

this country, we used to push westward. That was our frontier. Now we push upward and explore the heavens.

I urge our colleagues to join Senator HUTCHISON and me in supporting this resolution.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the resolution. 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 Florida (Mr. GRAHAM), the Senator from Iowa (Mr. HARKIN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that if present and voting the Senator from Florida (Mr. GRAHAM), the Senator from Iowa (Mr. HARKIN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Georgia (Mr. MILLER) would each vote Aye.

The PRESIDING OFFICER. Are there any other Senators in the chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 30 Leg.]

YEAS—95

| | | |
|-----------|-------------|-------------|
| Akaka | DeWine | Lincoln |
| Alexander | Dodd | Lott |
| Allard | Dole | Lugar |
| Allen | Domenici | McCain |
| Baucus | Dorgan | Mikulski |
| Bayh | Durbin | Murkowski |
| Bennett | Edwards | Murray |
| Biden | Ensign | Nelson (FL) |
| Bingaman | Enzi | Nelson (NE) |
| Bond | Feingold | Nickles |
| Boxer | Feinstein | Pryor |
| Breaux | Fitzgerald | Reed |
| Brownback | Frist | Reid |
| Bunning | Graham (SC) | Roberts |
| Burns | Grassley | Rockefeller |
| Byrd | Gregg | Santorum |
| Campbell | Hagel | Sarbanes |
| Cantwell | Hatch | Schumer |
| Carper | Hollings | Sessions |
| Chafee | Hutchinson | Shelby |
| Chambliss | Inhofe | Smith |
| Clinton | Inouye | Snowe |
| Cochran | Jeffords | Specter |
| Coleman | Johnson | Stabenow |
| Collins | Kennedy | Stevens |
| Conrad | Kerry | Sununu |
| Cornyn | Kohl | Talent |
| Corzine | Kyl | Thomas |
| Craig | Landrieu | Thomas |
| Crapo | Leahy | Voinovich |
| Daschle | Levin | Warner |
| Dayton | Lieberman | Wyden |

NOT VOTING—5

| | | |
|-----------|------------|--------|
| Graham FL | Lautenberg | Miller |
| Harkin | McConnell | |

The resolution (S. Res. 45) was agreed to.

The preamble was agreed to.

The PRESIDING OFFICER. The majority leader.

MOMENT OF SILENCE

Mr. FRIST. Madam President, in response to the resolution, I ask unanimous consent that we have a moment of silence, here and in the Galleries as well, out of respect for the astronauts,

their families, and the much larger NASA community who are mourning as we speak. A moment of silence, please.

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

(The Senate observed a moment of silence.)

Mr. FRIST. Thank you.

The PRESIDING OFFICER. The majority leader.

ORDER OF BUSINESS

Mr. FRIST. Madam President, we will now be proceeding to the Estrada nomination. To my colleagues, I simply report that a little bit later in the day we will be announcing whether or not there will be further votes today. Later today, in our wrap-up, we will talk about the plans for tomorrow and on Monday, but I would suspect we will be in session tomorrow morning until approximately noon and that we will be in session on Monday.

It is important that we have the debate and discussion that will begin shortly on this particular nomination which is very important to this body and to the country. We anticipate a very good discussion as we go forward. It will be active and we want to give plenty of opportunity for both sides to be heard as we proceed to debate.

EXECUTIVE SESSION

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

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the consideration of Executive Calendar No. 21, which the clerk will report.

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

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I am pleased that we have finally gotten to consider the nomination of Miguel Estrada to preside on the United States Court of Appeals for the District of Columbia Circuit, which has been pending before the Senate since May 9, 2001. I strongly support this nomination, and I hope we can vote on it soon. Also, I should say that I truly hope that news reports are inaccurate about efforts by my colleagues on the other side of the aisle to engage in a filibuster of this nominee in an effort to deny him a vote by the full Senate. To defeat this nominee in this manner would be unprecedented and a real shame for this body.

As many of us who are familiar with Mr. Estrada know, he represents a true

American success story. His story can make us all proud to be members of this country, make us proud of our country. Born in Tegucigalpa, Honduras, his parents divorced when he was only 4 years old. Mr. Estrada remained in Honduras with his father while his sister emigrated to the United States with his mother. Years later, as a teenager, Mr. Estrada joined his mother in the United States. Although he had taken English classes during school in Honduras, he actually spoke very little English when he immigrated. He nevertheless taught himself the language well enough to earn a B- in his first college English course. In a matter of years, he not only perfected his English skills, but he exceeded the achievements of many persons for whom English is their native tongue. He graduated magna cum laude and Phi Beta Kappa in 1983 from Columbia College, then magna cum laude in 1986 from Harvard Law School, where he was editor of the Harvard Law Review. Those are really difficult achievements.

Mr. Estrada's professional career has been marked by one success after another. He clerked for Second Circuit Judge Amalya Kearse a Carter appointee—then Supreme Court Justice Anthony Kennedy. He worked as an associate at the law firm of Wachtell Lipton in New York City, one of the great law firms of this country. He then worked as a Federal prosecutor in Manhattan, rising to become deputy chief of the appellate division. In recognition of his appellate skills, in spite of the fact that he has a speech handicap, he was hired by the Solicitor General's Office during the first Bush administration. He stayed with the Solicitor General's Office for most of the Clinton administration. When he left that Office, he joined the Washington, DC, office of Gibson, Dunn & Crutcher, where he has continued to excel as a partner. And everybody knows that the law firm of Gibson, Dunn & Crutcher is one of the great law firms of this country.

Most lawyers are held in high esteem if they have argued even one case before the Supreme Court. Mr. Estrada has argued 15 cases before the States Supreme Court. This is an impressive accomplishment by any standard, but it is particularly remarkable when you take two additional factors into consideration. First, as I have noted, English is not Mr. Estrada's native language. He has nevertheless mastered it to such a degree that he is considered to be one of the foremost appellate lawyers in our country. Second, his oral argument skills are even more extraordinary because, as I have mentioned, he has worked to overcome a speech impediment.

Despite this disability, Mr. Estrada has risen to the top of the ranks of oral advocates nationwide. People all over this country have admiration for him.

The legal bar's wide regard for Mr. Estrada is reflected in his evaluation

by the American Bar Association. The American Bar Association evaluates judicial nominees based on their professional qualifications, their integrity, their professional competence, and their judicial temperament. They do not have an official role in the confirmation process, but Senate Democrats did identify the group's evaluations last year as the "gold standard."

They ask judges who have heard a nominee argue cases, lawyers on the other side of cases, and hundreds of lawyers with whom the nominee has worked. They also ask neighbors and friends and other critics, people who have axes to grind. They really go into a lot of things, but mainly with people in the profession.

Based on its exhaustive assessment of these factors, the ABA has bestowed upon Mr. Estrada its highest rating of unanimously well qualified. That is high praise indeed.

I have to say, as one who has been critical of the American Bar Association and their evaluation process in the past, in recent years I think they have been doing an excellent job. We are gaining by the work they are doing.

In the past I have seen them as a partisan organization that was not fair to Republican nominees, at least to some Republican nominees. But I don't find that bias any longer. I want to praise the American Bar Association for it.

I take the time to offer up this brief recitation of Mr. Estrada's personal and professional history because I think it illustrates that he is in fact far from some rightwing ideologue that some of the usual opposition groups have portrayed him to be. He clerked for Judge Kearse, a Carter appointee; then Justice Kennedy, a moderate by any standard. He joined the Solicitor General's office and stayed on through much of the Clinton administration. His supporters include a host of well-respected Clinton administration lawyers, including Ron Klain, former Vice President Gore's chief of staff and a former staffer on the Senate Judiciary Committee, a man we all respect; Robert Litt, head of the criminal division in the Reno Justice Department or the Clinton Justice Department; Randolph Moss, former assistant Attorney General; and Seth Waxman, former Solicitor General in the Clinton administration. All of these people are people we respect, we admire, all of them are Democrats, and all of them have been Democrat leaders, and all of them have had an awful lot of influence with the Senate Judiciary Committee and the Senate itself through the years.

