It helped the process.

Our friends have suggested that the questions put to Mr. Estrada, the questions he refused to answer, were unreasonable. I say to my friends on the other side that they ought to look more closely at the questions we asked, and then look in the mirror—or perhaps more correctly, look in the record—because virtually every question we asked Mr. Estrada was asked by Republican Senators of President Clinton's judicial nominees. The only difference is that when the Republicans asked questions, President Clinton's nominees gave answers.

It is also worth noting that we put the same questions to other nominees of President Bush. The only difference here, too, is that they answered. But don't take my word for it; let's go to the record.

Senator DURBIN asked Mr. Estrada:

> In terms of judicial philosophy, please name several judges, living or dead, whom you admire and would like to emulate on the bench.

Mr. Estrada declined, claiming there is no judge whatsoever, not one single judge in the entire history of jurisprudence, whom he would ''seek to emulate on the bench, whether in terms of judicial philosophy or otherwise.'' He named a couple of judges he was friendly with, a couple of judges he had personal respect for, but not one judge living or dead whom he would emulate in terms of judicial philosophy or otherwise. That is a pretty extraordinary answer from a man who wants a lifetime appointment on the Nation's second highest court. He is basically saying: ''Trust me, I am very smart''—which he is—''so I'll be a good judge.''

Forgive us if we want a little more proof. If a party in court before Mr. Estrada tried to make a case with such a paucity of evidence, I can't imagine that Mr. Estrada, then a judge, would rule in his favor.

Maybe this is an unfair question. Maybe, as my friends from the other side are suggesting, this question should not have to be answered by someone seeking such a powerful position. Maybe it is wrong for us to propound such questions to judicial nominees.

Perhaps we should call up the Department of Justice and ask the Attorney General what he thinks about Senator DURBIN's question, because when Attorney General Ashcroft was a Senator, he agreed that Senator DURBIN's question was a fair one. How do I know? Because Senator Ashcroft asked the very same question himself. And guess what. When Senator Ashcroft asked it, the question was answered. Let me quote Senator Ashcroft:

> Which judge has served as a model for the way you would want to conduct yourself as a judge, and why?

In response, William Traxler, a nominee of President Clinton, responded by naming a specific judge, John Gentry, a State court judge before whom Mr. Traxler appeared when he was a litigator, as exactly the kind of judge Mr. Traxler would want to emulate.

I am sure my friends on the other side will say, Well, you know, Senator Ashcroft didn't specifically ask about judicial philosophy. But remember, Mr. Estrada's answer to Senator DURBIN's question went way beyond judicial philosophy. Mr. Estrada said he could not

name one single solitary judge he would want to emulate, in terms of judicial philosophy ''or otherwise.''

Regardless, we don't have to get into that argument. Let us look at what happened when the same question was put to another of President Clinton's nominees, Inge Prytz Johnson. Guess what. She answered.

Senator Ashcroft's question was: ''Which Supreme Court Justice, past or present, do you most admire and why?

Judge Johnson named Justice Potter Stewart and explained why she admired him.

Senator Ashcroft's followup question was: ''What Judge or Justice has most influenced your thinking concerning the constitutional separation of powers?''

Now we are getting right into judicial philosophy.

Now this is, for all intents and purposes, a question addressing the nominee's judicial philosophy on separation of powers issues.

I want to read Judge Johnson's answer in its entirety because it is really a model answer. It is the kind of answer we should not only expect from nominees, it is the kind of answer we should demand from them.

Judge Johnson said:

> Judge Learned hand was one of the preeminent advocates of judicial restraint and of respect for the doctrine of separation of powers. He said: ''Some of us have chosen America as the land of our adoption; the rest of us have come from those who did the same. For this reason we have some right to consider ourselves a picked group, a group of those who had the courage to break from the past and brave the dangers and the loneliness of a strange land. What was the object that nerved us, or those who went before us, to this choice? We sought liberty. . . .''
>
> Judge Learned Hand demonstrated through his opinions that this liberty can most fiercely be protected through respect for our constitutional doctrine of separation of powers.

That is a pretty straightforward answer. It shows us a little bit about what kind of judge this nominee aspired to be. It helped the Senate decide that she merited confirmation. There was nothing wrong with Senator Ashcroft asking the question and there was nothing wrong with Judge Johnson answering it.

Shall we go on?

I asked Mr. Estrada to name a Supreme Court case he disagreed with. I first asked him to name a case from the last 40 years of Supreme Court history. Then I expanded the question to cover all of Supreme Court jurisprudence. He refused to answer, claiming he could not name a single such case.

My friends on the other side suggest there is something unfair about this question. Let me tell you, as I go through the records of questions they put to President Clinton's nominees, this question pales in comparison.

Time and again, Republican Senators asked Clinton nominees to take positions on issues that would come before them if confirmed as Federal judges. If you want us to detail those instances for you, we are happy to do so. Just let us know and we will put together some charts demonstrating the double standard of these attacks on us. I think we all know what that research would show. I think we all know how unfair and inconsistent the other side is being. I don't want to go back a couple of years to the questions they asked, but we can do it if we have to.

By the standards our colleagues set and by any objective measure, our questions were well within bounds. And, frankly, these weren't even hardball questions. There was no surprise in these questions—they had all been asked before in one form or another. Mr. Estrada simply just did not want to answer.

My colleagues have cited Canon 5 of the Code of Judicial Conduct of the American Bar Association as the defense for Mr. Estrada's refusing to answer questions.

As Chairman HATCH has said, Canon 5 that expressly forbids nominees to judicial duty from making ''pledges or promises of conduct in office [or] statements that commit or appear to commit the nominee with respect to cases, controversies, or issues that are likely to come before the courts.''

Let us be clear. My questions were about already decided Supreme Court cases, cases that by definition will never come before Mr. Estrada; cases that he can never reconsider; and cases that would not even arguably justify invoking Canon 5 as a basis for refusing to answer.

Why are these questions important? Because the answers will give us insight into how Mr. Estrada approaches the law. They will help tell us what kind of judge he will be. Is he likely to be a Marshall or a Scalia? A Brennan or a Rehnquist? Probably not. There is quite a bit of difference among those judges. These are legitimate questions that don't even begin to lead to a violation of Canon 5.

But don't take my word for it. Take John Ashcroft's.

I don't mean to limit my laudatory comments to Senator Ashcroft, but he asked such good questions when he was here that I can't help citing him favorably. Mr. Attorney General, if you are watching this debate, I hope that by complimenting your fine work on this issue I'm not hurting your reputation with certain communities.

Then-Senator Ashcroft asked this question of Marcia Berzon, a Ninth Circuit nominee:

> Please define judicial activism. Is Lochner v. New York an example of judicial activism? Please identify three Supreme Court opinions that you believe are examples of judicial activism (not including Lochner if your answer to the previous question was yes). Is Roe v. Wade an example of judicial activism?

Judge Berzon answered. She waited a few years for the Senate to confirm her, but she answered. She said Lochner was an example of judicial activism. She said Roe was not. And she named three other Supreme Court cases that she believed were judicial activism.

So there is just no question that our questions were reasonable.

So there was no question that, at least by John Ashcroft's standard, our questions were reasonable.

Once again, why isn't it that what is good for the goose has to be good for the gander? Why does it seem there is a double standard; that it is OK when there were Democratic nominees to ask them question after question after question about their philosophy, but when Mr. Estrada comes before us we don't need to know anything more? All he has to do is say, I will follow the law.

Suggesting that there's something wrong with our asking the exact same questions our friends asked is nothing short of absurd.

Let me note as well, that the very same question I asked of Mr. Estrada, I asked of the five District Court nominees whose hearings were held the same day as Mr. Estrada's. They all answered. I asked the same question of Jeffrey Sutton, a circuit court nominee whose hearing we held a couple of weeks ago. He answered too.

Judge Linda Reade, a judge who I voted for in committee and on the Floor—one of the 96 Bush judicial nominees I have supported so far—and whom we unanimously confirmed to a District Court judgeship in Iowa, gave some particularly interesting answers.

Judge Reade was crucial of two Supreme Court cases that expanded police powers and diminished privacy rights under the fourth amendment. She answered interesting questions. It was a great moment for the committee.

One of the cases, United States v. Rabinowitz, held that police had the power to search someone's office when he was arrested with an arrest warrant but without a search warrant.

The other case was Harris v. United States where the court held, again, that a search of an arrestee's entire four-bedroom apartment was constitutional despite the fact that the police did not have a search warrant.

Her concerns about these cases reflect a heightened sensitivity to privacy rights protected by the fourth amendment. I don't want judges who read the fourth amendment so expansively that the police are handcuffed and unable to do their jobs. I want judges who will balance privacy rights with law enforcement interests.

I tend to be more conservative on criminal justice issues. I tend to side more with law and order than with the liberals out there. So I may not agree 100 percent with Judge Reade's answers. But her answers are fair and reasonable, and it allowed those of us on the committee to see what she was talking about.

Her answers suggest to me that Judge Reade will be attuned to American's privacy rights. I appreciate her candor, I appreciate her forthrightness, and I appreciate her straightforwardness. She is not hiding a thing. She is telling us what she thinks.

And there is obviously not a single Senator in this body who thinks Judge Reade's answers disqualify her for a Federal judgeship. Not a single one of us objected to her nomination or voted against her. The same is true of the four other nominees we asked questions the day of Mr. Estrada's hearing.

So this idea that the canons of ethics will be violated by asking questions about judicial philosophy is contradicted, is gainsaid, by the very fact that all of us voted for somebody who answered questions such as that. I do not think we would vote for someone who we thought repeatedly violated the canons of ethics.

So we want answers, we want forthright answers; we do not want the ball hidden. And then if judges appear to be somewhere within the mainstream—even though we may not agree with them on just about every issue—we will confirm them. That is what we did with these four nominees. We did it quickly. I voted for every one of them.

If the questions had been unreasonable, my colleagues on the other side, I presume, would not have asked them of Democratic nominees. But, as we have seen a little glimpse, the very questions we asked Mr. Estrada, Senators on the other side asked Democratic nominees, and there was no outcry or objection.

Just recently, I asked this question of a potential nominee in New York whom the President asked me to consider. I have not taken a position on her yet. She has not even been nominated. But let me tell you how much she impressed me with her answers. She named two cases, both of recent vintage.

The first case came from just last year, striking down the Child Pornography Prevention Act. In that case, a 6-to-3 Supreme Court said the first amendment protects purveyors of child pornography when they are using images of virtual children instead of actual children. I think the Court got the answer totally wrong. We are hopefully going to remedy that problem caused by the Court with legislation I am cosponsoring with Senators HATCH and LEAHY, among others. But I was pleased to hear that the nominee agreed that the Court got the ruling wrong.

The other case was another decision from last year where the Court held that police were allowed to ask bus passengers permission to search their bags without explaining that passengers have the right to say no.

Just as I was with Judge Reade's answers, I was conflicted about this one. I believe in privacy rights, but I also believe, in this post-9/11 world, police have to have some legitimate tools at their disposal to fight both crime and terrorism. So while I may not agree or disagree at this point with the answer, I was pleased to hear that if this nominee becomes a judge, this nominee will be sensitive to citizens' privacy rights.

I do not doubt that Judge Reade and the other nominees who have named Supreme Court cases with which they disagree will faithfully follow the law despite their disagreements. These are mainstream judges who have conservative but not extreme ideologies. I respect them. I have voted, as have almost all of my colleagues, for 99 percent—or some number like that—of them so far. And I will continue to vote for them as long as I believe they will not be activists or extremists on the bench.

We are simply trying to hold Mr. Estrada to the same set of standards that other nominees are meeting. We are asking even less of him than Republicans asked of President Clinton's nominees. It is obvious these are fair, reasonable, and legitimate questions. It is obvious there is nothing wrong, constitutionally or by the canons of ethics or anything else, with answering them because hundreds of nominees have and they have been approved by this body. It is also obvious that Mr. Estrada is stonewalling us by refusing to tell us what he thinks.

So these two areas that I have had a chance to discuss today—whether opposition to Mr. Estrada can legitimately be labeled anti-Hispanic in any way, and whether it is fair to answer questions—again, are both pervaded by a double standard. It seems what folks on the other side of the aisle were saying 2 years ago they are not saying today.

I hope we will be somewhat consistent. I hope we will be somewhat fair. The nomination of judges, and then the advice and consent the Senate gives them, is a sacred process, one that the Founding Fathers debated long and hard. To ridicule the process by saying there are not legitimate questions to be asked and answered, to ridicule the process by saying that when those questions are not answered someone is opposing a nominee because of his background, particularly when so many of those opposing this nominee have had great records in terms of bringing Hispanics to the bench—far better than President Bush or those on the other side of the aisle—is unfair, is unwise, and demeans this body. I hope it will end.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, it is my pleasure to rise and speak on behalf of Miguel Estrada, a fellow Virginian and President Bush's nominee to serve on the U.S. Court of Appeals for the District of Columbia.

I have been listening to the Senator from New York and listening to his description of what is fair and reasonable. I do find it interesting that the Senator, on several occasions, talked about the standards of questions that were propounded in years past by Senator Ashcroft.

If Senator Ashcroft was such a wonderful model for questioning and judicial standards, I do find it interesting that that same Senator from New York, when given an opportunity to vote for Senator Ashcroft to be Attorney General, voted against him. So we do see some inconsistencies on citing Senator Ashcroft and then not voting for him.

Let's focus on this situation and the nomination before this body: Miguel Estrada. Miguel Estrada is a highly qualified nominee to be a judge. He has impeccable character. People always look at the character of an individual to determine how that person will act when put in a position of responsibility. One way to judge is by their past performance.

Some will say that Miguel Estrada does not have judicial experience. There are others who have been appointed to the courts who do not have judicial experience. So then you try to determine their judicial philosophy. I am convinced, in my examination of Miguel Estrada, that he has the right judicial philosophy. I am confident that when Miguel Estrada puts on that robe and is appointed for life, he will understand that judges are to interpret the law, not to make the law, which is the responsibility of the legislative branch. I am very confident that as a judge on the DC Court of Appeals, Miguel Estrada will adhere to this principle.

Others have said that since he has not been a judge, how are we going to know about his temperament. There are not many Latino or Hispanic Americans who serve on the federal courts. By arguing that he has not had judicial experience, and therefore, he cannot serve, implicitly would make it very difficult, if nearly impossible, for many Hispanic Americans to serve on the federal bench.

Miguel Estrada has justifiably been called the personification of the American dream. He was born in Honduras and immigrated to the United States when he was a teenager at the age 17. He learned English as a second language and then went on and ultimately graduated with honors—magna cum laude from Columbia College and magna cum laude from Harvard Law School. He was even a member of the editorial board of the Harvard Law Review.

Mr. Estrada went on to serve as a law clerk on the U.S. Court of Appeals for the Second Circuit and also served as the Assistant to the Solicitor General of the United States. During his legal career, Miguel Estrada argued 15 cases in the Supreme Court of the United States, winning two-thirds of those cases.

Miguel Estrada has also performed significant pro bono service, or free legal services, including representation of a Virginia death row inmate before the U.S. Supreme Court, to which Miguel Estrada dedicated approximately 400 hours of time.

We previously heard from the Senator from New York that he wanted to determine whether Miguel Estrada had mainstream judicial values or had a

mainstream view of the role of the courts in various cases, stare decisis, and precedent.

Miguel Estrada has unanimously earned the highest rating of ''well qualified'' from the American Bar Association. The American Bar Association's rating is based on ''integrity, professional competence and judicial temperament.''