Mr. Klain's letter to the committee in support of Mr. Estrada is particularly insightful. He wrote:

Mr. Estrada will bring an independent streak to his judging, that may serve to surprise those who nominated him—and I think will give every litigant, from any point of view, a fair chance to persuade Mr. Estrada of the rightness of his or her case.

Another letter from more than a dozen of Mr. Estrada's former col-

leagues at the Solicitor General's office states that:

... he is a person whose conduct is characterized by the utmost integrity and scrupulous fairness, as befits a nominee to the federal bench.

I ask unanimous consent to print a copy of these letters in the RECORD.

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

O'MELVENY & MYERS LLP,
Washington, DC, January 16, 2002.

Hon. PATRICK LEAHY,
Chairman, U.S. Senate Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: When we talked recently, I told you that I was supporting the nomination of Miguel Estrada to be a Judge of the U.S. Court of Appeals for the District of Columbia Circuit. Given that I did not have, at that time, a chance to explain the basis for my position in depth, I thought I might put my views in writing for your consideration.

At the outset, let me be clear that I write this letter with mixed emotions. Not mixed emotions about Miguel: if President Bush is to fill this seat on the D.C. Circuit, I believe Miguel is an outstanding candidate who merits confirmation. Rather, I think it is unfortunate that this vacancy exists at all due to the Senate's failure to confirm two outstanding, and well-qualified candidates for this court nominated by President Clinton. In this case, that unfairness is particularly ironic, as I met both Elena Kagan—President Clinton's nominee for this position—and Miguel Estrada—President Bush's nominee—when we were all law students. The federal judiciary would be better off if the Senate had confirmed Professor Kagan last year—and then, with a subsequent vacancy arising during the Bush administration, Mr. Estrada were nominated and confirmed. But unfortunately, that is not the way that things worked out.

That said, I would hope that Miguel Estrada would gain your support for confirmation this year. I believe that Miguel is a person of outstanding character, tremendous intellect, and with a deep commitment to the faithful application of precedent. I have known Miguel for 15 years, and have seen him in a variety of contexts and circumstances. Though Miguel is politically conservative, I support his confirmation for three reasons that go beyond those factors that are obvious on their face; i.e., three reasons that go beyond his outstanding credentials, his intellect, and his incredible record of achievement as a lawyer.

First, Miguel is a serious lawyer who takes the law very seriously. Yes, Miguel has passionate views about legal policy and can be a strong advocate in a debate. But I have no doubt that, on the bench, Miguel will faithfully apply the precedents of his court, and the Supreme Court, without regard to his personal views or his political perspectives. His belief in the rule of law, in a limited judiciary, and in the separation of powers is too strong for him to act otherwise. He will not be one of those "conservatives" who gives speeches about judicial restraint, but then becomes an unabashed judicial activist on the bench. He will do his job as the law, the Constitution, and his duty requires. I do not think we can ask more of a judge on an intermediate appellate court.

Second, Miguel will rule justly toward all, without showing favor to any group or individual. When I worked on the Judiciary Committee staff, one of your colleagues once said to me, "Adversity in youth can affect poten-

tial judges one of two ways: it can make them compassionate towards those in need—feeling empathy for their plight—or it can make them cold-hearted—feeling as if 'I made it without help, so you can, too.'" Miguel is one of those individuals who falls firmly in the first category: the challenges that he has overcome in his life have made him genuinely compassionate, genuinely concerned for others, and genuinely devoted to helping those in need. In the political arena, Miguel favors very different policies than you and I do to achieve these ends. But his commitment to them is without question—and the fact that he would bring this commitment with him to the bench, in the dispensation of justice to all, is also without question. Those without means or without advantage will get a fair hearing from Miguel Estrada.

Third, Miguel will bring an independent streak to this judging, that may serve to surprise those who have nominated him—and I think will give every litigant, from any point of view, a fair chance to persuade Miguel of the rightness of his or her case. Make no mistake about it, Miguel is conservative, and in cases where those sorts of labels matter, is more likely to rule "that way" than the judges nominated to the D.C. Circuit by President Clinton. Miguel Estrada will not be "the David Souter" of the D.C. Circuit. But I do think that Miguel will be more independent, more open-minded, more likely to "break ranks" than other potential nominees of this conservative President. Miguel is a rigorous skeptic—and I have seen him be as skeptical about conservative shibboleths as liberal ones. He will ask tough questions of both sides, and give both sides a chance to win him over. This powerful intellectual quality is not unhinged from a compassion for people—rather, it is harnessed by Miguel in service of that compassion. It is a quality that will make Miguel a very fair judge.

In closing, I appreciate your consideration of this letter and the views expressed here. I wish you the best in trying to untangle the difficult mess that the confirmation process has become. And I hope you will see fit to support Miguel Estrada's confirmation when the Committee acts on that nomination.

With best wishes,

Sincerely,

RONALD A. KLAIN,
O'Melveny & Myers LLP.

SEPTEMBER 19, 2002.

Re nomination of Miguel A. Estrada.

Hon. PATRICK J. LEAHY,
Chairman, Senate Committee on the Judiciary,
Dirksen Senate Office Building, U.S. Senate,
Washington, DC.

Hon. ORRIN G. HATCH,
Ranking Member, Senate Committee on the Judiciary,
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 it stands, and in particular for the rule of law. We hold varying ideological views and affiliations 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 experiences 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., 1314 Cleveland Street; 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; Amy L. Wax, Professor of Law, University of Pennsylvania Law School; Christopher J. Wright, Harris, Wiltshire & Grannis LLP.

Mr. HATCH. Mr. Estrada's supporters are not limited to prominent and well-connected Democrats and Republicans. We heard during his confirmation proceedings or hearings about Mr. Estrada's pro bono efforts before the Supreme Court to overturn the conviction of death row inmate Tommy David Strickler. His cocounsel in that case, Barbara Hartung, wrote the committee that Mr. Estrada:

... values highly the just and proper application of the law. Mr. Estrada's respect for the Constitution and the law may explain why he took on Mr. Strickler's case, which at the bottom concerned the fundamental fairness of a capital trial and death sentence. I should note that Mr. Estrada and I have widely divergent political views and disagree strongly on important issues. However, I am confident that Mr. Estrada will be a distinguished, fair and honest member of the federal appellate bench.

Again, that is high praise from Barbara Hartung.

Another letter in support of Mr. Estrada came from Leonard Joy, attorney in charge of the Legal Aid Society, Federal Defender Division in New York City, which is the community defender

organization appointed to represent indigent defendants in Federal court at the trial and appellate levels. Mr. Joy, who frequently represented defendants whom Mr. Estrada prosecuted while he was an assistant U.S. Attorney, wrote that:

He clearly was one of the smartest attorneys in the office which prides itself in attracting the best and the brightest. Yet throughout he was eminently practical in the judgments he made and he had a down-to-earth approach to his cases. I found him to be a fair and straightforward prosecutor who did not treat defendants unduly harshly.

It is fair to say that all lawyers in my office liked him. Many of them are liberal in their politics and it is a credit to Mr. Estrada that he was able to get along with people who may have had different views than he.

Mr. HATCH. The letters the committee has received from lawyers who know Mr. Estrada both personally and professionally depict him as a brilliant yet fair attorney who is willing to listen to both sides of an issue before making a decision. Inherent in this description is the necessary conclusion that Mr. Estrada is not an ideologue but instead shows great respect for persons with divergent viewpoints. Indeed, as I noted at the hearing, Mr. Estrada placed phone calls to my office to support the confirmation of two Clinton judicial nominees: Adalberto Jose Jordan, who was confirmed to the Southern District of Florida, and Elena Kagan, nominated for the DC circuit.

Beyond the letters of support we have received for Mr. Estrada, the cases he has taken on as an attorney illustrate his commitment to following the law instead of imposing any political agenda. I know that the issue of reproductive choice is one that is very important to many of my Democratic colleagues, although it is one on which we disagree. I am not sure how many of them saw the portion of the hearing when Mr. Estrada was asked about his work on the NOW—National Organization for Women—case for the Clinton administration. Even if you assume that Mr. Estrada is pro-life as a matter of politics, which even I do not know, that representation illustrates his ability to put aside his personal convictions and follow the law as a good jurist has to do.

In addition, on the NOW web site there is an article by Vera Haller of Women's E-news. Although this article criticizes several of President Bush's judicial nominees—unfairly, in my view—but that is a different story—it applauds the selection of Mr. Estrada, noting that “[h]is presence on the list . . . was seen by some as a sign that President Bush hoped to avoid contentious confirmation battles in the Senate.”

I want to take a moment at the outset here to address a couple of issues that we are sure to hear more about as the discussion of Mr. Estrada's nomination progresses.

First, Mr. Estrada has been unfairly criticized by some for declining to an-

swer questions at his hearing about whether particular Supreme Court cases were correctly decided. Lloyd Cutler, who was White House Counsel to both President Carter and President Clinton, put it best when he testified before a Judiciary Committee subcommittee in 2001. He said, “Candidates should decline to reply when efforts are made to find out how they would decide a particular case.” He further explained, “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.’” Mr. Estrada's academic achievement, his professional accomplishments, and the letters of support we have received from his colleague all indicate that Mr. Estrada fits this description and deserves our vote of confirmation.

Second, several opponents of Mr. Estrada have attempted to block his confirmation by demanding that the Department of Justice release internal memoranda he authored while he was an assistant to the Solicitor General in the Solicitor General's office. First, it is important to note that Mr. Estrada told the committee that he does not object to the release of these documents. He is, rightfully, proud of his legal work. But there is a larger institutional problem. What the opponents of Mr. Estrada, or those who are continuing to demand these documents, apparently ignore is the fact that all seven living former Solicitors General—four Democrats and three Republicans—oppose this request. Their letter to the committee explains that the open exchange of ideas upon which they relied as Solicitors General “simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure.” These seven former Solicitors General—four Democrats, three Republicans—concluded that “any attempt to intrude into the Office's highly privileged deliberations would come at a cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself.”

The Wall Street Journal and the Washington Post have also criticized attempts to obtain these memoranda—and they should. The seven former Solicitors General of the United States are right, and their wise counsel should be followed.

I ask unanimous consent that the letter of the Solicitors General, as well as the Wall Street Journal and Washington Post editorials, be printed in the RECORD.

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

WILMER, CUTLER & PICKERING,
Washington, DC, June 24, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S.
Senate, Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIRMAN LEAHY: We write to express our concern about your recent request that the Department of Justice turn over "appeal recommendations, certiorari recommendations, and amicus recommendations" that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of the Solicitor General—under Presidents of both parties—we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review of adverse appellate decisions, and whether to participate as amicus curiae in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these and other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

Any attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself.

Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Sincerely,

On behalf of: Seth P. Waxman, Walter Dellinger, Drew S. Days, III, Kenneth W. Starr, Charles Fried, Robert H. Bork, Archibald Cox.

[From the Washington Post, May 28, 2002]

NOT FAIR GAME

Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) recently sought a series of internal Justice Department memos in connection with the judicial nomination of Miguel Estrada. Mr. Estrada, whom President Bush has named to the D.C. Circuit Court of Appeals, is a conservative who served as a staff attorney in the Office of the Solicitor General, mostly during the Clinton administration. Although his former colleagues there generally speak highly of him, one, a man named Paul Bender, has suggested publicly that Mr. Estrada's conservatism would corrupt his judicial work. Apparently to see if Mr. Estrada's paper trail within the office would support this suggestion, Sen. Leahy has requested all of Mr. Estrada's written recommendations to the office concerning whether cases should be appealed and what positions the government

should take as a friend of the court. Such a request for an attorney's work product would be unthinkable if the work had been done for a private client. The legal advice by a line attorney for the federal government is not fair game either.

The desire to evaluate Mr. Estrada's performance is understandable, and the problem of how to explore a nominee's views is not trivial. Mr. Estrada has no significant record of public statements or controversial writings, yet despite scant evidence, liberal groups are convinced that he threatens values they hold dear. Like most nominees, however, Mr. Estrada likely will decline to discuss specific issues that might come before him as a judge. So there is no good way of exploring whether he would respect and apply precedent faithfully or engage in judicial policymaking.

That said, there are plenty of bad ways, and few involve greater institutional risk for the Justice Department than letting appeals memos become fodder for wars about nominations. Particularly in elite government offices such as that of the solicitor general, lawyers need to be able to speak freely without worrying that the positions they are advocating today will be used against them if they ever get nominated for some other position. Says Walter Dellinger, one of President Clinton's solicitors general and one of Mr. Estrada's bosses in the office: "It would be very destructive of all of the purposes served by the attorney-client privilege to have attorneys in the solicitor general's office looking over their shoulders when they write memos." It is also needlessly destructive. A broad range of Clinton-era Justice Department political appointees are perfectly capable of describing Mr. Estrada's role at the solicitor general's office.

On several occasions in recent years, Congress recklessly has gone after work by line attorneys at the Justice Department. Importing these excesses into the confirmation process is a terrible idea. After a year of investigating, liberal activists have not been able to find much on Mr. Estrada, and the unfortunate result seems to be a fishing expedition. But there's no logical end to it. Mr. Estrada once clerked for Justice Anthony Kennedy, and it is perfectly possible that he made comments in some of his memos there that the Judiciary Committee might find interesting as well. Why not ask for those? There are some ponds in which activists—and Senators—should not fish.

[From the Wall Street Journal, May 24, 2002]

THE ESTRADA GAMBIT

Senate Judiciary Chairman Patrick Leahy keeps saying he's assessing judicial nominees on the merits, with political influence. So why does he keep getting caught with someone else's fingerprints on his press releases?

The latest episode involves Miguel Estrada, nominated more than a year ago by President Bush for the prestigious D.C. Circuit Court of Appeals. Mr. Estrada scares the legal briefs off liberal lobbies because he's young, smart and accomplished, having served in the Clinton Solicitor General's office, and especially because he's a conservative Hispanic. All of these things make him a potential candidate to be elevated to the U.S. Supreme Court down the road.

Sooner or later even Mr. Leahy has to grant the nominee a hearing, one would think. But maybe not, if he keeps taking orders from Ralph Neas at People for the American Way. On April 15, the Legal Times newspaper reported that a "leader" of the anti-Estrada liberal coalition was considering "launching an effort to obtain internal memos that Estrada wrote while at the SG's

office, hoping they will shed light on the nominee's personal views."

Hmmm. Who could that leader be? Mr. Neas, perhaps. Whoever it is, Mr. Leahy seems to be following orders, because a month later, on May 15, Mr. Leahy sent a letter to Mr. Estrada requesting the "appeal recommendations, certiorari recommendations, and amicus recommendations you worked on while at the United States Department of Justice."

It's important to understand how outrageous this request is. Mr. Leahy is demanding pre-decision memorandums, the kind of internal deliberations that are almost by definition protected by executive privilege. No White House would disclose them, and the Bush Administration has already turned down a similar Senate request of memorandums in the case of EPA nominee Jeffrey Holmstead, who once worked in the White House counsel's office.

No legal fool, Mr. Leahy must understand this. So the question is what is he really up to? The answer is almost certainly one more attempt to delay giving Mr. Estrada a hearing and vote. A simple exchange of letters from lawyers can take weeks. And then if the White House turns Mr. Leahy down, he can claim lack of cooperation and use that as an excuse to delay still further.

Mr. Leahy is also playing star marionette to liberal Hispanic groups, which on May 1 wrote to Mr. Leahy urging that he delay the Estrada hearing until at least August in order to "allow sufficient time . . . to complete a thorough and comprehensive review of the nominee's record." We guess a year isn't adequate time and can only assume they need the labor-intensive summer months to complete their investigation. (Now there's a job for an intern.) On May 9, the one-year anniversary of Mr. Estrada's nomination, Mr. Leahy issued a statement justifying the delay in granting him a hearing by pointing to the Hispanic groups' letter.

These groups, by the way, deserve some greater exposure. They include the Mexican American Legal Defense and Educational Fund as well as La Raza, two lobbies that claim to represent the interests of Hispanics. Apparently they now believe their job is to help white liberals dig up dirt on a distinguished jurist who could be the first Hispanic on the U.S. Supreme Court.