In addition, Miguel Estrada's nomination is strongly supported by the Hispanic National Bar Association; the League of United Latin American Citizens, LULAC, which is the nation's oldest and largest Hispanic civil rights organization; the United States Hispanic Chamber of Commerce; and the Hispanic Business Roundtable.

Miguel Estrada is also supported by these other mainstream organizations: The Latino Coalition; the National Association for Small Disadvantaged Businesses; the Mexican American Grocers Association; the Hispanic Chambers of Commerce from a variety of towns and cities across the country, including the Greater Kansas City area and Las Cruces; the Puerto Rican American Foundations; the Federation of Mayors of Puerto Rico; the Hispanic Engineers Business Corporation; the Association for the Advancement of Mexican Americans; Nueva Esperanza; the Hispanic Engineers Business Corporation, the Hispanic Contractors of America, the Cuban Liberty Council, the Cuban American Voters National Community, and the Cuban American National Foundation.

This is a broad spectrum of individuals, organizations and associations from a variety of backgrounds and enterprises from all across the country which are very much a part of the mainstream of America which support Miguel Estrada.

I believe the Senate's prompt action on Mr. Estrada's long-delayed nomination is especially important. The DC Court of Appeals is one of the most important courts of appeal in the entire country, with cases of national implication. It is a primary forum for determining the legality of federal regulations and laws that control vast areas of American life. Recent retirements have left this court slowed down with four vacancies—four vacancies which are hindering the court's ability to decide cases expeditiously.

Delays in administration of justice in the DC Circuit Court of Appeals have consequences that can cost millions of dollars and affect thousands of lives. Indeed, justice delayed is justice denied.

The senior Senator from Massachusetts, Mr. KENNEDY, said on this floor, at approximately 2:37 p.m., that he was concerned about the process of the Miguel Estrada nomination. I will express my concerns about the process.

Today there is a crisis in our courts, as too many federal courts lack a sufficient number of judges, especially the DC Court of Appeals, which has four of their 12 judgeships vacant. That means 33 percent of the DC Court of Appeals has vacancies in those seats.

What Senator HATCH and I want is fair consideration and confirmation of the President's well-qualified and diverse judicial nominees. While many on the other side may work to hijack the nominations process to score partisan political points or obstruct fair consideration, this nomination deserves a vote. It has deserved a vote for a long time.

This nomination has been pending since May 9, 2001. That is over 20 months ago. A hearing was not even held for Miguel Estrada until September of 2002.

I respectfully urge my colleagues to fill these vacancies—particularly this vacancy on the DC Circuit Court—and vote to confirm Miguel Estrada.

Look at the record. You will find that Miguel Estrada is superbly qualified to serve on the DC Circuit. Indeed, Miguel Estrada is an American success story, with exemplary credentials and qualifications. Hispanic Americans will rejoice in his success, as indeed all Americans will rejoice and applaud his success.

I join my Latino constituents in saying: Sigamos adelante con Miguel Estrada. Let us move forward with Miguel Estrada.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, an independent Federal judiciary is a fundamental part of our constitutional democracy. In fact, nominating judges to the Federal bench is among the most important and lasting decisions that a President can make. Equally important is the Senate's role of advice and consent on judicial nominations. Breakdowns in the nomination and confirmation process can impact not only the proper functioning of the judicial branch but the independence which is so critical to maintaining public confidence in the courts.

It is the President's responsibility to work with Senators of both parties to fill vacancies on the Federal courts. It is the duty, the constitutional duty of the Senate to carefully deliberate over the President's nominees.

Nobody can challenge the President's authority to nominate judges. It is indisputable. That the Senate has the right to advice and consent is equally indisputable. The two rights exist in the very same sentence of the Constitution.

That is why the administration's repeated failure to consult with Democratic Senators on the nomination of Federal judges is so troubling. Refusal by a nominee to provide the Senate with adequate information to evaluate their record undermines our ability to carry out our constitutionally mandated duties.

It is this latter point, the lack of information provided by a nominee to evaluate their record, which is particularly relevant to the nominee currently under consideration, Miguel Estrada. Mr. Estrada is nominated for a lifetime appointment on what is arguably the second highest court in the land. The DC Circuit has exclusive jurisdiction over a broad range of cases, including issues from consumer and environmental protection to civil rights and workplace rules. The court's jurisdiction is vast.

The DC Circuit has the obligation to interpret rules for access to courts which allow Americans to challenge the Government when any agency takes an action which affects their health. It is this circuit which is charged with protecting Americans to challenge the Government. It is this DC Circuit that has either concurrent jurisdiction or exclusive jurisdiction in cases involving the NLRB, OSHA, Federal Communications Commission, Americans with Disabilities Act, Federal Energy Regulatory Commission, Federal Elections Commission, Endangered Species Act, and the Environmental Protection Agency, just to name a few.

The judges on this court are widely viewed as potential nominees to the Supreme Court. In fact, three current members of the Supreme Court—Justices Scalia, Thomas, and Ginsberg—served on the DC Circuit.

Despite the importance of the issues that routinely come before the court, we have very little information about the current nominee's views on fundamental constitutional issues. Mr. Estrada has no judicial experience so we have no record of decisions from which to draw an impression of his judicial philosophy. Mr. Estrada is not widely published. He has apparently not published since he wrote an article on banking law in law school. It is not a disqualification if a person has no judicial experience or has not published their views on the law. However, the lack of a record gives the Senate a particular obligation in carrying out our constitutional duty to look at the views of somebody on very fundamental constitutional issues.

We have a higher duty, a greater responsibility to probe where there is no decision record and where there are no writings upon which to base a judgment. The administration's failure to provide the Senate with legal memoranda and Mr. Estrada's failure to ask the administration to provide the Senate with those memoranda—particularly, again, in light of the absence of a judicial record and publications—will make it more difficult for Senators to weigh the evidence as to what kind of a judge Mr. Estrada would be, nominated as he is to what, in effect, is the second highest court in the land.

There is much evidence from the record before the Judiciary Committee as to a failure on the part of Mr. Estrada to give information that is highly relevant to the Senate and to the committee. Senator LEAHY asked:

Is diversity a factor that an employer or a school could take into consideration?

Answer:

Because this is a matter that is being actively litigated in the courts and may come before the court, if I am confirmed, I don't think it would be appropriate generally to answer that question.

In fact, it is very appropriate generally to answer the question. What is inappropriate would be to answer that question relative to a specific set of facts that are pending before a court or might come before a court if Mr. Estrada is confirmed.

Senator KOHL asked:

In light of growing evidence that a substantial number of innocent people have been sentenced to the death penalty, does that provide support in your mind for the two Federal district court judges who have recently struck down the death penalty as unconstitutional?

Answer:

I am not familiar with the cases, Senator, but I think it would not be appropriate for me to offer a view on these types of issues which are currently coming in front of the court and may come before me as a judge.

Not even offer a view on these types of issues—not on the specific issues in the cases referred to by Senator KOHL, but these types of issues.

Senator KOHL says:

To what extent should a judge be required to balance the public's right to know against the litigant's right to privacy when the information sought could be sealed and could keep secret a public health and safety hazard?

Mr. Estrada:

Senator, there is a long line of authority in the DC Circuit, as it happens, dealing with public access in cases that are usually brought to gain access to Government records by news organizations, and those cases, as I recall—I haven't looked at them in some time—do recognize a common law right of access to public records, which must be balanced against the interest of the governmental actor that is asserting the need for confidentiality. I am not aware of any case, though there may be some that dealt with this issue in the context that you've outlined, but I would hesitate to say more than that because I don't know how likely it is that that very issue that you have just outlined would come before me in the DC Circuit if I were fortunate enough to be confirmed.

So now if he believes there are cases that might come before the DC Circuit, he says: I am not going to comment even in general on the subject matter of those cases. But where he doesn't know whether or not issues are coming before the DC Circuit, he says: I am not going to comment on that either. Again, he said: I hesitate to say more than that because I don't know how likely it is that that very issue that you have outlined would come before me in the DC Circuit if I am confirmed.

Either way, he is not going to give us an opinion. Other nominees have provided information of the type that Mr. Estrada will not give us. We have the circumstance—for instance, there are multiple cases where the Justice Department cooperated with past requests of the Judiciary Committee. The Senate requested past Justice Departments to provide this type of memoranda, such as memoranda relating to appeals written by Department attorneys, including the memoranda of William Bradford Reynolds, nominated for Associate Attorney General; Benjamin Civiletti, nominated for Attorney General. Steven Trott, nominated for the Ninth Circuit; and William Rehnquist, when he was nominated for Chief Justice, among others.

The current Bush administration, in fact, provided the Senate with legal memoranda, which Jeffrey Holmstead wrote—an attorney with the White House counsel's office—when there was an inquiry during the consideration of his nomination to be Assistant Administrator to the EPA. So these requests are not unprecedented.

The key is, will Mr. Estrada ask the administration to release the documents? That would give this Senate an opportunity to get his ideas about basic constitutional issues. He is not obligated to request the Justice Department to provide this information. We should be clear on that. There is no obligation on the part of Mr. Estrada to request the Justice Department to provide the information that I have discussed, but his refusal to do so comes at risk to his nomination.

We are not obligated to vote for someone who is not willing to ask the Justice Department to provide information that will give us the opportunity to get a better feel for where a nominee is on some basic, fundamental constitutional issues.

Justice Rehnquist said the following in a 1972 case:

Since most Justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formulated at least some tentative notions that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another. It would be not merely unusual, but extraordinary if they had not at least given opinions as to constitutional issues in their previous legal careers.

I agree with Justice Rehnquist. Apparently, Mr. Estrada does not.

When asked by Senator SCHUMER at the Judiciary Committee hearing to name three cases of which he was critical in the last 40 years of Supreme Court jurisprudence, Mr. Estrada said he was ''not sure that I could think of three that I would be—that I would have a sort of adverse reaction to. . . .''

As we have heard from Senator SCHUMER, other nominees have been more than willing to state where they have not been in agreement with Supreme Court opinions. Yet this nominee is not willing to give us even one Supreme Court opinion in the last 40 years where he would ''have a sort of adverse reaction,'' to use his words.

He was asked by Senator DURBIN to name judges, living or dead, whom he admired and would emulate on the bench.

He answered:

There is no judge, living or dead, whom I would seek to emulate on the bench, whether in terms of judicial philosophy or otherwise.

Finally, after one particularly unhelpful exchange, Senator KOHL seemed to sum up the feeling of many members of the committee when he told Mr. Estrada:

With all due respect to your answer, I am trying to know more about you, and I am not sure I am.

That sort of sums it up. With all due respect, we are trying to know more about you, and we are not sure we are able to.

Mr. Estrada's failure to provide members of the Judiciary Committee with answers to even the most basic questions on his view of the law is deeply troubling. We don't have writings. There are none. That is not his fault. It does not disqualify him, but there are none. We don't have opinions. That is not his fault. He has never been a judge. There are none. But what is his decision? It is not to ask the administration for documents which he wrote that would give us some answers as to whether or not we are in agreement with his fundamental legal philosophy.

His tactic of refusing to answer questions could become a standard method of operation for future nominees, to the detriment of both the nominating process and the frustration of the Senate's advice and consent duty, if we accept the standard he is setting forth by his refusal.

Mr. Estrada and the administration had the opportunity to make the case for confirmation. The administration chose not to provide information for Senators to properly evaluate his nomination. Mr. Estrada chose to remain silent on key questions despite opportunities to clarify his views.

Mr. President, I understand from a signal from the Parliamentarian that we are supposed to stop at this time,

The PRESIDING OFFICER. Under the previous order, the Senate is scheduled to consider en bloc several nominations at 5 o'clock.

Mr. LEVIN. I will finish with other views of Mr. Estrada at another time. I yield the floor.

## NOMINATIONS OF JOHN R. ADAMS TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO; S. JAMES OTERO TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; AND ROBERT A. JUNELL TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS

The PRESIDING OFFICER. Under the previous order, the Senate will now consider en bloc the following nominations, which the clerk will report.

The assistant legislative clerk read the nominations of John R. Adams, of Ohio, to be United States District Judge for the Northern District of Ohio; S. James Otero, of California, to be United States District Judge for the Central District of California; and Robert A. Junell, of Texas, to be United States District Judge for the Western District of Texas.

The PRESIDING OFFICER. Under the previous order, there are 15 minutes equally divided for debate on the nominations.

The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that Senator ENZI of Wyoming be recognized for up to 10 minutes immediately following the final vote in the series of votes at 5:15 p.m. to speak on the Estrada nomination and that Senator FEINGOLD be accorded at least 10 minutes immediately following Senator ENZI.

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

Mr. LEAHY. Mr. President, parliamentary inquiry. Am I correct, while there is time divided between the distinguished chairman and myself prior to these votes, there will be three separate votes, and have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. LEAHY. I ask unanimous consent that it be in order to request the yeas and nays on all three nominations.

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

Mr. LEAHY. I ask for the yeas and nays on all three nominations.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask my dear friend if it is possible to vote on all three en bloc, with one vote being considered three separate votes?

Mr. LEAHY. Mr. President, in answer to that question, to accommodate a number of Senators on the distinguished chairman's side of the aisle, at the time I was chairman, I tried doing that once, and the objection was so vociferous from both sides that I said I was never going to try that again. I would have no objection. I have tried to do that. I have been told there are many who feel that would be inappropriate, so we will not be able to do it.

Mr. HATCH. I withdraw the request.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, these are three excellent district court nominees. They deserve to be confirmed, as I think all of President Bush's nominees deserve to be confirmed. I recommend every Senator vote for each of these three nominees. I hope we can get other nominees to the floor as soon as possible as well.

I thank my colleagues on the other side for being willing to move to these three nominees last week in our markup and to allow them to be brought up this early. I believe we will all be pleased we can vote for such excellent nominees. I hope we can move all the other judgeship nominees this President has nominated as quickly as possible.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Vermont.

Mr. LEAHY. Madam President, we will vote on three judges. Let me mention them briefly.

Mr. HATCH. Will the Senator yield?

Mr. LEAHY. Yes.

Mr. HATCH. I reserve the remainder of my time. I may have a few people who wish to speak. I thank the Senator.

Mr. LEAHY. Madam President, today the Senate will vote on the confirmation of John Adams to the United States District Court for the Northern District of Ohio. Judge Adams, incidentally, is named to replace Judge George Washington White, so we have the historical circumstance of another John Adams following another George Washington.

Judge Adams has had an admirable career as an attorney and a judge. He has worked in private practice and served as a prosecutor. He has handled civil matters as well as criminal, and he has devoted a significant amount of time to issues beyond his law practice. As a judge, Mr. Adams has been a member of the Summit County Civil Justice Commission, whose goal is to institute reforms in the administration of civil justice in Summit County, and the Summit County Criminal Justice Coordination Council, whose goal is to make recommendations and oversee the operations of the criminal justice system and corrections in Summit County. He is also involved in the Ohio Community Corrections Organization, which tries to work together to develop, improve, expand, and promote adult and juvenile community corrections by bringing judges, prosecutors, defense attorneys, law enforcement officials, treatment providers and other parties together to work toward common goals of community intervention for offenders.

Judge Adams has been involved in a number of other charitable, civic and professional organizations. He is a life member of the NAACP. He has also served as a member of, among others, the following organizations: the Summit County Mental Health Association, part of a network of professionals and volunteers committed to improving America's mental health and seeking victory over mental illness. His is the sort of solid record of accomplishments, and not ideology, that the President should try and seek out in his future federal court nominees.

I congratulate Judge Adams and his family and friends on his confirmation.

Today the Senate will also vote on the confirmation of Robert Junell, nominated to the U.S. District Court for the Western District of Texas. His will be the eighth of President Bush's district court judges confirmed to serve in the State of Texas. Seven of those judges were given hearings and votes during the 17 months I served as chairman of the Judiciary Committee. That was nearly one judge for Texas every other month, in addition to the four United States Attorneys and three United States Marshals who were reviewed and confirmed in that period of time.

This is in great contrast to the fate of many of President Clinton's nominees from Texas, who were blocked and delayed by the Republican majority, including Enrique Moreno, nominated to the Fifth Circuit Court of Appeals who never got a hearing, never got a vote; Jorge Rangel, nominated to the Fifth Circuit Court of Appeals who never got a hearing, never got a vote, and; Hilda Tagle to the District Court, whose confirmation was delayed nearly two years for no good reason.

So I am glad to see another judge appointed to the Texas bench, and am confident he will serve with more distinction than at least one of his future colleagues, Judge Ron Clark. Judge Clark, a personal friend of the President's was among the judges we confirmed last year to a district court seat in Texas. Judge Clark's commission was not immediately forthcoming from the White House. We learned that Mr. Clark was quoted as saying that he had asked the White House to delay signing his commission while he ran for political office as a Republican so that he could help Republicans keep a majority in the Texas State House until the end of the session in mid-2003. The White House was apparently complicit in these unethical partisan actions by a person confirmed to the federal bench. Clark, who was confirmed to a seat on the federal district court in Texas, was actively campaigning for election despite his confirmation.

These actions brought discredit to the court to which Mr. Clark was nominated by the President and confirmed by the Senate, and call into question Judge Clark's ability to put aside his partisan roots and be an impartial adjudicator of cases. Even in his answers under oath to this Committee, he swore that if he were ''confirmed'' he would follow the ethical rules. Canon 1 of the Code of Conduct for United States Judges explicitly provides that the Code applies to ''judges and nominees for judicial office'' and Canon 7 provides quite clearly that partisan political activity is contrary to ethical rules. In his answers to me, Mr. Clark promised ''[s]hould I be confirmed as a judge, my role will be different than that of a legislator.'' Yet, even after his confirmation he was flaunting the promises he made to me, to the Senate Judiciary Committee and to the Senate as a whole. That the White House was prepared to go along with these shenanigans reveals quite clearly the political way they approach judicial nominations.

Only after the New York Times reported these unseemly actions, did the President sign Judge Clark's appointment papers. Judge Clark then announced that he would stop ''campaigning'', but he insisted on reminding State voters that they still had a choice in the election in November. His

name remained on the ballot. And indeed, he was elected to his old seat in the Texas Legislature.

I trust that Mr. Junell, who comes highly recommended by Representative Charlie Stenholm of Texas, and who has also been a member of the Texas House of Representatives, has a better understanding of the proper role of a Federal judge than did Mr. Clark, and will serve the people of the Western District of Texas with distinction. Mr. Junell has certainly worked hard during his varied career as a litigator and a politician to help numerous disadvantaged individuals. A life member of the NAACP, Mr. Junell is also a former member of the board of directors of the La Esperanza clinic.

I congratulate the nominee and his family on his confirmation.

With today's confirmation of Judge S. James Otero to be a United States District Judge for the Central District of California, the Senate is filling a vacancy that by all rights could have been filled years ago. Judge Otero, now serving on the Los Angeles Superior Court, will be filling a seat left open on the elevation of Judge Richard Paez to the Ninth Circuit Court of Appeals in 2000. Judge Paez, of course, was nominated to that vacancy on the appellate court more than 4 years before he was confirmed.

Judge Otero's nomination is a good example of the kinds of bi-partisan candidates the President ought to be sending the Senate. He comes to us after being unanimously approved by California's bipartisan Judicial Advisory Committee—a committee established through an agreement Senator FEINSTEIN and Senator BOXER reached with the White House. This committee works to take the politics out of judicial nominations. It reviews qualified, consensus nominees who will serve on the Federal judiciary with distinction. Too often in the last 2 years we have seen the recommendations of such bipartisan panels rejected or stalled at the White House. Instead, they should be honored and encouraged.

I note that Judge Otero has contributed strongly to his community, working with and on behalf of Latinos nationally and in California. He has worked on a pro bono project for the Mexican Legal Defense and Education Fund, and served as a member of the Mexican Bar Association, the Stanford Chicano Alumni Association, and the California Latino Judges Association, among others. This stands in stark contrast to a nominee such as Miguel Estrada, whose nomination has dominated debate today. Judge Otero has taken many opportunities to help Hispanics and all Californians.

During the 17 months I was chairman of the Judiciary Committee, I worked hard to ensure that Hispanics were confirmed to the Federal bench, and I am proud of that record. Many Hispanics nominated by President Clinton were blocked or delayed by the Republican majority, and I did not want to see that repeated. Fine nominees such as Jorge Rangel, Enrique Moreno and Ricardo Morado were never given hearings. Others, including Judge Richard Paez, Judge Sonia Sotomayor, and Judge Hilda Tagle, were stalled for no good reason. I am proud that did not happen on my watch, I am glad to say that we quickly considered and confirmed nominees such as Christina Armijo to the District Court in New Mexico, Philip Martinez to the District Court in Texas, Jose Martinez to the District Court in Florida, Alia Ludlum to the District Court in Texas, and Jose Linares to the District Court in New Jersey.

I congratulate Judge Otero and his family on his confirmation and the people of California on a fine Federal judge to fill the seat of such Judge Richard Paez in the Central District.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I yield such time as she may consume to Senator HUTCHISON from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, how many minutes remain for Senator HATCH?

The PRESIDING OFFICER. There are 5 minutes remaining.

Mrs. HUTCHISON. I ask the Presiding Officer to notify me at 3 minutes.

Madam President, I am very pleased to speak on behalf of someone who I really know well and have a great deal of confidence in, and that is State Representative Rob Junell. Rob is being nominated, and hopefully confirmed today, to be the U.S. district judge for the Western District of Texas. He will reside in Midland.

This is a very important court. It has been designated as a judicial emergency by the Judicial Conference of the United States.

Rob is a native of West Texas and is currently of counsel to a San Angelo law firm. He served seven terms in the Texas legislature where he was chairman of the Appropriations and Budget Committees. I worked with him to try to make sure Texas had a limitation on State debt, and it was because of Robert Junell's absolute insistence we pass this legislation that we were able to do it in one session, and it has served my State of Texas well to have a limit on State debt. Rob Junell deserves credit for that.

Rob Junell earned a degree from the New Mexico Military Institute and from Texas Tech University. He also graduated from the University of Arkansas with a master's degree in political science and a law degree with honors from Texas Tech Law School.

Rob Junell has been a leader in the State of Texas. I have worked with him in many ways. I think he is one of the smartest people with whom I have ever worked. He also took time to be a part of his community of San Angelo. He served on the boards of the United Way of Concho Valley and the San Angelo AIDS Foundation. He is a lifetime member of the NAACP. He meets the high standards we set for Federal judges. I know he is going to be a really terrific Federal judge, because he knows the law and he knows what is fair. He has that sense about him of what is right and what is not. He also knows the place of a judge. Having been a legislator, he knows it is the elected representatives who should make law, not judges with lifetime appointments. So he will change his course now from being a legislator, elected by the people, and making very important laws for my State of Texas, to becoming a judge and interpreting those laws and trying to see what the legislature meant.

It is my honor to speak on behalf of Rob Junell and recommend him to my colleagues in the Senate for confirmation.

I thank the chairman, Senator HATCH, and the ranking member, Senator LEAHY, for acting expeditiously on this nomination, and I especially thank Senator HATCH for reserving time for me.

I yield the floor.

Mr. DEWINE. Mr. President, I rise today in support of the nomination of Judge John Adams. Judge Adams, from Akron, has been nominated to be U.S. District Judge for the Northern District of Ohio. He currently serves as a Judge on the Court of Common Pleas in Summit County, Ohio.

Judge Adams is a 1978 graduate of Bowling Green State University, where he earned a Bachelor of Science degree in Education. In 1983, he received his law degree from the University of Akron School of Law. While a law student at Akron, Judge Adams clerked for Judge W.F. Spicer with the Summit County Court of Common Pleas.

Following this clerkship, Judge Adams spent 5 years in private practice with the law firm of Germano, Rondy, Ciccolini Co., and during this time, also served as Assistant Summit County Prosecutor. In 1989, Judge Adams returned to private practice as an associate and then a partner at the firm of Kauffman & Kauffman in Akron.

Since 1999, Judge Adams has served as a Judge on the Court of Common Pleas for Summit County. In this position, Judge Adams has demonstrated that he is an intelligent, hard working, and dedicated jurist. He is well respected, both inside the courtroom and out, and exhibits an excellent judicial temperament. He has shown that he has what it takes to be an excellent District Court Judge.

In endorsing his re-election effort last November, the Akron Beacon Journal stated that Judge Adams ''has the potential to be a distinguished federal judge, building on the record of fairness and thoughtfulness that has marked his three years on the county bench.'' I agree completely with that sentiment.

Judge Adams' accomplishments are indeed impressive, and I am pleased

that the Senate is voting on his nomination today. I urge my colleagues to join me in voting to confirm Judge Adams.

Mr. HATCH. Madam President, I am pleased that we have three excellent district court nominees on the floor this evening, John Adams for the Northern District of Ohio, Robert Junell for the Western District of Texas, and Judge Samuel Otero for the Central District of California. They have been nominated to fill seats considered judicial emergencies by the U.S. Judicial Conference, so our action today is especially important. I support all of them without any reservation, and I ask my colleagues to join me in confirming their nominations. Let me say a few words about each nominee.

John Adams, Jr., our nominee to the U.S. District Court for the Northern District of Ohio, has extensive experience in both the private and public sectors of the legal community. Judge Adams has 15 years of experience in private practice, and he served for 3 years as an assistant county prosecutor at the Summit County Prosecutor's Office. Since 1999, Judge Adams has served on the Court of Common Pleas for Summit County.

Robert A. Junell, nominated to the U.S. District Court for the Western District of Texas, has distinguished himself both as an advocate and a legislator. Mr. Junell has over 25 years of civil litigation experience, with a specialty in personal injury law, and he has served as a member of the Texas House of Representatives since 1988.

Our third nominee, Judge Samuel Otero, who has been nominated for the Central District of California, served as a Los Angeles deputy city attorney for 10 years, handling approximately 130 superior court and municipal court cases during his tenure. Since being nominated to the California bench in 1988, Judge Otero has served on both the Los Angeles Superior and Municipal Courts.

I am confident that all three nominees will serve with honor and distinction. I compliment the President for putting their nominations forward and I look forward to their confirmation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I know the time is running, but I ask the distinguished Senator from Utah if he would ask the majority leader if we could have 10-minute votes after this first vote which is 15 minutes.

Mr. HATCH. I ask unanimous consent that after the first vote, the two remaining votes be no longer than 10 minutes.

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

The question is, Will the Senate advise and consent to the nomination of John Adams, of Ohio, to be United States district judge for the Northern District of Ohio.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Kentucky (Mr. MCCONNELL) and the Senator from Texas (Mr. CORNYN) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Illinois (Mr. DURBIN), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. CORZINE), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Illinois (Mr. DURBIN), and the Senator from Massachusetts (Mr. KERRY) would each vote ''aye''.

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 31 Ex.]

YEAS—91

| | | |
|---|---|---|
| Akaka | Dole | Lugar |
| Alexander | Domenici | McCain |
| Allard | Dorgan | Mikulski |
| Allen | Edwards | Murkowski |
| Baucus | Ensign | Murray |
| Bayh | Enzi | Nelson (FL) |
| Bennett | Feingold | Nelson (NE) |
| Bingaman | Feinstein | Nickles |
| Bond | Fitzgerald | Pryor |
| Boxer | Frist | Reed |
| Breaux | Graham (SC) | Reid |
| Brownback | Grassley | Roberts |
| Bunning | Gregg | Rockefeller |
| Burns | Hagel | Santorum |
| Byrd | Harkin | Sarbanes |
| Campbell | Hatch | Schumer |
| Cantwell | Hollings | Sessions |
| Carper | Hutchison | Shelby |
| Chafee | Inhofe | Smith |
| Chambliss | Inouye | Snowe |
| Clinton | Jeffords | Specter |
| Cochran | Johnson | Stabenow |
| Coleman | Kennedy | Stevens |
| Collins | Kohl | Sununu |
| Conrad | Kyl | Talent |
| Craig | Landrieu | Thomas |
| Crapo | Leahy | Voinovich |
| Daschle | Levin | Warner |
| Dayton | Lieberman | Wyden |
| DeWine | Lincoln | |
| Dodd | Lott | |

NOT VOTING—9

| | | |
|---|---|---|
| Biden | Durbin | Lautenberg |
| Cornyn | Graham (FL) | McConnell |
| Corzine | Kerry | Miller |

The nomination was confirmed.

Mr. LEAHY. I move to reconsider the vote.

Mr. DORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. TALENT). The question is, Will the Senate advise and consent to the nomination of S. James Otero, of California, to be United States District Judge for the Central District of California? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Kentucky (Mr. MCCONNELL) is necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Illinois (Mr. DURBIN), the Senator from Florida (Mr. GRAHAM), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Illinois (Mr. DURBIN), and the Senator from Massachusetts (Mr. KERRY) would each vote ''aye''.

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 32 Ex.]

YEAS—94

| | | |
|---|---|---|
| Akaka | Dole | Lugar |
| Alexander | Domenici | McCain |
| Allard | Dorgan | Mikulski |
| Allen | Edwards | Miller |
| Baucus | Ensign | Murkowski |
| Bayh | Enzi | Murray |
| Bennett | Feingold | Nelson (FL) |
| Bingaman | Feinstein | Nelson (NE) |
| Bond | Fitzgerald | Nickles |
| Boxer | Frist | Pryor |
| Breaux | Graham (SC) | Reed |
| Brownback | Grassley | Reid |
| Bunning | Gregg | Roberts |
| Burns | Hagel | Rockefeller |
| Byrd | Harkin | Santorum |
| Campbell | Hatch | Sarbanes |
| Cantwell | Hollings | Schumer |
| Carper | Hutchison | Sessions |
| Chafee | Inhofe | Shelby |
| Chambliss | Inouye | Smith |
| Clinton | Jeffords | Snowe |
| Cochran | Johnson | Specter |
| Coleman | Kennedy | Stabenow |
| Collins | Kohl | Stevens |
| Conrad | Kyl | Sununu |
| Cornyn | Landrieu | Talent |
| Craig | Lautenberg | Thomas |
| Crapo | Leahy | Voinovich |
| Daschle | Levin | Warner |
| Dayton | Lieberman | Wyden |
| DeWine | Lincoln | |
| Dodd | Lott | |

NOT VOTING—6

| | | |
|---|---|---|
| Biden | Durbin | Kerry |
| Corzine | Graham (FL) | McConnell |

The nomination was confirmed.

Mr. SCHUMER. Mr. President, I move to reconsider the vote.