The frustration among liberals in not being able to dig up anything on Mr. Estrada is obvious. Nan Aron, president of the Alliance for Justice, told Legal Times that "There is a dearth of information about Estrada's record, which places a responsibility on the part of Senators to develop a record at his hearing. There is much that he has done that is not apparent." Translation: We can't beat him yet.

Anywhere but Washington, Mr. Estrada would be considered a splendid nominee. The American Bar Association, whose recommendation Mr. Leahy once called the "gold standard by which judicial candidates have been judged," awarded Mr. Estrada its highest rating of unanimously well-qualified. There are even Democrats, such as Gore adviser Ron Klain, who are as effusive as Republicans in singing the candidate's praises.

When Mr. Estrada worked in the Clinton-era Solicitor General's office, he wrote a friend-of-the-court brief in support of the National Organization of Women's position that anti-abortion protesters violated RICO. It's hard to paint a lawyer who's worked for Bill Clinton and supported NOW as a right-wing fanatic.

We report all of this because it reveals just how poison judicial politics have become, and how the Senate is perverting its advise and consent power. Yesterday the Judiciary

Committee finally confirmed a Bush nominee, but only after Republican Arlen Specter went to extraordinary lengths to help fellow Pennsylvanian Brooks Smith.

Mr. Estrada doesn't have such a patron, so he's fated to endure the delay and document-fishing of liberal interests and the Senate chairman who takes their dictation.

[From the Wall Street Journal, June 11, 2002]

NO JUDICIAL FISHING

Senate Judiciary Chairman Patrick Leahy has just received the answer to his outrageous request for the private decision memos written by judicial nominee Miguel Estrada: No fishing now, or ever.

Last month Mr. Leahy followed orders from liberal interest groups (as reported in *Legal Times*) to ask the Department of Justice for all of the appeal recommendations, certiorari recommendations and amicus recommendations that Mr. Estrada worked on while at the Clinton-era Solicitor General's office.

Internal deliberations are highly confidential documents, protected by executive privilege. No White House would disclose them, and sure enough, the Bush Administration has now quickly refused to do so. Assistant Attorney General Daniel Bryant wrote Mr. Leahy last week that future Assistant Solicitors General would be "chilled" from providing "the candid and independent analysis that is essential to high-level decision-making."

The Justice Department "cannot function properly if our attorneys write these kinds of documents with one eye focused on the effect that their words, if made public, might have on their qualifications for future office," he added.

This is no surprise to anyone, certainly not to Mr. Leahy and his liberal minders. Their goal here is delay, trying to put off the day when Mr. Estrada takes a seat on the D.C. Circuit Court of Appeals, from which President Bush could promote him to become the first Hispanic-American on the U.S. Supreme Court. Mr. Estrada was nominated 13 months ago and hasn't even had a hearing yet.

In the meantime, the D.C. Circuit, like the federal judiciary overall, faces a severe vacancy crisis; four of its 12 seats are vacant. Mr. Leahy's ideological petulance grows more costly by the day.

Mr. HATCH. Madam President, let me say this to colleagues who insist upon seeking internal memoranda Mr. Estrada wrote during his tenure at the SG's office. During the last Congress, the Senate confirmed Jonathan Adelstein, whom I fully support, to an important position on the FCC. Mr. Adelstein is a former aide to the distinguished minority leader, but the Republicans did not demand all of Mr. Adelstein's memoranda to Senator DASCHLE on telecommunications issues before confirming him. This is despite the fact that such memoranda probably could have been useful in determining how Mr. Adelstein would have approached his decisions as a commissioner. The reason we did not seek them was because of the obvious: To do so would have intruded into the deliberative relationship between Mr. Adelstein and Senator DASCHLE. This would have been an inappropriate intrusion, as all of the Solicitors General, including President Clinton's Solicitors, have warned of the Judiciary Committee's request, regardless of how

valuable the memoranda would have been in deciding whether to support Mr. Adelstein.

Along the same lines, I must note the American public would probably find insightful the internal memoranda written to any of my colleagues in the Senate by their staff. How would we feel about that? Do we think we would get the most candid advice if our top counsel knew their private advice is not really private? Let's get real here.

These misguided efforts should not prevent our confirmation of a highly qualified nominee who has pledged to be fair and impartial, and to uphold the law regardless of his personal convictions. I have no doubt Mr. Estrada will be one of the most brilliant Federal appellate judges of our time. This is a picture of Miguel Estrada, who was found by the American Bar Association—unanimously—well qualified, the highest rating given to any judicial nominee. I have no doubt Mr. Estrada will be one of the most brilliant Federal appellate judges of our time, and I urge every Member of this body to join me in voting to confirm him.

Madam President, let me say just a few more things about the significance of this nomination. There have been many people who have been waiting for the confirmation vote on this nominee, and many more people who are watching today for the first time as we display our American institutions and the value we give to the independence of our judiciary.

It was no small matter that at our hearing for Mr. Estrada, we had in the audience the Honorable Mario Canahuati, the Ambassador of Honduras to the United States. The Honduran community in this country, though centered in Louisiana, is scattered throughout the U.S., from North Carolina to New York to California.

We welcomed also to our hearing the leaders of the many Hispanic communities and organizations in the U.S. who came to express support for this nomination.

In this context, I want to make a general comment on judicial confirmations. For over a year, we have had a very troubling debate over issues that we thought our Founding Fathers had settled long ago with our Constitution. I have been heartened to read the scores of editorials all across this country that have addressed the notion of injecting ideology into the judicial confirmation process, because this notion has been near universally rejected—except, of course, for a handful of well paid, special interest liberal lobbyists in Washington, and a few other diehards.

It seems to me the only way to make sense of the advise and consent role our Constitution's Framers envisioned for the Senate is to begin with the assumption that the President's constitutional power to nominate should be given a fair amount of deference, and that we should defeat nominees only where problems of character, qualifica-

tions, or inability to follow the law are evident.

As Alexander Hamilton recorded for us, the Senate's task of advise and consent is to advise and to query on the judiciousness and character of nominees, not to challenge, by our naked power, the people's will in electing who shall nominate.

To do otherwise, it seems to me, is to risk making the Federal courts an extension of this political body. This would threaten one of the cornerstones of this country's unique success—an independent judiciary. Let me say this again. Such political efforts would threaten one of the cornerstones of this country's unique success—an independent judiciary.

Let's not take my advice here, let's listen to Presidents Carter and Clinton's White House counsel, Lloyd Cutler, a person, though we disagree on many issues, for whom I have the highest regard and always have. He is a terrific human being and a wonderful lawyer, one of the best who has ever served his country.

Moreover, these are not just my views, this is our Anglo-American judicial tradition. It is reflected in everything that marks a good judge, not the least of which is Canon 5 of the Code of Judicial Conduct of the American Bar Association 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."

I should expect no Senator would invite a nominee to breach this code of ethics, and it worries me that we are coming close, and that we now appear to complain that a nominee does not breach the code when we ask him to. I can honestly say I fear that we are getting to or crossing over dangerous lines here I have not witnessed in my 27 years in the U.S. Senate.

As I have indicated by reciting his stellar record, Miguel Estrada's nomination is before us today because it deserves to be here under any standard that any disinterested person could devise. He is qualified for the position for which President Bush has nominated him. I know it, and after our debate, I think the American people will know it as well.

But notwithstanding all of Mr. Estrada's hard work and unanimous rating of highly qualified by the ABA, he has been subjected, so far, to a pinata confirmation process with which we have all become very familiar. The extreme left-wing Washington groups go after judicial nominees like kids after a pinata. And it is not specific to Mr. Estrada. They beat it and they beat it until something comes out that they can then chew and distort.

In the case of Mr. Estrada, the ritual has been slightly different. They have been unable to find anything they can chew on and spit out to us, so they now

say that we simply do not know enough about Mr. Estrada to confirm him. And that is after more than 640 days of delay.

Well, it is not that we do not know enough. We had a full-day hearing, conducted by Senator SCHUMER. It was a full hearing. I commend him for conducting and allowing all Senators the opportunity to ask any and all questions they wished to ask. I believe that was last September. Mr. Estrada's nomination has been pending before us for almost 2 years. We know as much about Mr. Estrada as we have known about any nominee. Their complaint is that we know all there is and the usual characters haven't found anything to distort.