Mr. THOMAS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Robert A. Junell, of Texas, to be United States District Judge for the Western District of Texas? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Mississippi (Mr. LOTT), the Senator from Kentucky (Mr. MCCONNELL), and the Senator from Oklahoma (Mr. NICKLES) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Illinois (Mr. DURBIN), the Senator from Florida (Mr. GRAHAM), the Senator from Vermont (Mr. JEFFORDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware

(Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Illinois (Mr. DURBIN), and the Senator from Massachusetts (Mr. KERRY) would each vote aye.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 33 Ex.]

YEAS—91

| | | |
|---|---|---|
| Akaka | Dodd | Lugar |
| Alexander | Dole | McCain |
| Allard | Domenici | Mikulski |
| Allen | Dorgan | Miller |
| Baucus | Edwards | Murkowski |
| Bayh | Ensign | Murray |
| Bennett | Enzi | Nelson (FL) |
| Bingaman | Feingold | Nelson (NE) |
| Bond | Feinstein | Pryor |
| Boxer | Fitzgerald | Reed |
| Breaux | Frist | Reid |
| Brownback | Graham (SC) | Roberts |
| Bunning | Grassley | Rockefeller |
| Burns | Gregg | Santorum |
| Byrd | Hagel | Sarbanes |
| Campbell | Harkin | Schumer |
| Cantwell | Hatch | Sessions |
| Carper | Hollings | Shelby |
| Chafee | Hutchison | Smith |
| Chambliss | Inhofe | Snowe |
| Clinton | Inouye | Specter |
| Cochran | Johnson | Stabenow |
| Coleman | Kennedy | Stevens |
| Collins | Kohl | Sununu |
| Conrad | Kyl | Talent |
| Cornyn | Landrieu | Thomas |
| Craig | Lautenberg | Voinovich |
| Crapo | Leahy | Warner |
| Daschle | Levin | Wyden |
| Dayton | Lieberman | |
| DeWine | Lincoln | |

NOT VOTING—9

| | | |
|---|---|---|
| Biden | Graham (FL) | Lott |
| Corzine | Jeffords | McConnell |
| Durbin | Kerry | Nickles |

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action on the three nominations.

The Senator from Utah.

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

Mr. HATCH. Mr. President, I ask unanimous consent that on Tuesday there be an additional 6 hours for debate on the Estrada nomination; provided further, that the time be equally divided between the chairman and the ranking member, or their designees; and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. Mr. President, we have had a robust debate on the nomination. I still remain very hopeful that we will reach a consent to have a vote on the nomination after some further reasonable period of time. I hope our colleagues on the other side will permit a vote on Miguel Estrada. I think it is the right thing to do.

Mr. REID. Will the Senator from Utah yield?

Mr. HATCH. I will be happy to yield.

Mr. REID. Mr. President, I agree with the Senator. I think the debate has been very constructive today. The chairman of the committee and this Senator spoke with the majority leader today, and we expect some more debate tomorrow. The two leaders will speak tomorrow after the caucuses.

The PRESIDING OFFICER. Under the previous order, the Senator from Wyoming is recognized for 10 minutes.

Mr. REID. Mr. President, while the Senator is in the Chamber, it is my understanding that Senator ENZI is going to speak for a period of 10 minutes and the Senator from Wisconsin will speak for up to 12 minutes. I am wondering if there are any other speeches. We have an important conference committee that starts at 6:30 tonight.

Mr. HATCH. I know of no other speeches.

Mr. REID. I do not think we have anyone on our side.

Mr. HATCH. Mr. President, I ask unanimous consent that these be the last speeches.

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

The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise to support the nomination of Miguel Estrada to the U.S. Court of Appeals for the Washington, DC, Circuit. We have a great need in our Nation for qualified judges who have the patience, perseverance, and integrity to ensure that the United States continues to be a nation that is ruled by law and not by uncontrolled emotion; by reason and not by political expediency.

I am confident that Mr. Estrada is that kind of man and will be that kind of judge. There is no question that Mr. Estrada is qualified. He has proven himself through his education. He has proven himself through his work experience. And he has proven himself through his own perseverance, for he has been forced to wait for almost 2 years—2 years—for the Senate to consider this nomination. He has done this with the kind of patience and integrity that befits a U.S. Federal judge.

We often talk about the ideal in our debates in the Senate. We hold up a picture of what things should look like and how things should be done in the hope that someday we can move our Nation forward to the point where the ideal is more than a dream, but is instead a reality.

One of those ideals that has been presented is a world where our judges and our courts are more representative of America. Our courts have been accused of being elitist. The Bush administration has been working hard to change that image by making sure our judges are more diverse. By confirming Miguel Estrada to the DC Circuit Court of Appeals, we will, for the first time, have a Hispanic judge in the DC Circuit. But I can tell you, Mr. Estrada was not nominated just because he is Hispanic. He was nominated because he graduated magna cum laude and Phi Beta Kappa with a bachelor's degree from Columbia University in 1993. He was nominated because he also graduated magna cum laude from Harvard Law School in 1986 where he was also editor of the Law Review. He served as a law clerk for Supreme Court Justice Anthony Kennedy, as a Federal prosecutor in New York, and as an Assistant Solicitor General for both the Bush and Clinton administrations, and as the leading appellate lawyer at a national law firm. Altogether, he has argued 15 cases before the Supreme Court, including one case in which he represented a death row inmate pro bono.

One will have to search long and hard to find anyone anywhere more qualified for a position on the DC Circuit Court of Appeals, and yet in spite of all of his qualifications and personal integrity, Mr. Estrada has had to wait almost 2 years for the Senate to complete his nomination.

Why? I must say that as far as I can tell, his confirmation has been delayed for reasons that have absolutely nothing to do with his qualifications or integrity as a judge. Instead, they have everything to do with partisan politics and partisan bickering.

What is most tragic about this situation is that these delays have not come without a cost. There are victims in this situation who have been denied their rights to a fair and impartial judicial process because there are not enough judges to hear their appeals. The real victims of these delays are not Mr. Estrada or the Bush administration or even the Republican Party. No. The real victims are the people whose rights have been set aside by partisan bickering and whose appeals are forced to wait because we do not have enough judges.

There is a saying: Justice delayed is justice denied. There are those in Washington who are willing to deny justice by making people with very real needs and very real issues wait while they try to score a few points in this game of politics. They force people seeking justice to drag out their court costs, their attorney's fees, their restitution and damage payments, all because they want to get one up on the other party.

We have a crisis in our courts that we can solve. Mr. Estrada is part of that solution. He was given the highest possible rating of unanimously well qualified by the American Bar Association. He has similar, if not more, experience than five of the eight judges currently serving in the DC Circuit. He has been praised by his colleagues as having those attributes most sought for in a judge; namely, brilliance, compassion, fairness, and a respect for precedence.

It is not only my opinion that is changing. I picked up a copy of Roll Call today and found a full-page ad by the Latino Coalition, which is a little bit upset over the delay in getting this nomination approved. They say the

only controversy regarding Miguel Estrada is his race. This is an impression that is being given to America. They say Senators have supported non-Hispanic judicial nominees with fewer qualifications and less experience. So the only difference here is that they cannot support an independent-minded and well-qualified Hispanic, an impression that is being put out there to America.

Of course, they give the arguments that he is qualified, that the American Bar Association gave him a well-qualified rating, that he does have experience, and that there is a double standard for Hispanics. Five of the eight judges currently serving on the DC Circuit had no previous judicial experience when appointed. That includes two of President Clinton's nominees: Merrick Garland, whose Justice Department record was quite similar to that of Miguel Estrada, and David Tatel. In addition, Judge Harry Edwards had no prior judicial experience when he was nominated by President Carter in 1979, and he was younger and had less experience than Estrada.

They go on to talk about whether he has a conservative ideology, and they suggest you tell that to Clinton appointees, prominent Democrats, and they mention a number of them. Again, this is an impression that is out there in the world about what is happening right here and now.

They are concerned about the comments they have heard that perhaps he is not Hispanic enough, and they are a little upset with that. They listed a number of organizations that are backing him and are getting the message out that here is a person who is well qualified and that there is a belief that there is some discrimination occurring.

I hope we can get this rapidly concluded and get this outstanding man on the bench.

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized for 12 minutes.

Mr. FEINGOLD. Mr. President, I oppose the nomination of Miguel Estrada. Let me take a few minutes to explain why.

First, I want to discuss the background of this nomination, which I think is an important factor for the Senator to consider. The DC Circuit, to which Mr. Estrada has been nominated, as many people have said, is widely regarded as the most important Federal circuit. It has jurisdiction over the actions of most Federal agencies. Many of the highest profile cases that have been decided in recent years by the Supreme Court concerning regulation of economic activity by Federal agencies in areas such as the environment, health and safety regulation, and labor law, went first to the DC Circuit. In the area of administrative law and the interpretation of the major regulatory statutes such as the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, the National Labor Relations Act, and even the Federal Election Campaign Act, the DC Circuit is the last word, as the Supreme Court accepts relatively few cases on appeal from the circuit courts.

The DC Circuit is now evenly split, and has been for some time, between nominees of Democratic and Republican Presidents. There are four judges who were appointed by Republicans and four by Democrats, and there are four vacancies. In the last Congress of President Clinton's term, he made two nominations that were never acted upon by the Senate Judiciary Committee. In one case, the committee held a hearing but never scheduled a vote, and in another, the Clinton nominee was not even given the courtesy of a hearing.

Now we hear that President Bush is not only going to fill those two seats, but also two others that Republicans have argued for years did not need to be filled at all because of the court's supposedly smaller workload in comparison to other circuits. I have heard this time and again in the Judiciary committee, we do not need these positions filled. Now that there is a Republican Senate, suddenly they are going to be filled. So this nomination becomes a pivotal nomination, and this circuit could very quickly become divided 8 to 4 between Republican appointees and Democratic appointees. Again, this is the context where President Clinton's nominees were not given a chance to have a vote.

I am disappointed that the Bush administration has not been willing to extend an olive branch on this circuit in particular. There are enough vacancies to accommodate both of the pending nominees and the two nominations by President Clinton who were treated so badly in the 107th Congress. But that does not seem likely to happen.

It is worth mentioning as well that seats on the DC Circuit have also in recent years served as springboards for the Supreme Court. Three of the current nine justices on the Supreme Court, Justices Scalia, Ginsburg, and Thomas, first sat on the DC Circuit.

Many commentators and activists, on the right and the left, believe that Mr. Estrada is being groomed for a Supreme Court appointment.

For all of these reasons, I believe it is our duty to give this nomination very close scrutiny. Unfortunately, Mr. Estrada has not made this task easy. In fact, by failing to answer questions at his hearing candidly and completely, he has made it even more difficult. Unlike many of the circuit court nominees that the Judiciary Committee has reviewed so far, Mr. Estrada is not a judge on a lower court, with a record of judicial opinions that we can review to get an idea of his views and his judicial philosophy for this lifetime appointment. Unlike some of the other nominees we have seen, he is not a law professor, with extensive written work that we can review and about which we can ask questions. He is a private attorney, with no published writings since law school. The Justice Department has refused to let the committee see his memos from when he worked in the Solicitor General's office, which may or may not be revealing of his views.

This is where we are: we were left with the hearing to explore with Mr. Estrada directly the question of what kind of judge he would be on the D.C. circuit. As a member of the Judiciary Committee, I attended much of that hearing. Mr. Estrada steadfastly refused to help us get a sense of his views. And his way of resisting the committee's legitimate inquiry was, in my mind, extraordinary. I have been on that committee for over 8 years and have never quite seen this. He took the position that he could not express an opinion about a case that had already been decided by the Supreme Court unless he took the time to review not only the opinion of the court, which for many would be sufficient, but all the briefs and the arguments of the parties, and also, and I'm quoting here from one of his answers: ''[doing] all the legwork of investigating every last clue that the briefs and the arguments offer up.''

Mr. Estrada says he has to do all that just to give his reaction to a decision of the Supreme Court. That is not the type of approach I have seen most people take when being up for a nomination in front of the Senate Judiciary Committee. The result? Mr. Estrada gave us no evidence of the kind of judge he would be. For me, given the importance of his circuit and the history of appointments to this circuit, that is a big problem. The Senate has a right to complete and responsive answers to its questions before confirming someone to a life term on such an important court.

In a few areas, we have something to go on because Mr. Estrada undertook pro bono representation of a group called the Center for Community Interest on whose board he served. Unfortunately, even though this is one of the few pieces of information we have, I was not reassured by what I learned. Mr. Estrada not only defended an anti-loitering statute ultimately struck down by the Supreme Court, but on a radio program he took a very aggressive stance in dismissing the arguments made against the statute. He even went so far as to suggest there was something improper about the fact that this legal challenge had been brought, and that attitude carried over in his arguments in a challenge to another anti-loitering ordinance, which Mr. Estrada argued that the NAACP did not have standing to challenge the law.

I was also not satisfied with Mr. Estrada's answers to questions concerning his role in helping to screen law clerk applicants for Justice Anthony Kennedy of the Supreme Court. Allegations have been made that Mr. Estrada saw himself as an ideological gatekeeper of sorts, with the task of

making sure no one was too liberal for his tastes to be a clerk for the Justice. After first asserting the comments ascribed to him were meant as a joke, Mr. Estrada then gave very careful lawyerly answers to follow-up questions.

I cannot say for certain that he was untruthful. I am not saying that. But he certainly was not forthcoming. And this is the pattern throughout the process of trying to examine this nomination of Mr. Estrada.

Both to this area and in answers to questions concerning specific decisions of the courts or legal principles, I think the Senate has the right and duty to demand more openness and responsiveness from someone whose public record is so thin and who has been nominated for such an important judicial position.

Let me be clear, I very much want to be fair about something such as this. I probably would vote to confirm Miguel Estrada to a Federal district court judgeship. He has a distinguished academic and employment record. But for this crucial seat on this crucial court, we need to be confident that a nominee, if confirmed, will be fair, impartial, and not devoted to advancing an ideological agenda.

Based on the record before us, I do not have that confidence in Mr. Estrada. I must, therefore, reluctantly oppose his nomination.

I yield the floor.

## LEGISLATIVE SESSION

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

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

## MORNING BUSINESS

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business.

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

## LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred July 4, 2000, in Grant Town, WV. Arthur ''J.R.'' Carl Warren, Jr., 26, an openly gay African-American man, was brutally murdered. The two 17-year-old boys who killed Warren beat him and repeatedly kicked him with steel-toed boots. They threw him in a car and drove across town where they beat him further and drove back and forth over his body, ultimately killing him. The attackers were known to describe Warren using racial epithets and antigay slurs.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

## TRADE ADJUSTMENT ASSISTANCE LEGISLATION FOR FARMERS

Mr. CONRAD. Mr. President, I want to take a few minutes today to express my concern about yet another implementation foulup at the Department of Agriculture. Over the past several months, many colleagues and I have been extremely disappointed to find that USDA has deliberately ignored congressional intent in implementing the farm bill. Today, I want to point out to my colleagues that this pattern is not limited to the farm bill.

Six months ago, we enacted comprehensive trade legislation that gave the President trade promotion authority. In return for this authority, the President embraced an expansion of the Trade Adjustment Assistance program to help those who suffer ill effects as a result of trade agreements. I was extremely pleased that this expansion of Trade Adjustment Assistance included legislation I authorized to make the TAA program work for farmers.