But surely we should not expect to hear it suggested today that Mr. Estrada doesn't have enough judicial experience. Only 3 of the 18 judges appointed to the DC circuit by Democrats since President Carter had any prior judicial experience before their nominations.

These include Ruth Bader Ginsburg and Abner Mikva to select two. Likewise, judicial luminaries such as Louis Brandeis and Byron White had no judicial experience before being nominated to the Supreme Court. And Thurgood Marshall, the first African American on the Supreme Court, had no judicial experience before he was nominated to the Second Circuit. I could go on and on.

I wish to address another aspect of Mr. Estrada's background. I know Miguel Estrada and I know how proud he is, in ways that he is unable to express, about being the first Hispanic nominated to the D.C. Circuit Court of Appeals. So I will express it. This nomination is a matter of pride for him for the same reason that it is for any of us, not just because Mr. Estrada is a symbol for Latinos in America, but because Miguel Estrada's story is the best example of the American dream of all immigrants. He and I are proud because we love this great country and the future it continues to promise to young immigrants. Miguel Estrada's success can make each of us love this country all the more.

In fact, I have never seen any Hispanic nominee whose nomination has so resonated with the Latino community, except for the partisans—the partisan Democrats.

As I said earlier, Miguel Estrada was born in Honduras. He was so bright at an early age that he was enrolled at a Jesuit school at the age of 5. He was raised in a middle-class family. At age 17, he came to live with his mother who had immigrated to New York, knowing very little English. Today he sits before the Senate of the United States waiting to be confirmed to one of the greatest courts in the land.

I am embarrassed, therefore, by the new lows that some have gone to attack Mr. Estrada. Detractors have suggested that because he has been successful and has had the privilege of a

fine education, he is somehow less than a full-blooded Hispanic. This is the most embarrassing tactic used against this nominee. I wonder if we would tolerate saying of a woman nominee that because of this or that, she is not really a woman, or of a male nominee that because he is this or that, he is not fully a man. We would not tolerate that here, and I do not think we should tolerate it in the case of Miguel Estrada.

Even more offensive, it seems to me, are the code words that some of his detractors use about him—code words which perpetuate terrible stereotypes about Latinos—used in effect to diminish Miguel Estrada's great accomplishment and the respect he has from colleagues of all political persuasions.

As chairman and founder 13 years ago of the nonpartisan Republican Hispanic Task Force which, despite the name, is made up of both Republicans and Democrats—I have tried to achieve greater inclusion of Hispanics in the Federal Government. I have worked hard to do that. I love the Hispanic people. They know it.

I am concerned by the obstacles they face. I fear that some Democrats are creating a new intellectual glass ceiling for Hispanics. If they do not think a certain liberal way that they do, then they are not good enough for upward mobility and advancement.

Let me say that again. If they do not think a certain liberal way that they do, then they are not good enough for upward mobility and advancement. That is wrong, and this body should not perpetuate that.

Many liberals in this town fear that there could be role models for Hispanics that might be moderate to conservative—despite the fact that polls show that the great majority of Hispanics are conservative. But surely, the advancement of an entire people should not be dependent on one party being in power.

This past year I met with a number of leaders of Hispanic organizations from all across the country. I asked them what they think about the subtle prejudices that Mr. Estrada is facing and they agree. Perhaps, they are more offended than I could ever be, but I doubt it.

The best expression of this outrage was shown just last week by Congressman Herman Badillo in an article in the Wall Street Journal.

I ask unanimous consent that this article be printed in the RECORD.

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

[From the Wall Street Journal, Jan. 30, 2003]

QUÉ PASA, CHUCK?

(By Herman Badillo)

NEW YORK.—Nothing makes Democrats more frenzied than when a Hispanic or African-American goes off the reservation. Witness now the opposition that the Puerto Rican Legal Defense Fund and the usual Washington special interests are giving Miguel Estrada, the young Honduran immigrant-turned-New Yorker that President

Bush has nominated to the D.C. Circuit Court of Appeals.

Congressional Democrats have gone so far as to say that Mr. Estrada is a Hispanic "in name only."

But if their behavior is outrageous it is also par for the course. Half of the Democrats' energy lately seems focused on corralling the nation's two largest minority groups into an intellectual ghetto. The vitriol we saw most famously directed at Clarence Thomas, and more recently at Condoleezza Rice, demands that blacks and Hispanics toe a political line to have their success acknowledged by their own community.

When confirmed by the Senate, Miguel Estrada, a brilliant lawyer with extraordinary credentials, will be the first Hispanic on the second most prestigious court in the land. He will be a role model not just for Hispanics, but for all immigrants and their children. His is the great American success story.

But his confirmation by the Senate will come no thanks to Chuck Schumer, his home-state senator. Mr. Schumer has thrown every old booby-trap in Mr., Estrada's way, and invented a few new ones just for him. When the Senate held a hearing for Mr. Estrada last year, Mr. Estrada's mother told Mr. Schumer that she had voted for him and hoped that he would return the favor. He hasn't yet.

It is hard to blame Democrats of course. They know how their bread is buttered and by whom—the monied special interest groups that have made a profitable business of opposing the nominations of President Bush. The Hispanic groups that shun Mr. Estrada, including the Congressional Hispanic Caucus, which announced its opposition to his nomination last September, are a different matter. They should be ashamed of themselves.

Sen. Orrin Hatch (R., Utah), who heads both the Senate Judiciary and the Senate Republican Hispanic Task Force, put it well when he said that these liberal Hispanic groups "have sold out the aspirations of their people just to sit around schmoozing with the Washington power elite."

Mr. Schumer's one-man campaign against Mr. Estrada has grown tiresome too. Despite the rebuke of every living U.S. solicitor general of both parties dating back four decades, Mr. Schumer continues to make irresponsible demands, never made before for a non-Hispanic nominee, and insists on making backhanded and unfounded insinuations about Mr. Estrada's career and temperament. This treatment of Mr. Estrada is demeaning and unfair, not only to the nominee but also to the confirmation process and the integrity of the Senate.

Mr. Schumer's petulance ignores Mr. Estrada's qualifications, intellect, judgment, bipartisan support, and that he received a unanimous "well qualified" rating—the highest possible rating—from the American Bar Association. The liberal Hispanic groups that challenge Mr. Estrada's personal identity as a Hispanic ignore his support by nonpartisan Hispanic organizations, such as the Hispanic National Bar Association, the League of United Latin American Citizens, and the U.S. Hispanic Chamber of Commerce.

Mr. Schumer and his colleagues are fond of speaking about the need for "diversity" on the courts. Apparently that talk does not extend to President Bush's nominees, since the confirmation of Mr. Estrada would provide just such diversity on this important court. It is past time that Mr. Schumer put an end to his embarrassing grandstanding on Mr. Estrada's nomination.

One would think that a New York senator would know that, whether Puerto Rican, Dominican or Honduran, Hispanics are most

united in one thing—the pride we take in our advancement as Americans regardless of where we started. One suspects that Mr. Schumer may learn this lesson yet, and that Miguel Estrada's name is one that Charles Schumer will hear repeated when he runs for re-election all too soon.

Mr. HATCH. Mr. Badillo served four terms as a Democrat in the House of Representatives, as Deputy Mayor of New York City under Mayor Koch, as Bronx President and as Board Chairman of the City University of New York. He is the best known Hispanic public leader in New York State with five decades of public service to show for his efforts.

Mr. Badillo had this to say about how Mr. Estrada has been treated:

[It is] demeaning and unfair, not only to the nominee but also to the confirmation process and the integrity of the Senate.

Mr. Badillo notes that Mr. Estrada has had demands placed on him “never made before for a non-Hispanic nominee.”

The Hispanic experience, in fact, sheds new light on the debate we have been having about ideology in judicial confirmations. Many new Hispanic Americans have left countries without independent judiciaries, and they are all too familiar with countries with political parties that claim cradle-to-grave rights over their allegiances and futures.

I have a special affinity for Hispanics and for the potential of the Latin culture in influencing the future of this country. Polls show that Latinos are among the hardest working Americans. That is because like many immigrant cultures in this country, Hispanics often have two and even three jobs. Surveys show they have strong family values and a real attachment to their faith traditions and they value education as the vehicle to success for their children.

In short, Hispanics have reinvigorated the American dream, and I expect they will bring new understandings of our nationhood, that some of us, Madam President—might not fully see with tired eyes.

Without trumpeting the overused word “diversity,” I have made it my business to support the nominations of talented Hispanics for my entire career in the Senate. I hope that the desire for diversity that many of my Democrat colleagues say they share with me will trump the reckless and destructive pursuit of injecting ideology into the judicial confirmations process as we move forward on this particular nomination.

In Spanish-speaking churches all over this country and in every denomination, Hispanics sing a song called DE COLORES. This means OF MANY COLORS. It celebrates the many colors in which we all are created.

Hispanics know they come in many colors, with all kinds of backgrounds. They enjoy among themselves a wide diversity already. They left behind countries filled with ideologues that

would chain them to single political parties. Latinos share a commonsense appreciation of each other's achievements in this country without any regard whatsoever to ideology, over which some Americans have the luxury of obsessing.

Congressman Herman Badillo said it well—in fact, he said it beautifully:

[W]hether Puerto Rican, Dominican or Honduran, Hispanics are most united in one thing the pride we take in our advancement as Americans regardless of where we started.

In fact, that is true for all of us. It seems to me that any political party's attempt to control a group and to bar independent thought and belief, in effect to disallow diversity of thought within the Hispanic community, is simply wrong and no people should stand for that. That is what I have come to call and deplore as the “intellectual glass ceiling.”

I have news for those engaging in this: Hispanic Americans—like all Americans—have liberals and conservatives. No one should be so arrogant as to demand that a whole community should think as they do. People who are demanding that all Hispanics should fit into one mold ought to be ashamed of themselves. They have sold out the aspirations of their people just to sit around schmoozing with Washington's liberal power elite.

Let's be clear, these liberal groups are only two or three in number, and they are basically surrogates for the Democrat Party. They are marginalized given the large number of Hispanic organizations that have come out in support of Mr. Estrada. I should note that Mr. Estrada's supporters include LULAC, the League of United Latin American Citizens,—the largest and oldest Latino organization in this country.

Like President Bush—I have the same feelings—I think it is high time that a talented lawyer of Hispanic descent sits on the second most prestigious court in the land. Miguel Estrada is that man.

I wish to address one last thing. I noticed that the very liberal Puerto Rican Legal Defense Fund issued a report just last spring, arguing that there were too few Hispanics on the bench and challenging the Bush administration to nominate more.

I noticed, however, that they never mentioned Miguel Estrada's nomination. In fact, though they address all the other federal circuit courts, the DC Circuit Court for which Mr. Estrada is nominated is oddly missing from their analysis arguing for more Hispanic nominations.

In this respect, I want to commend President Bush. He has already sent us 9 since he began, and we expect by the end of this week to have altogether 12 well-qualified Hispanic nominees. At this rate, if he has 8 years to serve, President Bush will have nominated close to 40 Hispanic-American judges. This will be more than any other President before him, Democrat or Repub-

lican. Already, as this chart indicates, President Bush has a greater percentage of Hispanic nominations than any President before him.

Nevertheless, I too am concerned about the few Hispanic judges we have, especially given that Hispanics are now the largest minority group in America. And I am concerned by the obstacles they face. Congressman Badillo, himself a former Democrat, describes it this way: “Nothing” he says, makes some people “more frenzied than when Hispanics and African Americans go off the reservation.” I hope that he is not talking about any Senators here.

Finally, I ask unanimous consent to have printed in the RECORD an editorial by The Washington Post that expresses their support for Mr. Estrada.

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

[From the Washington Post, Sept. 29, 2002]

EXPLOITING ESTRADA

It is hard to image a worse parody of a judicial confirmation process than the unfolding drama of Miguel Estrada's nomination to the U.S. Court of Appeals for the D.C. Circuit. Opponents of Mr. Estrada, a well-regarded appellate lawyer who served a stint in the solicitor general's office, are convinced that the young, conservative Hispanic represents a grave threat to the republic. Yet Mr. Estrada has not done his foes the courtesy of leaving a lengthy paper trail of contentious statements. And this creates something of a problem for those bent on keeping him off the bench: There is no sound basis on which to oppose him. Mr. Estrada's other problem is that the White House does not merely want credit for appointing a first-rate lawyer to an important court but wants to use Mr. Estrada, who had a hearing last week before the Senate Judiciary Committee, to curry favor with Hispanic voters. As a result, Mr. Estrada's nomination has been turned into a political slugfest and discussed in the crudest of ethnic terms.

On one side of this degrading spectacle, Mr. Estrada's opponents question whether he is Hispanic enough, whether a middle-class Honduran immigrant who came to the Untied States to go to college can represent the concerns of “real” Latinos. The Puerto Rican Legal Defense and Education Fund, for example, complains that his “life experiences [have not] resembled . . . those of Latinos who have experienced discrimination or struggled with poverty, indifference, or unfairness.” Such distasteful ethnic loyalty tests have no place in the discussion. Yet on the other side, Republicans have reduced Mr. Estrada to a kind of Horatio Alger story. White House counsel Alberto R. Gonzales, in an article on the opposite page on Thursday, described him as “an inspiration to Hispanics and to all Americans.” But Mr. Estrada has not been nominated to the post of inspiration but that of judge. Both sides should remember that there is no Hispanic manner of deciding cases.

Lost in all of this is a highly qualified lawyer named Miguel Estrada. Democrats have suggested opposing him because of general concerns about the partisan “balance” on the D.C. Circuit or because they don't know enough about his views to trust him. They also continue to fish for dirt on him. Sen. Charles E. Schumer (D-NY.) grilled him at his hearing about questions that have been raised anonymously concerning his aid to Justice Anthony M. Kennedy in picking clerks. And Democrats are still pushing to

see confidential memos Mr. Estrada wrote in the solicitor general's office and trumpeting criticism of him by a single supervisor in that office—criticism that has been discredited by that same colleague's written evaluations.

Seeking Mr. Estrada's work product as a government lawyer is beyond any reasonable inquiry into what sort of judge he would be. Nor is it fair to reject someone as a judge because that person's decision to practice law, rather than write articles or engage in politics, makes his views more opaque. And it is terribly wrong to demand that Mr. Estrada answer charges to which nobody is willing to attach his or her name.

Democrats have a legitimate grievance concerning the D.C. Circuit: Two excellent nominees of the previous administration were never acted upon by Senate Republicans. The White House is wrong to ignore this issue and does so at its peril. But the answer is not attacks on high-quality Bush administration nominees such as Mr. Estrada. At the end of the day, Mr. Estrada must be considered on his merits. His confirmation is an easy call.

Mr. HATCH. As one editorial puts it, his nomination is "an easy call."

The Post was right to point out that we who support Miguel Estrada should not do so simply because he is a Hispanic. As the Post points out there is no particularly "Hispanic manner of deciding cases." They reject the diversity argument.

I agree, and as I indicated Mr. Estrada has an exemplary record as a magna cum laude of both Columbia University and Harvard Law School graduate, and his extraordinary record of public service, including 15 cases argued before the Supreme Court. This record has not been met by many of the nominees of either party over the 27 years I have been here.

In addressing why he was before us at his hearing I did not say anything about confirming Miguel Estrada because he is Hispanic. I did not have to make that argument because, as The Post points out, his record makes his confirmation "an easy call."

But this fact should not diminish the pride, that I have addressed, that Miguel Estrada's supporters have in the compelling story of a young immigrant who arrives from Honduras at age 17 and rises to be nominated to the second most prestigious court in the land. This is a pride I hope we can all share, Democrats and Republicans, when this Senate confirms him. It is a non-partisan pride.

I disagree with The Post, however, to the extent they minimize the significance of confirming a well-qualified Hispanic.

Confirming minority candidates, provided they are also well-qualified as Mr. Estrada is, is a positive good, in and of itself. It is important to raise role models in high office for young Hispanics in this country, indeed for all immigrants, provided they are otherwise well qualified or as in Miguel Estrada's case—unanimously well-qualified. Now, I will take a second with another chart because it is important to go through his qualifications. These are only a few qualifications, but they are very important.