When a trade agreement causes manufactured imports to increase, and plants close and workers lose their jobs, the workers are eligible for cash benefits and retraining under TAA so that they can adjust to this dislocation and find new work. But when a trade agreement or change in our trade policy results in a flood of agricultural imports that collapse prices and cost farmers tens of thousands of dollars in the lost income, farmers could not qualify for assistance because the program requires that you lose your job. Farmers don't lose their jobs. They still bring in the harvest. But when prices collapse, they can end up losing a lot more than income than the manufacturing worker who does lose a job. That is unfair, and it is wrong.

My TAA for Farmers legislation would fix it to make sure farmers can receive assistance when trade causes their prices and incomes to collapse. The law we passed last year directed USDA to get this program up and running by February 3—this past Monday. But just a few days ago, without any prior warning, USDA informed me that Secretary Veneman and her top deputies had ignored the law. They never bothered to direct anyone to write the rules to implement TAA for Farmers. USDA is only now getting started on this project, and it will take at least 6 months before the rules are in place. That means farmers who were hurt by trade last year will not be able to get the assistance to which they are entitled under the law. That is just not right.

Year in and year out, agriculture is one of the few bright spots in our international trade picture. At a time when we are running $400 billion annual trade deficits, agriculture is one of the few sectors to show a trade surplus. Yet too often in trade negotiations our agricultural interests have been traded away to get agreement in other areas. And the results can be devastating.

For example, in North Dakota we have had a bitter experience with the Canadian Free Trade Agreement. As a result of defects in that agreement, North Dakota wheat and barley growers have been subjected to a flood of unfairly traded Canadian imports, costing our farmers hundreds of millions of dollars in lower prices and lost sales. Not surprisingly, support for trade expansion out in farm country, where it ought to be stronger than anywhere else, has slipped dramatically. My TAA for Farmers legislation is designed to create a safety net to help farmers in this circumstance. My hope is that this legislation will also help rebuild support for trade agreements than can increase our agricultural imports.

But that certainly won't happen if Secretary Veneman and the USDA ignore the law and fail to implement the program. So I want to put the Secretary on notice that, while I cannot say I am surprised that she has once again failed to come through for farmers, I am certainly disappointed. And I will be watching very closely to make sure that the timetable does not slip again and that the final rule is consistent with congressional intent.

## BLACK HISTORY MONTH

Mr. KOHL. Mr. President, I rise today to commemorate the observance of Black History Month.

Dr. Carter Godwin Woodson launched ''Negro History Week'' in 1926 to counter widespread ignorance and distortion about the history of African Americans in the United States. In 1976, the week was expanded to a month and renamed ''Black History Month.'' February was chosen because many key dates in black history occur in that month: the birthdays of Fredrick Douglass, W.E.B. Dubouis, Langston Hughes, and Abraham Lincoln; the founding of the NAACP; the swearing in of the first African American Senator, the Honorable Hiram Revels; and passage of the 15th amendment to the Constitution proclaiming the right of U.S. citizens to vote regardless of race, color, or previous condition of servitude.

African-Americans are responsible for rich contributions to the State of Wisconsin as well as the entire Nation. I would like to encourage all Wisconsin residents to honor Black History Month by utilizing local resources such

as America's Black Holocaust Museum in Milwaukee, the Wisconsin Black Historical Society, and the Milwaukee Art Museum. In addition, numerous sites around the State commemorate Underground Railroad activity in Wisconsin including the Milton House Museum. These sites, as well as your local library, are wonderful resources for learning more about the invaluable contributions of African-American teachers, writers, artists, healers, freedom fighters, farmers, businessmen and women, and families to the history of our Nation.

Many Wisconsin colleges and universities are celebrating African-American contributions and heritage this February as well. For example, the University of Wisconsin-Stevens Point is holding the annual Soul Food Dinner and Gospel Festival. The University of Wisconsin-Superior will be hosting a visit from author Bakari Kitwana, and the Association of Students of African Descent will sponsor performances of African American readings, poetry, and music. At the University of Wisconsin-Madison, the Wisconsin Black Student Union is sponsoring lectures and movie showings.

As stimulating as all this activity in February is, however, we should not relegate the study of black history to just this 1 month. February should be, and remain a starting point for a year long and life long exploration of the rich and varied contributions of our African-American communities.

## ADDITIONAL STATEMENTS

### RECOGNIZING DR. WILLIAM R. HARVEY

● Mr. ALLEN. Mr. President, today I recognize Dr. William R. Harvey as he celebrates his 25th year as the President of Hampton University.

A native of Brewton, AL, he is a graduate of Southern Normal High School and Talladega College. After graduating from Talladega College, Dr. Harvey served 3 years on active duty with the United States Army. During that time, he served in Europe and the United States. He is currently a lieutenant colonel in the Army Reserve. He earned his doctorate in college administration from Harvard University in 1972. Prior to assuming his current position, he served as administrative vice president at Tuskegee University; administrative assistant to the president of Fisk University; and as assistant for governmental affairs to the dean of the Graduate School of Education at Harvard University.

President of Hampton University since 1978, Dr. William R. Harvey has introduced innovations that have solidified Hampton University's stellar position among the Nation's colleges and universities. His innovative leadership is reflected in the growth and quality of the University's students, academic programs, physical facilities and financial base. During Dr. Harvey's tenure as President, the student enrollment at Hampton University has increased from approximately 2,700 students to over 6,000. Moreover, the SAT scores of entering freshmen have increased approximately 300 points. His commitment to expansion and innovation in academic programs has resulted in 45 new academic programs. These new programs, together with existing ones, have placed and kept Hampton on the cutting edge of higher education.

Dr. Harvey has long been active on the national scene as a result of his appointments to national boards by four United States presidents. He has served on the President's National Advisory Council on Elementary and Secondary Education, the Defense Advisory Committee on Women in the Service, the Fund for the Improvement of Postsecondary Education, the Commission on Presidential Scholars, the President's Advisory Board on Historically Black Colleges, and the U.S. Department of Commerce Minority Economic Development Advisory Board. Currently, Dr. Harvey serves as a board member of the First Union National Bank (Mid-Atlantic Division—South Carolina, North Carolina, Tennessee, Virginia, Washington, D.C., and Maryland); Newport News Shipbuilding, Inc., and Trigon Blue Cross Blue Shield of Virginia.

His achievements have been recognized through inclusion in Personalities of the South, Who's Who in the South and Southwest, Who's Who in Black America, Who's Who in American Education, International Who's Who of Intellectuals, Two Thousand Notable Americans, Who's Who in Business and Finance, and Who's Who in America.

I congratulate Dr. Harvey on his accomplishments and wish him continued success.●

### THE ULTIMATE CHALLENGE

● Mr. DOMENICI. Mr. President, I rise today in recognition of Grants, NM, and the 20th Annual Mount Taylor Winter Quadrathlon. ''The Ultimate Challenge'' is a great program that encourages tourism and health in New Mexico.

I commend the people of Grants and Cibola County for their initiative to promote tourism in New Mexico through conducting the world-renowned Mount Taylor Winter Quadrathlon. ''The Ultimate Challenge'' is an innovative program which has adapted the traditional Triathlon to the varying terrain of Grants and the surrounding area. Instead of being a traditional Triathlon, which includes biking, running, and swimming, contestants have the opportunity to bike, run, ski and snow-shoe.

The Quadrathlon begins in Grants at 6,500 feet and continues all the way up Mount Taylor to an elevation of 11,301 feet, and concludes with a return trek to Grants. This multi-sport event allows those in the race to see the bountiful beauties of New Mexico, from our pristine deserts to our snow-covered mountains.

The race, which starts out with a 13-mile bike ride, begins in the desert; as the competition continues up Mount Taylor, the athletes are able to see 100 miles from horizon to horizon on a clear day and are given the opportunity to appreciate why New Mexico is indeed the Land of Enchantment.

I applaud Grants for being innovative in not only promoting tourism, but also by encouraging healthy lifestyles throughout their community and the world. The Quadrathlon, which solicits participants from New Mexico and across the globe, has improved the lives of many New Mexicans by giving them healthy goals for which to strive.

Grants has fostered a world renowned event by promoting the Quadrathlon for the past 20 years. I am proud to recognize Grants and the surrounding community for continually supporting such a beneficial event. On behalf of the Senate and the State of New Mexico, I thank these special New Mexicans for making a difference in our lives.●

### RECOGNIZING LARRY LAYMAN

● Mr. ALLEN. Mr. President, today I recognize Larry Layman, a Halifax area forester, who retired on January 1, 2003, ending a 30-year career of service to the Virginia Department of Forestry.

Larry Layman graduated from Virginia Tech with a Forestry and Wildlife degree in 1973 and began his career with the Virginia Department of Forestry as a forester in the Farmville Regional Office. On August 1, 1974, he was promoted to Halifax County Area Forester.

Mr. Layman has spent countless hours providing forest management advice, supervising planting crews, suppressing forest fires, working with crews in the application of herbicides and marking pine stands to be thinned. His ability to communicate proper forest resource management practices to forest landowners has resulted in greatly improved forest resources in the county.

I congratulate Mr. Layman on his years of dedicated service to the people of Halifax County and the Commonwealth of Virginia and wish him well in his retirement.●

### RECOGNIZING THE GAZETTE-VIRGINIAN

● Mr. ALLEN. Mr. President, today I recognize the Gazette-Virginian newspaper in South Boston, Virginia, as it celebrates its 100th birthday.

The Gazette-Virginian is Virginia's ninth largest nondaily newspaper. Its predecessor, the South Boston Times, began publication over 114 years ago as a weekly newspaper serving the South Boston area of Virginia. In 1903, the

name was changed to the Halifax-Gazette. Since that time, the paper has continued to grow to meet the needs of the area.

Acquired by the Shelton Family partially in 1946 and then wholly in 1958, the paper has flourished under their leadership. O. Lynn Shelton served as editor of the paper and was succeeded in this position by his son, Keith Shelton.

In 1963, the Halifax-Gazette became the Gazette-Virginian and began publication twice weekly. In 1998, the Gazette-Virginian went on-line, offering its readers a new avenue of communication. Today, the Gazette-Virginian employs 21 dedicated, full-time employees and boasts a circulation of 11,500, making it the most subscribed to paper in Halifax County.

I congratulate the Gazette-Virginian on its success and wish it many prosperous years of outstanding news coverage to come.●

## CELEBRATING BAILEY'S U.S. POST OFFICE'S CENTENNIAL

● Mr. LOTT. Mr. President, I take this opportunity to recognize the U.S. Post Office in Bailey, MS, as it celebrates its 100th year of existence. The Bailey Post Office began its service in December of the year 1902, when John A. Bailey was appointed as the first local postmaster by Henry C. Payne, the Postmaster General of the United States. The Bailey Post Office was opened in the already existing structure of the Bailey Grocery and has been serving the Bailey community ever since.

Since its inception in 1902, the Bailey Post Office has reliably served the people of the city of Bailey and the surrounding area and currently has two mail routes that cover 700 families in the Bailey community. Such longevity can be attributed to the character and work ethic that Bailey Post Office employees have exhibited over the years, but more than that, it is a tribute to the small town values present in a place such as Bailey. The fact that Leon Bailey, the grandson of the first ever Postmaster General in Bailey, still lives in Bailey speaks volumes about the tightly knit community the people of Bailey enjoy. During the recent centennial celebration, more than 300 members of the community gathered to commemorate the occasion.

Such a sense of community is rare in today's world, and as such it should be commended. That is why I felt the need to pay tribute to the current and past workers of the Bailey Post Office as well as the current and past members of the community.●

## ECONOMIC REPORT OF THE PRESIDENT DATED FEBRUARY 2003 WITH THE ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISERS FOR 2003—PM 14

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Joint Economic Committee:

ECONOMIC REPORT OF THE PRESIDENT

*To the Congress of the United States:*

The economy is recovering from the effects of the slowdown that began in the middle of 2000 and led to the subsequent recession. The American economy has been hit hard by the events of the past three years, most tragically by the effects of the terrorist attacks of September 11, 2001. Our economy and investor confidence were hurt when we learned that some corporate leaders were not playing by the rules. The combined impact of these events, along with the three-year decline in stock values that impacted business investment, slowed growth in 2002. Despite these challenges, the economy's underlying fundamentals remain solid—including low inflation, low interest rates, and strong productivity gains. Yet the pace of the expansion has not been satisfactory; there are still too many Americans looking for jobs. We will not be satisfied until every part of our economy is vigorous and every person who wants a job can find one.

We are taking action to restore the robust growth that creates jobs. In January, I proposed a growth and jobs plan to add needed momentum to our economic recovery. We will accelerate the tax relief already approved by Congress and give it to Americans now, when it is most needed. Lowering tax rates and moving more Americans into the lowest tax bracket will help our economy grow and create jobs. Faster marriage tax relief and a faster increase in the child tax credit will especially help middle-class families, and should take effect now. We will take steps to encourage small business investment, helping them to expand and create jobs. We will end the unfair double taxation of corporate income received by individuals. By putting more money back in the hands of shareholders, strengthening investor confidence in the market, and encouraging more investment, we will have more growth and job creation. These steps will allow Americans to keep more of their own money to spend, save, or invest. They will boost the economy, ensure that the recovery continues, and provide long-term economic benefits through higher productivity and higher incomes.

As our economy recovers, we also have an obligation to help Americans who have lost their jobs. That is why we extended the unemployment payments for workers who lost their jobs and improved incentives for investment to create new jobs. I also proposed a bold new program of reemployment accounts to help workers searching for jobs.

Our commitment to a strong economy does not stop with these important steps. We will continue to strengthen investor confidence in the integrity of our markets. We will develop better ways to train workers for new jobs. We will make the Nation's regulations and tax code less onerous and more reflective of the demands of a dynamic economy, and expand opportunities for open trade and stronger growth in all nations, especially for emerging and developing economies.

Our Nation's economic progress comes from the innovation and hard work of Americans in a free market that creates opportunities no other system can offer. Government does not create wealth, but instead creates the economic environment in which risk takers and entrepreneurs create jobs. with the right policies focused on growth and jobs, strong economic fundamentals—and hard work—I am confident we will extend economic opportunity and prosperity to every corner of America.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 2003.*

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1020. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification regarding the proposed transfer of major defense equipment valued at 14,000,000 or more to Israel; to the Committee on Foreign Relations.

EC–1021. A communication from the Deputy Secretary, Division of Corporate Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations (3235–AI70)'' received on January, 29, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1022. A communication from the Deputy Secretary, Division of Investment Management, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Proxy Voting By Investment Advisers (3235–AI65)'' received on February, 1, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1023. A communication from the Deputy Secretary, Division of Investment Management, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment (RIN3235–AI64)'' received on January, 29, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1024. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Alabama Update to Materials Incorporated by Reference (FRL 7444–7)'' received on January 31, 2003; to the Committee on Environment and Public Works.

EC–1025. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled

''Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and Montery Bay Unified Air Pollution Control District (FRL 7441–5)'' received on January 31, 2003; to the Committee on Environment and Public Works.

EC–1026. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Determination to Stay and/or Defer Sanctions, Imperial County Air Pollution Control District (FRL 7441–7)'' received on January 31, 2003; to the Committee on Environment and Public Works.

EC–1027. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois (FRL 7444–4)'' received on January 27, 2003; to the Committee on Environment and Public Works.

EC–1028. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; State of Colorado (FRL 7443–8)'' received on January 27, 2003; to the Committee on Environment and Public Works.

EC–1029. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Alabama (FRL 7444–9)'' received on January 27, 2003; to the Committee on Environment and Public Works.

EC–1030. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Plans For Designated Facilities and Pollutants: New Hampshire; Plan for Controlling MWC Emissions From Existing Municipal Waste Combustors (FRL 7447–7)'' received on January 31, 2003; to the Committee on Environment and Public Works.

EC–1031. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland: Amendments to Volatile Organic Compound Requirements from Specific Processes (FRL 7437–7)'' received on January 31, 2003; to the Committee on Environment and Public Works.

EC–1032. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled ''Assessing and Monitoring Floatable Debris'' received on January 27, 2003; to the Committee on Environment and Public Works.

EC–1033. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled ''National Recommended Water Quality Criteria; 2002'' received on January 27, 2003; to the Committee on Environment and Public Works.

EC–1034. A communication from the Acting Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled ''Office of Water Quality Trading Policy'' received on January 27, 2003; to the Committee on Environment and Public Works.

EC–1035. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, the report relative to transactions involving U.S. Exports to Pakistan; to the Committee on Banking, Housing, and Urban Affairs.

EC–1036. A communication from the President of the United States, transmitting, pursuant to law, a report relative to the continuation of the national emergency with respect to Sierra Leone and Liberia to extend beyond January 18, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1037. A communication from the President of the United States, transmitting, pursuant to law, the 6-month periodic report on the National Emergency with respect to Sierra Leone and Liberia that was declared in Executive Order 13194 of January 18, 2001 and expanded in scope in Executive Order 13213 of May 22, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–1038. A communication from the Military Health System, Department of Defense, transmitting, pursuant to law, the report relative to evaluation of the feasibility and practicability of using telecommunications to provide health care services and pharmacy services; to the Committee on Armed Services.

EC–1039. A communication from the Secretary of the Army, transmitting, pursuant to law, the report relative to a cost breach for both the Program Acquisition Unit Cost (PAUC) and Average Procurement Unit Cost (APUC) thresholds for the Comanche Program; to the Committee on Armed Services.

EC–1040. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Exotic Newcastle Disease; Additions to Quarantined Area (Doc. No. 02–117–3)'' received on January 29, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1041. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''AQI User Fees: Extension of Current Fees Beyond Fiscal Year 2002 (Doc. No. 02–085–2)'' received on January 29, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1042. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Mexican Fruit Fly; Addition of Regulated Area (Doc. No. 02–121–2)'' received on January 29, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1043. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Polycholrinated Biphenyls; Manufacturing (Import) Exemptions (FRL 7288–6)'' received on January 27, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1044. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''6-Benzylandenine; Temporary Exemption From the Requirement of a Tolerance (FRL 7287–2)'' received on January 31, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1045. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Thiophanate Methy; Pesticide Tolerance for Emergency Exemption (FRL 7285–9)'' received on January 31, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1046. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Cyprodinil; Pesticide Tolerance (FRL 7289–7)'' received on January 31, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1047. A communication from the Executive Director, Commodity Futures Trading Commission, transmitting, pursuant to law, the Federal Managers' Financial Integrity Act, 2002 Report; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1048. A communication from the Administrator, Food Safety and Inspection Service, transmitting, pursuant to law, the report of a rule entitled ''Termination of Designation of the State of Missouri With Respect to the Inspection of Meat and Meat Food Products and Poultry and Poultry Food Products (Doc. No. 00–052F)'' received on January 27, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1049. A communication from the Acting Director of Human Resource Management, Department of Energy, transmitting, pursuant to law, the report of a nomination confirmed for the position of Deputy Secretary, Department of Energy, received on January 10, 2003; to the Committee on Energy and Natural Resources.

EC–1050. A communication from the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities Final Rule'' received on January 28, 2003; to the Committee on Energy and Natural Resources.

EC–1051. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Annual update of list of areas in which the IRS will not issue ruling (Rev. Proc. 2003–3)'' received on January 28, 2003; to the Committee on Finance.

EC–1052. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Taxpayer Identification Number (RIN 1545–BB88)'' received on January 31, 2003; to the Committee on Finance.

EC–1053. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance Regarding the Definition of Foreign Personal Holding Company Income (RIN1545–BA33)'' received on January 31, 2003; to the Committee on Finance.

EC–1054. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Information Reporting and Backup Withholding for Payment Card Transactions (1545–BA17)'' received on January 31, 2003; to the Committee on Finance.

EC–1055. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance Necessary to Facilitate Electronics Tax Administration (1545–AY56)'' received on January 31, 2003; to the Committee on Finance.

EC–1056. A communication from the Director, Regulations and Forms Services, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to

law, the report of a rule entitled ''Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda (1115–AG68) (INS no. 2202–02)'' received on February 4, 2002; to the Committee on the Judiciary.

EC–1057. A communication from the Director, Regulations and Forms Services, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Adjustment of Immigration Benefit Fees (1115–AG96) (INS no. 2257–03)'' received on January 27, 2003; to the Committee on the Judiciary.

EC–1058. A communication from the Deputy Assistant Attorney General, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Minimum Safety and Security Standards for Private Companies that Transport Violent Prisoners (1105–AA77)'' received on January 27, 2003; to the Committee on the Judiciary.

EC–1059. A communication from the Chair, United States Sentencing Commission, transmitting, pursuant to law, the report entitled ''Increased Penalties Under The Sarbanes-Oxley Act of 2002''; to the Committee on the Judiciary.

EC–1060. A communication from the Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Final Rule Relating to Civil Penalties Under ERISA Section 502(c)(7) and Conforming Technical Changes On Civil Penalties Under ERISA Sections 502(c)(2), 502(c)(5), and 502(c)(6) (1210–AA91)(1210–AA93)'' received on January 27, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1061. A communication from the Under Secretary of Defense, Personnel and Readiness, Department of Defense, transmitting, pursuant to law, the report of the annual audit and report of the Activities of the American Red Cross; to the Committee on Health, Education, Labor, and Pensions.

EC–1062. A communication from the Congressional Liaison Officer, Trade and Development Agency, transmitting, pursuant to law, the report relative to the Trade and Development Agency funding obligation regarding the Federal Air Traffic Control Authority (FATCA) Project Management Technical Assistance in Serbia; to the Committee on Appropriations.

EC–1063. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the report of a violation, case number 99–09B, totaling $82,617, occurred in fiscal year 1996 for the Family Housing, Navy appropriation; to the Committee on Appropriations.

EC–1064. A communication from the Administrator, NASA, transmitting, pursuant to law, the fiscal year 2002 Annual Report of the Centennial of Flight Commission; to the Committee on Commerce, Science, and Transportation.

EC–1065. A communication from the Secretary of the Commission, Bureau of Economics, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Annual Adjustment of Ceiling on Allowable Charge for Certain Disclosures under the Fair Credit Reporting Act Section 612(a)'' received on January 21, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1066. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications; Pacific Sardine Fishery (0648–AP88)'' received on January 21, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1067. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report relative to the notification of two critical military skills identified for the purpose of authorizing a retention bonus; to the Committee on Commerce, Science, and Transportation.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LUGAR, without amendment:

S. Res. 50. An original resolution authorizing expenditures by the Committee on Foreign Relations.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BREAUX (for himself, Mr. HATCH, Mr. BAUCUS, Mr. BOND, Mr. BURNS, Ms. COLLINS, Mr. HARKIN, Mr. KOHL, Ms. LANDRIEU, Mrs. LINCOLN, Mr. NELSON of Florida, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. SMITH, Mr. JEFFORDS, Mr. MILLER, and Ms. STABENOW):

S. 333. A bill to promote elder justice, and for other purposes; to the Committee on Finance.

By Ms. LANDRIEU:

S. 334. A bill to amend title 38, United States Code, to provide eligibility for astronauts for Servicemembers' Group Life Insurance; to the Committee on Veterans' Affairs.

By Mr. JOHNSON:

S. 335. A bill to expand the calling time restrictions on telemarketing telephone calls to include the period from 5:30 p.m. to 7:30 p.m., and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DOMENICI:

S. 336. A bill to amend title 10, United States Code, to expand reimbursement for travel expenses of covered beneficiaries for specialty care in order to cover specialized dental care; to the Committee on Armed Services.

By Mr. NELSON of Florida:

S. 337. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Solid Waste Disposal Act to prohibit the use of arsenic-treated lumber as mulch, compost, or a soil amendment, and to prohibit the manufacture of arsenic-treated wood for use as playground equipment for children, fences, walkways, or decks or for other residential or occupational purposes, and for other purposes; to the Committee on Environment and Public Works.

By Mr. LAUTENBERG:

S. 338. A bill to protect the flying public's safety and security by requiring that the air traffic control system remain a Government function; to the Committee on Commerce, Science, and Transportation.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LUGAR:

S. Res. 50. An original resolution authorizing expenditures by the Committee on Foreign Relations; from the Committee on Foreign Relations; to the Committee on Rules and Administration.

## ADDITIONAL COSPONSORS

S. 6

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 6, a bill to enhance homeland security and for other purposes.

S. 16

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 16, a bill to protect the civil rights of all Americans, and for other purposes.

S. 56

At the request of Mr. JOHNSON, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 56, a bill to restore health care coverage to retired members of the uniformed services.

S. 92

At the request of Mrs. LINCOLN, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 92, a bill to accelerate and make permanent the child tax credit.

S. 141

At the request of Mr. KERRY, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 141, a bill to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes.

S. 150

At the request of Mr. ALLEN, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

S. 156

At the request of Mr. VOINOVICH, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 156, a bill to amend the Atomic Energy Act of 1954 to reauthorize the Price-Anderson provisions.

S. 173

At the request of Mr. LIEBERMAN, his name was added as a cosponsor of S. 173, a bill to amend the Internal Revenue Code of 1986 to extend the financing of the Superfund.

S. 173

At the request of Mr. REED, his name was added as a cosponsor of S. 173, supra.

S. 196

At the request of Mr. ALLEN, the names of the Senator from Missouri (Mr. TALENT) and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 196, a bill to establish a digital and wireless network technology program, and for other purposes.

S. 219

At the request of Mr. CRAIG, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 219, a bill to amend the Tariff Act of 1930 to clarify the adjustments to be made in determining export price and constructed export price.

S. 238

At the request of Mr. REED, the names of the Senator from Nevada (Mr. REID), the Senator from Delaware (Mr. CARPER), and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 238, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 245

At the request of Mr. BROWNBACK, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 245, a bill to amend the Public Health Service Act to prohibit human cloning.

S. 250

At the request of Mr. DURBIN, the names of the Senator from Washington (Mrs. MURRAY), the Senator from Michigan (Mr. LEVIN), and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 250, a bill to address the international HIV/AIDS pandemic.

S. 252

At the request of Mr. THOMAS, the names of the Senator from North Dakota (Mr. DORGAN) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 252, a bill to amend the Internal Revenue Code of 1986 to provide special rules relating to the replacement of livestock sold on account of weather-related conditions.

S. 262

At the request of Mr. BINGAMAN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 262, a bill to amend the temporary assistance to needy families program under part A of title IV of the Social Security Act to improve the provision of education and job training under that program, and for other purposes.

S. 272

At the request of Mr. SANTORUM, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 272, a bill to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low income Americans to gain financial security by building assets, and for other purposes.

S. 285

At the request of Mr. CAMPBELL, the names of the Senator from Alaska (Ms. MURKOWSKI) and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 285, a bill to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, and for other purposes.

S. 289

At the request of Mr. GRASSLEY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 289, a bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes.

S. 300

At the request of Mr. KERRY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 314

At the request of Mr. KENNEDY, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 314, a bill to make improvements in the Foundation for the National Institutes of Health.

S. 318

At the request of Mr. KERRY, the names of the Senator from Maine (Ms. SNOWE) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of S. 318, a bill to provide emergency assistance to nonfarm-related small business concerns that have suffered substantial economic harm from drought.

S. 332

At the request of Mr. DORGAN, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 332, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

S.J. RES. 3

At the request of Mr. LIEBERMAN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S.J. Res. 3, a joint resolution expressing the sense of Congress with respect to human rights in Central Asia.

S. RES. 44

At the request of Mr. GRAHAM of South Carolina, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. Res. 44, a resolution designating the week beginning February 2, 2003, as ''National School Counseling Week''.

S. RES. 48

At the request of Mr. AKAKA, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. Res. 48, a resolution designating April 2003 as ''Financial Literacy for Youth Month''.

S. RES. 49

At the request of Mr. HATCH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Res. 49, a resolution designating February 11, 2003, as ''National Inventors' Day''.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BREAUX (for himself, Mr. HATCH, Mr. BAUCUS, Mr. BOND, Mr. BURNS, Ms. COLLINS, Mr. HARKIN, Mr. KOHL, Ms. LANDRIEU, Mrs. LINCOLN, Mr. NELSON of Florida, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. SMITH, Mr. JEFFORDS, Mr. MILLER, and Ms. STABENOW):

S. 333. A bill to promote elder justice, and for other purposes; to the Committee on Finance.

Mr. BREAUX. Mr. President, I rise to introduce S. 333, the Elder Justice Act. Despite the rapid aging of America, few pressing social issues have been as systematically ignored as elder abuse, neglect, and exploitation.

This abuse of our seniors takes many forms. It can be physical, sexual, psychological, or financial. The perpetrator may be a stranger, an acquaintance, a paid caregiver, a corporation and, far too often, a spouse or another family member. Elder abuse happens everywhere—in poor, middle-class and upper income households; in cities, suburbs, and rural areas. It knows no demographic or geographic boundaries.

The cost of such abuse and neglect is high by any measure. The price of this abuse is paid in needless human suffering, inflated health care costs, depleted public resources, and the loss of one of our greatest national assets—the wisdom and experience of our elders.

With scientific advances and the graying of millions of baby boomers, this year the number of elderly on the planet passed the number of children for the first time. Although we have made great strides in promoting independence, productivity, and quality of life, old age still brings inadequate health care, isolation, impoverishment, abuse, and neglect for far too many Americans.

Studies conclude that elder abuse, neglect, and exploitation are widely under reported and these abuses significantly shorten the lives of older victims. A single episode of mistreatment can tip over an otherwise independent, productive life, triggering a downward spiral that can result in depression, serious illness, and even death.

Too many of our frailest citizens suffer needlessly and cannot simply move away from the abuse. Frequently, they cannot express their wishes or suffering. And, even if they can, often they do not, fearing retaliation.

Congress has passed comprehensive bills to address the ugly truth of two other types of abuse—child abuse and crimes against women. These bills placed these two issues into the national consciousness and addressed the issues at a national level.

The law created new Federal infrastructure and funding—focusing resources, creating accountability, and changing how we think about and treat abuse of women and children. And most

jurisdictions now have established coordinated social service-public heath-law enforcement approaches to confront these abuses.

But despite dozens of congressional hearings over the past two decades on the devastating effects of elder abuse, neglect and exploitation, interest in the subject has waxed and waned, and, to date, no Federal law has been enacted to address this issue in a comprehensive manner. In these hearings, elder abuse was called a ''disgrace'' and a ''burgeoning national scandal.'' Indeed, we found no single Federal employee working full time on elder abuse in the entire Federal Government.

The time has come for Congress to provide seniors a set of fundamental protections. That is why, along with Senators HATCH, BAUCUS, COLLINS, SMITH of Oregon, LINCOLN, BOND, NELSON of Florida, BURNS, ROCKEFELLER, SANTORUM, LANDRIEU, JEFFORDS, HARKIN, MILLER, STABENOW, and KOHL, I am introducing a bill, the Elder Justice Act, the first comprehensive Federal effort to address elder abuse in the United States.