Miguel Estrada not qualified? Give me a break. My friends on the other side have said the American Bar Association is the gold standard. I think the way they are doing it now is probably true. ABA rating: Unanimously well qualified.

He argued 15 cases before the U.S. Supreme Court, winning most of them; Columbia and Harvard Law, graduated magna cum laud; editor of the Harvard Law Review—there are a lot of lawyers in this body; I doubt if many have been editors of law reviews—law clerk for U.S. Supreme Court Justice Kennedy; assistant solicitor general for President Bush 1 and President Clinton.

Those are very important qualifications. There are not many who come before this body who have been confirmed, even to the prestigious Circuit Court of Appeals for the District of Columbia, that can match Miguel Estrada.

I believe he handled himself well before the committee, although some on the other side do not. Be that as it may, Miguel does work very hard with the speech impediment he has had all his life. In spite of that handicap or disability, he has argued 15 cases before the U.S. Supreme Court. It has been hardly a disability to him. He is a terrific human being. He is a very upright person. He is an example to all of what we can achieve in this great land. He certainly deserves confirmation by this body. I hope we can do that within a reasonable period of time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. I ask unanimous consent the call of the quorum be dispensed.

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

Mr. LEAHY. Madam President, notwithstanding the misleading charts of my good friend from Utah—we will get to the numbers—there is an easy number for everyone to remember. There are 10 Hispanics on the circuit court of appeals today. Eight were nominated by President Clinton. There would actually be 13 on the circuit courts of appeals today except the Republican leadership in the last couple of Congresses blocked three of President Clinton's nominees for the court of appeals. President Clinton does have, by far, the record of having successfully appointed the highest number of Hispanics for circuit courts of appeals of either President of either party. As I said, it would be even larger if the Republican Party had not refused votes in committee on three nominations.

Madam President, in the wake of the tragic events of this week, all Americans are grieving with the families of the crew of the Space Shuttle *Columbia*

and with the entire NASA community. The President acknowledged that loss with a prayerful statement Saturday afternoon and with his presence, and his eloquent words yesterday in Houston were joined by a number of Senators of both parties. Our Nation mourns the loss of another crew, the crew of the Black Hawk helicopter that went down east of Baghram Afghanistan last Thursday.

Both were connected to important national missions, one the scientific quest into space, and the other part of the continuing struggle to secure Afghanistan from those who have made it a haven for international terrorism. These actions remind us all of the courage and sacrifice of those who serve the Nation in our armed services and on the frontiers of space. This week the Nation mourns, and much of the world grieves with us.

This morning, Secretary of State Powell spoke to the Security Council of the United Nations on the situation in Iraq as the administration moves forward with preparations for war, war that appears now inevitable. We know how precious to their families are each of the members of the Reserves and Armed Forces who may be about to take assignments in harm's way. In light of all these events, this week is really a poor time for the leadership of the Senate and the administration to force the Senate into an extended debate on the administration's controversial, divisive plan to pack the Federal court with activists. I had hoped the administration and the Republican leadership would reconsider that plan and the timing of this debate. I know the Democratic leader raised the matter with the Republican leadership. I thank Senator DASCHLE for having done so.

I thought the Senate was right to begin the week with unanimous Senate action on S. Res. 41, commemorating the devotion and regretting the fate of the *Columbia* space shuttle mission. Both the Republican leader and Democratic leader joined to put together that resolution. I commend both of them for doing it.

In fact, memorials are taking place around the country this week, in our hometowns and small towns, as well as the one in Houston yesterday, and here at the National Cathedral in Washington tomorrow, at Cape Canaveral in Florida, and elsewhere. Of course, there are memorials in other countries affected, especially Israel and India.

So this is not the time I would have chosen for this debate. The Senate should be finding matters of consensus on which we can all work together in unity in these difficult days of grieving. It would be good, just for once, to have things that could unite us rather than things that divide us.

Under Democratic Senate leadership in the difficult days following the terrorist attacks of 9/11, that is what we did. We joined together, Democrats and Republicans alike. We worked hard to

put aside divisive issues. We focused exclusively on what America needed most in the aftermath of those attacks. I recall how hard some of us devoted ourselves to what became the USA Patriot Act; the hours, the days, the weeks we spent trying to forge consensus.

We also saw how the administration worked to demean that bipartisanship, and how during the election season it denigrated the work of Democrats trying to help the security of this country and began, once again, to divide, not unite.

It would be good to see national leaders in national campaigns seek to unite us and not to divide us. But it has been sometime since we have seen that.

So in the new 108th Congress, as we begin this initial nominations debate in the Senate Chamber, we see an emboldened executive branch wielding its rising influence over both Houses of Congress, and ever more determined to pack the Federal courts with activist allies, to turn this independent judiciary into a political judiciary.

That would be one of the greatest tragedies this Nation could face. Throughout the world, when people come to America they look at our Federal judiciary and say: This is a truly independent judiciary. Shouldn't we be working to do that?

In upholding our constitutional oath, shouldn't we, as Senators, be doing that? Shouldn't whoever is President be doing that?

I recall when the Soviet Union collapsed, Members of the new Russian Duma came here to the United States to see how we do it in a democracy. I recall sitting in my conference room with a number of people. I remember the Members of the Duma coming to my office. There were those who were going to have to oversee the new judiciary. One of the things that struck me is one of them said: We have heard that there are instances where American citizens go into a court and they bring suit against the American Government. Is that true?

I said: Yes, it happens all the time.

They said: We have also heard there were times when Americans bring suit against their Government and the individual citizen wins, the Government loses.

I said: That happens all the time.

And they said: You don't replace the judges if they rule with one of the citizens and rule against the U.S. Government?

I said: If the U.S. Government is in the wrong, of course they do, that's their duty. That is what we mean by judicial independence. That is how the same American citizen could come in on another issue and lose. The fact is, American citizens can come into our Federal courts and know they are going to be independent. They are going to know it doesn't make any difference whether they are Republicans or Democrats, whether they are rich or poor, no matter what their color, no

matter what their religion, no matter whether they are liberal, conservative, moderate, or whatever part of the country they are from, when they go to the Federal courts they can see they are independent.

Now, in this attempt to change the ideology of all the Federal courts into one narrow ideological strata, we see an attempt not to unite Americans but to divide them. But worse than that, because these are lifetime appointments, we see an attempt to irrevocably damage the integrity and the independence of the Federal judiciary.

With unprecedented speed—certainly unprecedented in the last 15 or 20 years—the Democratic-controlled Senate moved through and, in 17 months, confirmed 100 of President Bush's nominees. The vast majority of them were conservative Republicans, and I voted for almost all of them because I thought, having listened to them, at least we knew enough about them to know that they could be impartial on the bench. There were some we did not take up because it was so obvious from their statements that they were there to take a political, ideological view. Then we find some, of course, who will not tell us at all what they are there for.

The fundamental checks and balances of our Federal system are at risk of being sacrificed to a one-party rule with the coequal branches of our Government collapsing into one.

The Senate should not abandon its critical role. I wish more people—I wish 100 Members of the Senate—would sit down and read history books and determine how we got here and what our advice and consent rule is. Look at the fact that even President George Washington had judges who were turned down by the Senate at that time.

This is a great institution. I have given 29 years of my life here. It is the main place of checks and balances in our Federal Government, especially when it comes to advising and consenting to appointees. We are not talking about an appointment to an assistant secretaryship, or administratorship somewhere in a job that may last for a couple of years, important though it may be; we are talking about lifetime appointments, appointments of judges who will be there long after all of us have left.

Defending and upholding the Constitution is what we Senators are sworn to do. I can remember every time I walked down the aisle of this Senate and up to the Presiding Officer and raised my hand to take my oath of office to begin another 6-year term. I can remember each one of those times as though it was in crystal, as though time stopped, because what I remember is not the fact that I have become a Senator again, or that my family may be in the Gallery, or that my friends are happy. What I remember is I am taking a very awesome oath. This oath says that I will uphold the Constitu-

tion, and I will uphold my duties as a U.S. Senator—not as a Democrat or as a Republican, and not even as a Vermonter but as a U.S. Senator. We are a nation of 275 million Americans. Only 100 of us get the opportunity to represent this country at any given time. And it is an awesome responsibility.