Our bill will elevate elder abuse, neglect, and exploitation to the national stage in a lasting way. We want to ensure Federal leadership to provide resources for services, prevention, and enforcement efforts to those on the front lines.

A crime is a crime whoever the victim and wherever it occurs. Crimes against seniors must be elevated to the level of child abuse and crimes against women.

It is clear in confronting child abuse and violence against women that the best methods of prevention is two-pronged—through both law enforcement and social services. With offices in the Departments of Health and Human Services and Justice, this legislation ensures a combined public health-law enforcement coordination at all levels. In addition, because elder abuse and neglect have been virtually absent from the national research agenda, this bill establishes research centers of excellence, and funds research projects to fuel future legislation.

These measures lay the foundation to address, in a meaningful and lasting way, a devastating and growing problem that has been invisible for far too long. We can no longer neglect these difficult issues afflicting frail and elderly victims.

This effort takes numerous steps to prevent and treat elder abuse:

It improves prevention and intervention by funding projects to make older Americans safer in their homes, facilities, and neighborhoods, to enhance long-term care staffing and to stop financial fraud before the money goes out the door.

It enhances detection by creating forensic centers and developing expertise to enhance detection of the problem.

It bolsters treatment by funding efforts to find better ways to mitigate the devastating consequences of elder mistreatment.

It increases collaboration by requiring ongoing coordination at the federal level, among Federal, State, local and private entities, law enforcement, long-term care facilities, consumer advocates and families.

It aids prosecution by assisting law enforcement and prosecutors to ensure that those who abuse our Nation's frail elderly will be held accountable, wherever the crime occurs and whoever the victim.

It helps consumers by creating a resource center for family caregivers and those trying to make decisions about different types of long-term care providers.

The importance of defending our right to live free of suffering from abuse and neglect does not diminish with age. If we can unlock the mysteries of science to live longer, what do we gain if we fail to ensure Americans live longer with dignity?

More and more of us will enjoy longer life in relative health, but with this gift comes the responsibility to prevent the needless suffering too often borne by our frailest citizens.

I appreciate the work of my fellow members and a wide array of groups on behalf of elder justice and look forward to continued support from both sides of the aisle and in both houses to make elder justice a reality for those Americans who need it most.

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By Ms. LANDRIEU:

S. 334. A bill to amend title 38, United States Code, to provide eligibility for astronauts for Servicemembers' Group Life Insurance; to the Committee on Veterans' Affairs.

Ms. LANDRIEU. Mr. President, our Nation continues to mourn the terrible tragedy that we all experienced on Saturday with the explosion of the Space Shuttle *Columbia*. The loss of these seven brave men and women proved that space flight is still dangerous. Unfortunately, I come to the floor today to call my colleagues' attention to another tragedy, one which Congress can and should correct.

After the 1986 *Challenger* explosion, a terrible oversight on the part of our government came to light. We learned that NASA astronauts, with the exception of those in the military, often cannot get life insurance. Their jobs are too high-risk for them to be able to easily obtain private insurance. And, up until now, the government has not provided any type of safety net for these men and women, who risk their lives every day to advance our Nation's space program.

Fortunately, a private fund, the Space Shuttle Children's Trust Fund, was formed to fill this breach. The fund paid an estimated $1.2 million to the families of the astronauts killed in the *Challenger* explosion. I would like to take a moment to commend Mr. Delbert Smith, a Washington, DC attorney and chairman of the fund, as well as all of the other men and women who stepped forward to help the families of these national heroes. It is selfless individuals like Mr. Smith and his colleagues that make America the greatest nation in the world.

Despite the sacrifice of these individuals, the fact is that the government should have taken care of the families of these astronauts. Just as we take care of our veterans, we should ensure that our astronauts do not have to worry about the financial survival of their families if the unthinkable happens. And while there will always be a place for organizations like the Space Shuttle Children's Trust Fund, Congress has a responsibility to take care of the brave men and women in our human space flight program.

Unfortunately, it pains me to say that this is one lesson we did not learn from the *Challenger* disaster. After the *Columbia* explosion, I was shocked to learn that there is still no provision for the Federal Government to ensure that the families of astronauts are taken care of in these tragic circumstances.

We all pray that we will never have to suffer through another tragedy like the *Challenger* and *Columbia* explosions. But it is the responsibility of Congress to ensure that we are prepared in case it does happen again. Therefore, today I am introducing a bill that would allow astronauts to participate in the Servicemember's Group Life Insurance program. As my colleagues know, this is the insurance program that is set up for our men and women in the military. With relatively low payments, service members are eligible to up to $250,000 in life insurance. I believe that astronauts should also be eligible for this program, and that is why I am proposing this legislation.

In closing, something like this should have been done in 1986, following the *Challenger* disaster. Unfortunately, 17 years later, Congress still has not acted to fix this problem. I say to my colleagues, we must not let even one more astronaut put his or her life at risk until we have ensured that the government will be there to provide for their children and their families. I hope my colleagues will join me in supporting this measure, and I hope we can get it approved quickly. I thank the chair.

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By Mr. DOMENICI:

S. 336. A bill to amend title 10, United States Code, to expand reimbursement for travel expenses of covered beneficiaries for specialty care in order to cover specialized dental care; to the Committee on Armed Services.

Mr. DOMENICI. Mr. President, I rise today to offer legislation entitled the ''Military Family Access to Dental Care Act.'' This legislation, while limited in its scope, will have a profound effect on the lives of our military service members and their families particularly those serving our country at remote rural bases.

Current law provides reimbursement for military dependents who, when referred, must travel at least one-hundred miles to receive specialty health care. However, specialty dental care has not been interpreted within the scope of this provision. In a rural State like New Mexico, this exclusion has a real impact on quality of life.

For example, a military dependent stationed at Cannon Air Force Base in eastern New Mexico is not able to receive periodontic or orthodontic care in nearby Clovis these specialties are simply not available. Instead, to receive such care, that dependent would have to travel 225 miles to Albuquerque, 110 miles to Lubbock, Tx, or 104 miles to Amarillo often two or three times to alleviate a special dental problem. The cost of traveling these long distances can eat away at a military family's income and degrade their quality of life.

The legislation I propose expands the scope of existing law to ensure that travel of at least one-hundred miles for referred specialty dental care is reimbursable. It is my firm belief that this small but practical bill can improve the lives of many military families, especially those assigned to bases in the West. What is more, it sends a signal to our military personnel and their families that we recognize the sacrifices they make for us and want to respond by addressing their needs whenever we can. I hope that my colleagues will join me in supporting this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 336

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REIMBURSEMENT OF COVERED BENEFICIARIES FOR CERTAIN TRAVEL EXPENSES RELATING TO SPECIALIZED DENTAL CARE.**

Section 1074i of title 10, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''In any case''; and

(2) by adding at the end the following new subsection:

''(b) SPECIALTY CARE PROVIDERS.—For purposes of subsection (a), the term 'specialty care provider' includes a dental specialist (including an oral surgeon, orthodontist, prosthodontist, periodontist, endodontist, or pediatric dentist).''.

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By Mr. NELSON of Florida:

S. 337. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Solid Waste Disposal Act to prohibit the use of arsenic-treated lumber as mulch, compost, or a soil amendment, and to prohibit the manufacture of arsenic-treated wood for use as playground equipment for children, fences, walkways, or decks or for other residential or occupational purposes, and for other purposes; to the Committee on Environment and Public Works.

Mr. NELSON of Florida. Mr. President, I rise today to discuss an issue I've fought long and hard on—the risk posed to children by arsenic-treated wood playground equipment.

There is now a government study which demonstrates the link between wood laced with an arsenic preservative called chromated copper arsenate or CCA and an increased risk of lung and bladder cancer.

Last Friday, the scientists at the Consumer Product Safety Commission issued a report that concluded that 2 to 100 children out of 1 million will get bladder and lung cancer from their exposure to arsenic-treated wood playground equipment.

This is disturbing.

Especially since CCA was used to preserve 98 percent of the wood produced for residential uses in the United States in 2001.

Since March of 2001, when media reports emerged about elevated levels of arsenic in playground soil and numerous playgrounds in the State of Florida closed as a result, I have been pushing the Environmental Protection Agency to complete its long-awaited study on the dangers posed by this arsenic preservative.

I am still waiting.

To spur action on this issue, in the last 2 years, I have filed legislation mandating warning labels on all arsenic-treated wood to inform consumers that the wood they were purchasing contained a carcinogen.

Further, my past legislation required the EPA to complete its study, begun long before the CPSC started its study, regarding the risks posed by arsenic-treated wood.

And, finally, I introduced legislation to ban the residential uses of arsenic-treated wood.

Meanwhile, EPA reached an agreement with the wood preserving industry to voluntarily phase out the manufacture of CCA-treated wood for residential purposes by December 31, 2003.

However, a year has passed since EPA reached that agreement and they still have not published a final rule in the Federal Register making the phaseout permanent, they still have not completed their own risk assessment of the dangers posed to children playing on CCA-treated equipment and a New York Times article in December 2002, reported that the administration may be reconsidering the phaseout.

For those reasons, today I again introduce legislation to ban the manufacture of arsenic-treated wood for residential uses, including use as a mulch, to set a date certain for completion of EPA's risk assessment and to require the EPA to conduct a public education program to inform the public about how they can decrease their risk of contracting cancer from CCA-treated wood.

The legislation also provides for the safe disposal of CCA-treated wood to prevent arsenic from contaminating our groundwater.

I urge my colleagues to support this legislation.

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By Mr. LAUTENBERG:

S. 338. A bill to protect the flying public's safety and security by requiring that the air traffic control system remain a Government function; to the Committee on Commerce, Science, and Transportation.

Mr. LAUTENBERG. Mr. President, I rise to introduce the Safe and Secure Skies Act of 2003, a bill that would protect the safety and security of the flying public by requiring that air traffic control remain a government function. This legislation is necessary because the Bush administration has taken several steps to privatize our Nation's air traffic control system.

On September 11 air traffic controllers across the Nation performed heroically, as they guided thousands of aircraft out of the sky. From the tower at Newark International Airport, air traffic controllers in my State could see the Twin Towers burning as they worked to return tens of thousands of Americans to the ground safely.

Like many public servants on that day, they are heroes. Along with police, firefighters, and other emergency personnel, these public employees gave 110 percent to secure the safety of the American people.

In the aftermath of these tragic events, the American people demanded one thing in particular of their government: they wanted government personnel—not private contract firms—to perform security screening of baggage at our Nation's airports. And Congress compiled with this request, as we turned the privatized baggage screening system over to Federal workers with the new Transportation Security Agency.

That is why it is so surprising to me that the administration is now taking steps to privatize the air traffic control system in this country. It makes little sense, especially after September 11. It is the opposite of what the public wants.

The safety and security of the American people should not be the responsibility of the lowest bidder. Rather, it is a core responsibility of government.

But the administration is moving rapidly in the opposite direction. Already we have seen the jobs of air traffic control specialists—those who repair, inspect, and maintain the air traffic control system—opened up to outsourcing. And the administration just completed a ''feasibility study'' of privatizing the jobs of flight service station controllers—the experts who provide critical weather, safety, and security alerts to pilots.

Next on the agenda for the administration are the air traffic controllers, who monitor and guide thousands of aircraft every day over the United States.

The administration has already proposed air traffic controller privatization in two of its annual budgets. In

June 2002, President Bush issued an executive order stripping air traffic services of its ''inherently governmental'' status. And in December 2002, the administration issued a document designating air traffic control a ''commercial'' activity, opening the door to contracting out the jobs of air traffic controllers to the lowest bidder.

This change from ''inherently governmental'' to a ''commercial'' function is more than a technical change—''inherently governmental'' functions can never be privatized, while ''commercial'' functions may be outsourced.

The administration is trying to accomplish its privatization plan under the public's radar screen through the Office of Management and Budget's A–76 process. We in Congress have the power to stop this process and the bill I am introducing today will reverse the administration's plan.

My Safe and Secure Skies Act will return air traffic control functions to ''inherently governmental'' status, thus barring any privatization action. I do want to note, however, that my legislation will not affect the existing FAA ''Contract Tower'' program, which involves some small, visual flight rules airports.

We currently have the best air traffic control system in the world. Over 15,000 dedicated Federal air traffic controllers guide more than 2 million passengers a day home safely. Maintaining and inspecting the system are over 11,000 air traffic specialists, and nearly 3,000 flight service station controllers provide critical information and alerts to pilots. They are expert professionals who perform under pressure every day to keep our skies safe.

I believe our air traffic controllers are almost a wing of the military, and they play a major role in homeland security. When President Bush gave the State of the Union speech last month, it was the flight service station air traffic controllers who sent alerts to avoid the expanded ''no-fly'' zone around Washington. And when the space shuttle *Columbia* tragically disintegrated in the skies over Texas, it was the air traffic controllers who directed aircraft away from the falling debris field.

These men and women perform a critical government function.

Some claim that privatization will save money. But when you look at other countries' experiments with air traffic control privatization, all you see are financial messes and safety hazards. Australia, Canada, and Great Britain all have privatized systems that are now in crisis. Costs have gone up and safety has gone down.

Since Great Britain adopted privatization, near misses have increased by 50 percent and delays have increased by 20 percent. The British Government has already had to bail out the privatized air traffic control company twice.

Privatization of the air traffic control system is bad fiscal policy, bad safety policy, bad homeland security policy, and the public doesn't want it.

I therefore ask my colleagues to support my Safe and Secure Skies Act, which will declare these critical air traffic control functions to be ''inherently governmental'', and therefore not eligible for outsourcing.

The safety of our skies should not be put in the hands of the lowest bidder.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 50—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON FOREIGN RELATIONS

Mr. LUGAR submitted the following resolution; from the Committee on Foreign Relations; which was referred to the Committee on Rules and Administration:

S. RES. 50

*Resolved,* That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Foreign Relations, is authorized from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2(a). The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this resolution shall not exceed $2,933,624, of which amount (1) not to exceed $210,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $5,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2003, through September 30, 2004, expenses of the committee under this resolution shall not exceed $5,163,940, of which amount (1) not to exceed $210,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $5,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2004, through February 28, 2005, expenses of the committee under this resolution shall not exceed $2,201,453, of which amount (1) not to exceed $210,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $5,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The Committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2005.

SEC. 4. Expenses of the Committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations.''

## NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, February 12, 2003, at 10:30 a.m. in Room 495 of the Russell Senate Office Building to conduct a Confirmation hearing on the President's nomination of Mr. Ross O. Swimmer to be Special Trustee for American Indians at the U.S. Department of the Interior.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

## NATIONAL INVENTORS' DAY

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 10, S. Res. 49.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 49) designating February 11, 2003 as National Inventors' Day.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LEAHY. Mr. President, I am pleased the Senate is passing S. Res. 49 that Senator HATCH and I introduced to recognize February 11, 2003, as National Inventors' Day.

More than 200 years ago, on July 30, 1790, Samuel Hopkins, a resident of Vermont, was granted the first United States patent. He had discovered a process for making potash, and was

awarded his patent by President George Washington, Attorney General Edmund Randolph and Secretary of State Thomas Jefferson.

Samuel Hopkins is just one of the many resourceful and creative inventors from Vermont. The town of Brandon can boast Thomas Davenport, a self-educated blacksmith interested in electricity and magnetism. Through hands-on experiments with electromagnets, he built the first true electric motor in 1834. Initially, his patent request was denied because there was no prior patent on electric machinery. But he garnered the support of numerous professors and philosophers who examined his invention and endorsed his right to a patent on his novel device. In 1837, his determinism paid off, and he secured a patent.

John Deere was born in Rutland, VT and spent most of his early life in Middlebury. After moving out West, John Deere realized the cast-iron plows he and other settlers brought with them were not going to work in the Midwest soil. He studied the problem and developed the first successful steel plow using steel from a broken saw blade. This new steel plow became the key for successful farming in the West, and ''John Deere'' is still synonymous with farming equipment today.

Vermont continues to be a leader in inventing and obtaining patents. My State ranks fourth in the Nation for number of patents issued. IBM's Essex Junction Plant, which designs and makes computer technology for a wide range of products, received 411 patents from the U.S. Patent & Trademark Office in 2002. Vermont's plant also has 18 inventors who together have earned more than 600 patents. One of those inventors is Steve Voldman, the top patent winner. Over the past 10 years, he has received 110 patents. In 2002, he received 29. Many of his 2002 patents had to do with silicon germanium, a new technology that has produced the world's fastest chip.

Today's inventors are individuals in a shop, garage or home lab. They are teams of scientists working in our largest corporations or at our colleges and universities. In the spirit of independent inventors, small businesses, venture capitalists and larger corporations in Vermont and all over the United States, I would like to recognize February 11, 2003, as ''National Inventors' Day.''

Mr. ENZI. I ask unanimous consent that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

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

The resolution (S. Res. 49) was agreed to.

The preamble was agreed to.

The resolution, with the preamble, reads as follows:

S. RES. 49

Whereas the American people and the world have benefited from the creations and discoveries of America's inventors; and

Whereas the patents that protect those creations and discoveries spur technological progress, improve the quality of life, stimulate the economy, and create jobs for Americans: Now, therefore, be it

*Resolved*, That the Senate—

(1) honors the important role played by inventors in promoting progress in the useful arts;

(2) recognizes the invaluable contribution of inventors to the welfare of the people of the United States;

(3) designates February 11, 2003, as ''National Inventors' Day''; and

(4) requests the President to issue a proclamation calling upon the people of the United States to celebrate such day with appropriate ceremonies and activities.

## ORDERS FOR TUESDAY, FEBRUARY 11, 2003

Mr. ENZI. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Tuesday, February 11. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then proceed to executive session to resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit.

I further ask unanimous consent that the Senate recess from the hour of 12:30 p.m. to 2:15 p.m. for the weekly party caucuses.

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

## PROGRAM

Mr. ENZI. For the information of all Senators, tomorrow the Senate will return to the consideration of the Estrada nomination to the DC Circuit Court. As stated earlier, we are attempting to reach an agreement that would allow us to lock in a final vote on the nomination. It is hoped that an agreement can be reached during tomorrow's session. Votes are possible during tomorrow's session.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under a previous order, the Senate stands adjourned until 9:30 a.m., Tuesday, February 11, 2003.

Thereupon, the Senate, at 6:45 p.m., adjourned until Tuesday, February 11, 2003, at 9:30 a.m.

## CONFIRMATIONS

Executive nominations confirmed by the Senate February 4, 2003:

DEPARTMENT OF DEFENSE

PAUL MCHALE, OF PENNSYLVANIA, TO BE AN ASSISTANT SECRETARY OF DEFENSE.

CHRISTOPHER RYAN HENRY, OF VIRGINIA, TO BE DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY.

# EXTENSIONS OF REMARKS

## SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, February 11, 2003 may be found in the Daily Digest of today's RECORD.

## MEETINGS SCHEDULED

### FEBRUARY 12

9:30 a.m.
Armed Services
To hold hearings to examine the current and future worldwide threats to the national security of the United States; to be followed by a closed meeting to be held in SH–219.
SH–216

Commerce, Science, and Transportation
To hold joint hearings with the House Committee on Science Subcommittee on Space and Aeronautics to examine the recent space shuttle Columbia accident.
SR–325

Environment and Public Works
Business meeting to markup S. 195, to amend the Solid Waste Disposal Act to bring underground storage tanks into compliance with subtitle I of that Act, to promote cleanup of leaking underground storage tanks, to provide sufficient resources for such compliance and cleanup, and an original resolution authorizing expenditures by the committee.
SD–406

Finance
To continue hearings to examine proposals for economic growth and job creation, focusing on incentives for consumption; to be followed by hearings to examine the nominations of Joseph Robert Goeke, of Illinois, to be a Judge of the United States Tax Court, Glen L. Bower, of Illinois, to be a Judge of the United States Tax Court, Daniel Pearson, of Minnesota, to be a Member of the United States International Trade Commission, Charlotte A. Lane, of West Virginia, to be a Member of the United States International Trade Commission, and Raymond T. Wagner, Jr., of Missouri, to be a Member of the Internal Revenue Service Oversight Board for the remainder of the term expiring September 14, 2004.
SD–215

Foreign Relations
To hold hearings to examine the reconstruction of Afghanistan.
SD–419

Judiciary
To hold hearings to examine judicial nominations.
SD–226

10 a.m.
Health, Education, Labor, and Pensions
Business meeting to consider committee's rules of procedure for the 108th Congress, subcommittee assignments, S. 239, to amend the Public Health Services Act to add requirements regarding trauma care, proposed legislation entitled ''Keeping Children and Families Safe Act of 2003'', proposed legislation concerning NIH Foundation, proposed legislation concerning birth defects, and proposed legislation entitled ''Animal Drug User Fee Act''.
SD–430

Indian Affairs
To hold hearings to examine the nomination Ross O. Swimmer, to be Special Trustee—American Indians, Department of the Interior.
SR–485

2:30 p.m.
Commerce, Science, and Transportation
Oceans, Atmosphere, and Fisheries Subcommittee
To hold hearings to examine Coast Guard transition to Homeland Security.
SR–253

### FEBRUARY 13

9:30 a.m.
Environment and Public Works
Clean Air, Climate Change, and Nuclear Safety Subcommittee
To hold oversight hearings to examine the Nuclear Regulatory Commission.
SD–406

Armed Services
To hold hearings on proposed legislation authorizing funds for fiscal year 2004 for the Department of Defense, and the Future Years Defense Program.
SH–216

Commerce, Science, and Transportation
To hold hearings to examine United States Olympic Committee reforms.
SR–253

Judiciary
Business meeting to consider judicial nominations.
SD–226

10 a.m.
Energy and Natural Resources
To hold hearings to examine the President's proposed budget request for fiscal year 2004 for the Forest Service of the Department of Agriculture.
SD–366

Finance
To hold hearings to examine Enron, focusing on the Joint Committee on Taxation's investigative report.
SD–215

2:30 p.m.
Budget
To resume hearings on the President's proposed budget for fiscal year 2004, focusing on the Department of Transportation.
SD–608

Commerce, Science, and Transportation
To hold hearings to examine infrastructure needs of minority serving institutions.
SR–253

Energy and Natural Resources
To hold hearings to examine oil, gas, Hydrogen, and conservation, focusing on oil supply and prices.
SH–216

### FEBRUARY 14

9:30 a.m.
Governmental Affairs
To hold hearings to examine the President's proposal to create a terrorist threat integration center, including consolidating intelligence analysis.
SD–342

### FEBRUARY 25

9:30 a.m.
Armed Services
To hold hearings to examine the Defense Authorization Request for Fiscal Year 2004 and the Future Years Defense Program, to be immediately followed by a closed hearing in SH–219.
SD–106

Foreign Relations
To hold hearings to examine world food aid.
SH–216

10 a.m.
Energy and Natural Resources
To hold hearings to examine the President's proposed budget request for fiscal year 2004 for the Department of Energy.
SD–366

Health, Education, Labor, and Pensions
To hold hearings to examine terrorism, focusing on state and local response.
SD–430

2 p.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine a legislative presentation of the Disabled American Veterans.
SH–216

2:30 p.m.
Energy and Natural Resources
To hold hearings to examine oil, gas, Hydrogen, and conservation, focusing on gas supply and prices.
SD–366

### FEBRUARY 26

10 a.m.
Health, Education, Labor, and Pensions
Business meeting to consider pending calendar business.
SD–430

### FEBRUARY 27

9:30 a.m.
Foreign Relations
To hold hearings to examine proposed legislation authorizing funds for the Department of State.
SD–419

10 a.m.
Energy and Natural Resources
To hold hearings to examine oil, gas, Hydrogen, and conservation, focusing on energy production on federal lands.
SD–366
Health, Education, Labor, and Pensions
To hold hearings to examine the Workforce Investment Act.
SD–340

MARCH 4

10 a.m.
Energy and Natural Resources
To hold hearings to examine oil, gas, Hydrogen, and conservation, focusing on financial conditions of the electricity market.
SD–366

MARCH 6

10 a.m.
Energy and Natural Resources
To hold hearings to examine oil, gas, Hydrogen, and conservation, focusing on energy use in the transportation sector.
SD–366

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine legislative presentations of the Military Order of the Purple Heart, the Paralyzed Veterans of America, Jewish War Veterans, the Blinded Veterans Association, and the Non-Commissioned Officers Association.
345 Cannon Building

MARCH 11

10 a.m.
Energy and Natural Resources
To hold hearings to examine oil, gas, Hydrogen, and conservation, focusing on federal programs for energy efficiency and conservation.
SD–366

MARCH 12

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine a legislative presentation of the Veterans of Foreign Wars.
345 Cannon Building

MARCH 13

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine legislative presentations of the Retired Enlisted Association, Gold Star Wives of America, the Fleet Reserve Association, and the Air Force Sergeants Association.
345 Cannon Building

MARCH 20

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine legislative presentations of AMVETS, American Ex-Prisoners of War, the Vietnam Veterans of America, the Military Officers Association of America, and the National Association of State Directors of Veterans' Affairs.
345 Cannon Building

# *Daily Digest*

# Senate

## *Chamber Action*

***Routine Proceedings, pages S2065–S2124***

***Measures Introduced:*** Six bills and one resolution were introduced, as follows: S. 333–338, and S. Res. 50. **Page S2119**

**Measures Reported:**

S. Res. 50, authorizing expenditures by the Committee on Foreign Relations. **Page S2119**

**Measure Passed:**

***National Inventors' Day:*** Senate agreed to S. Res. 49, resolution designating February 11, 2003, as "National Inventors' Day". **Pages S2123–24**

**Nomination Considered:** Senate resumed consideration of the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

**Pages S2067–S2109, S2113–15**

A unanimous-consent agreement was reached providing for further consideration of the nomination at 9:30 a.m., on Tuesday, February 11, 2003.

**Page S2124**

**Messages from the President:** Senate received the following message from the President of the United States:

Transmitting, pursuant to law, the Economic Report of the President dated February 2003 with the Annual Report of the Council of Economic Advisers for 2003; to the Joint Economic Committee. (PM–14) **Page S2117**

**Nominations Confirmed:** Senate confirmed the following nominations:

By unanimous vote of 91 yeas (Vote No. EX. 31), John R. Adams, of Ohio, to be United States District Judge for the Northern District of Ohio.

**Pages S2109–13**

By unanimous vote of 94 yeas (Vote No. EX. 32), S. James Otero, of California, to be United States District Judge for the Central District of California.

**Pages S2109–13**

By unanimous vote of 91 yeas (Vote No. EX. 33), Robert A. Junell, of Texas, to be United States District Judge for the Western District of Texas.

**Pages S2109–13**

**Executive Communications:** **Pages S2117–19**

**Additional Cosponsors:** **Pages S2119–20**

**Statements on Introduced Bills/Resolutions:** **Pages S2120–23**

**Additional Statements:** **Pages S2116–17**

**Notices of Hearings/Meetings:** **Page S2123**

**Record Votes:** Three record votes were taken today. (Total—33) **Pages S2112–13**

**Adjournment:** Senate met at 11 a.m, and adjourned at 6:45 p.m., until 9:30 a.m., on Tuesday, February 11, 2003. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on Page S2124.)

## *Committee Meetings*

No committee meetings were held.

# House of Representatives

## Chamber Action

The House was not in session today. It will meet on Tuesday at 12:30 p.m. for morning hour debate.

## Committee Meetings

No committee meetings were held.

### NEW PUBLIC LAWS

*(For last listing of Public Laws, see* DAILY DIGEST, *p. D84)*

H.J. Res. 18, making further continuing appropriations for the fiscal year 2003. Signed on February 7, 2003. (Public Law 108–5)

### COMMITTEE MEETINGS FOR TUESDAY, FEBRUARY 11, 2003

*(Committee meetings are open unless otherwise indicated)*

#### Senate

*Committee on Banking, Housing, and Urban Affairs:* to hold oversight hearings to examine the Semi-Annual Monetary Policy Report of the Federal Reserve; and to hold a business meeting to consider the nomination of William H. Donaldson, of New York, to be a Member of the Securities and Exchange Commission, 10 a.m., SH–216.

*Committee on the Budget:* to hold hearings to examine the President's International Affairs Budget, 10 a.m., SD–608.

*Committee on Commerce, Science, and Transportation:* to hold hearings on proposed legislation authorizing funds for the Federal Aviation Administration, Department of Transportation, 9:30 a.m., SR–253.

*Committee on Energy and Natural Resources:* to hold hearings to examine the President's proposed budget request for fiscal year 2004 for the Department of the Interior, 10 a.m., SD–366.

Full Committee, to hold hearings to examine the nomination of Joseph Timothy Kelliher, of the District of Columbia, to be a Member of the Federal Energy Regulatory Commission, 2:30 p.m., SH–216.

*Committee on Finance:* to hold hearings to examine proposals for economic growth and job creation, focusing on incentives for consumption, 10 a.m., SD–215.

*Committee on Foreign Relations:* to hold hearings to examine the future of Iraq, 9:30 a.m., SD–419.

*Committee on Health, Education, Labor, and Pensions:* with the Committee on the Judiciary, to hold joint hearings to examine patient access crisis, focusing on the role of medical litigation, 2:30 p.m., SD–106.

*Committee on the Judiciary:* with the Committee on Health, Education, Labor, and Pensions, to hold joint hearings to examine patient access crisis, focusing on the role of medical litigation, 2:30 p.m., SD–106.

*Select Committee on Intelligence:* to hold hearings to examine current and projected national security threats, 10 a.m., SD–106.

Full Committee, to hold closed hearings to examine certain intelligence matters, 2:30 p.m., SH–219.

*Special Committee on Aging:* to hold hearings to examine guardianship over the elderly, focusing on security provided or due process denied, 10 a.m., SD–628.

#### House

*Committee on Appropriations,* to meet for organizational purposes, 10 a.m., 2359 Rayburn.

*Committee on International Relations,* to meet for organizational purposes, and to consider an Oversight Plan for the 108th Congress, 5:45 p.m., 2172 Rayburn.

*Committee on Rules,* to consider the Conference Report to accompany H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, 7 p.m., H–313 Capitol.

*Committee on Veterans' Affairs,* hearing on the Department of Veterans Affairs Budget request for Fiscal Year 2004, 10 a.m., 334 Cannon.

*Next Meeting of the* **SENATE**

**9:30 a.m., Tuesday, February 11**

**Senate Chamber**

**Program for Tuesday:** Senate will continue consideration of the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

*(Senate will recess from 12:30 p.m. until 2:15 p.m. for their respective party conferences.)*

*Next Meeting of the* **HOUSE OF REPRESENTATIVES**

**12:30 p.m., Tuesday, February 11**

**House Chamber**

**Program for Tuesday:** Consideration of suspensions.

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