I see the administration trying to pack the Federal court with activists. I take that very seriously. I have voted against nominees of Republican Presidents and of Democratic Presidents if I believed it would not be upholding my duties as a Senator to vote for them. But, unfortunately, this debate will be contentious, and it may be split largely along party lines.

Already, Republicans have charged those who have spoken or voted against this nomination as motivated by racism. I do not know any racist in this body in either party, and I resent the fact that some Republicans have said those who have voted against this nominee in the committee were motivated by racism. There are none in this body.

The Associated Press reports that Republicans, last Thursday, charged those who opposed this nomination of doing so "because of ethnicity" and with wanting "to smear anyone who would be a positive role model for Hispanics." Those who made such statements should begin this debate by withdrawing those statements and disavowing that divisive rhetoric.

It is wrong for anybody to be declaring that Members of this body in either party are racists. I think it is wrong what has happened here.

Those who have done so should apologize to Democratic Senators on the Judiciary Committee who voted against this nomination, and also to the Hispanic leaders—very respected Hispanic leaders—in this country who showed the courage to examine this nomination, and, having examined the nomination of Mr. Estrada, decided to oppose it.

Last year, some Republicans made an outrageous and slanderous charge that religious bigotry motivated votes by the Democrats on the Senate Judiciary Committee—even going so far as to say no Christians should get a vote, and basically made it very clear because there are four Catholics and four Jews on that committee. As one of those Catholics, I resent that, and I resent that more than anything I have heard in 29 years in the U.S. Senate. We have not seen that outrageous and slanderous charge withdrawn.

Again, I have never met a Senator in either party who showed religious bigotry. But I have heard Senators accuse Democratic members of the Senate Judiciary Committee of that. It is wrong. It is absolutely wrong—and just as wrong to say if you vote against somebody it is out of racism. That is wrong.

I have voted on thousands upon thousands of nominees for Presidents of both parties. For most of them I had

absolutely no idea what their race or religion was. And when I did, it never once entered into my thought. It may cause fundraising letters or cheap applause lines when speaking to different groups, but I must admit as a member of a religious minority that I find that it is something which I resent greatly.

I had hoped the administration and the Republican leadership would not do something so controversial and divisive with this nomination—not with all this Nation has gone through and continues to go through, with the tragedy of last weekend, and not knowing that we are coming to the final decision on going to war.

Just as the President has, once again, chosen to divide rather than unite by sending controversial judicial nominations in an effort to pack the courts, the Republican leadership in the Senate has chosen this time to force that controversy forward.

I made efforts over the last 2 years to try to work with the White House to confirm and appoint judges to the judicial vacancies, including a very large number of vacancies that are there because Republicans refused to allow a vote on nominations by President Clinton—moderate nominations by President Clinton. The vacancies remain year after year after year because the Senate does not allow a vote on the nominee.

As I said, during the last 17 months of the last Congress under Democratic leadership, the Senate confirmed 100 of President Bush's judicial nominees. Actually during that time, even though the Republicans were in charge for 6 months, they did not confirm a single one of President Bush's judicial nominees—but Democrats did, 100 of them. We worked at a rate almost twice that averaged during the preceding years when a Republican-led Senate was considering nominees of a Democratic President.

Consensus nominees were considered first and relatively quickly. Controversial nominees took more time but we considered many of them as well.

The last judicial nominee considered by the Senate last December was from the neighboring State of the distinguished Presiding Officer, Judge Dennis Shedd of South Carolina. Judge Shedd's nomination was chiefly supported by Senator Strom Thurmond. Despite his record—and certainly a record with which I disagree—in civil rights cases and his record on the bench, we proceeded. His record raised serious concerns among many—especially among African Americans living in the Fourth Circuit and across the Nation. But we brought the nominee forward. I do recall when we did that some Republicans said it would bring adversity to the bench. I am not sure what they meant by that. But we brought it forward, nonetheless, as I had agreed to. The Senate vote was 55 to 44 to confirm him.

Shortly thereafter, the Nation and the Senate were confronted by the con-

trovery over the remarks of the former Republican leader, and people openly speculated whether the President would renominate that Senator's choice, Judge Charles Pickering. The nomination was defeated in our committee.

I do not know of any precedent for a President renominating a judicial nominee who was voted on and rejected by the Judiciary Committee. Yet this President has chosen to renominate—to go against precedent—both Judge Pickering and Justice Priscilla Owen, who both had been voted on by the Judiciary Committee and whose nominations were rejected last year.

I am over the fact that we haven't seen them on the agenda, in case Senators have second thoughts. But we will see. But now we have a different nomination before the Senate.

As I have said for some time, the Senate and the American people deserve to have an adequate record and strong confidence about the type of judge Mr. Estrada would be in order to support a favorable vote on this nomination. But we don't have that in the sparse record before the Senate on his nomination to the second highest court of the land, and as a Senator I certainly don't have confidence to support this nomination when basically all I can say about him is he is a pleasant person to be with. We have seen different sort of constantly changing biographies of him in the press—all impressive, whichever one is the latest one being used. But what I want to know is what is he going to be like in a court? You have to be concerned. Will he be an activist on the DC court?

Throughout our earlier proceedings, I repeatedly urged Mr. Estrada and the administration to be more forthcoming—certainly to be forthcoming at least to the extent that the five previous administrations I served with have been. But neither the nominee nor the administration has shown any interest—any interest whatsoever—in being more forthcoming.

So what do we have? We have before us for consideration a nominee with no judicial experience, and little relevant practical experience related to the jurisdiction of this court. He counts Justice Scalia, Kenneth Starr, and Ted Olson among his friends and mentors, but any information about how his decisionmaking would go or what he thinks is not there.

The Senator from New York, Mr. SCHUMER, asked him: Well, we are not going to ask you about a case that may actually be before the court. Senator SCHUMER said: We are not going to ask you how you would vote on the WorldCom case because that may well be there. But if you look at Supreme Court cases, for example, can you name any you disagree with? And that was just to get some idea of what he thinks. He asked him: Can you name any cases you disagree with? And he could not.

Even if you did not want to look at some very recent cases, I would think

somebody would think of a case, such as the Dred Scott decision, or Plessy v. Ferguson. These are a couple cases that would come to mind that you might disagree with. I certainly would disagree with the court upholding, what everybody now realizes is unconstitutional, the locking up of Japanese Americans during World War II, the locking up of loyal American citizens absent any due process just because of where their ancestors came from, which was upheld by a very political Supreme Court. I could have disagreed with that.

There has to have been some cases—over all these years. Upholding slavery? Upholding separate but equal? Upholding the internment of Americans for no other reason than the color of their skin and where their parents or grandparents came from? That was a softball toss. We are not even going to be allowed to know what he thinks about that. Maybe he thinks those were good cases. But if that is the case, then say they are good cases, which actually is what he did. He said there were none he disagreed with.

So you have to think that maybe one of the reasons for the controversy over Mr. Estrada is because he appears to have been groomed to be an activist appellate judge and groomed by well-connected, ideologically driven legal activists.

For example, those who he declares are his friends—you can have friends whenever you want. I have friends who range across the political spectrum. But I think I also would be willing to state what my political philosophy is, or certainly what my judicial philosophy is if I am going to ask for a lifetime appointment to the bench, just as I have to state what my political philosophy is when I ask the people of Vermont to elect or reelect me.

Last week, the Congressional Hispanic Caucus and the Congressional Black Caucus restated their concerns, and the Puerto Rican Legal Defense and Education Fund, the Mexican American Legal Defense and Education Fund, and the Southwest Voter Registration and Education Project reiterated their concerns.

Some of the most respected Latino labor leaders, including Maria Elena Durazo of HEAR, Arturo S. Rodriguez of the UFW, Miguel Contreras of L.A. County Fed., Cristina Vazquez of UNITE, and Eliseo Medina of SEIU have indicated their strong opposition to this nomination.

Let me quote from the letter from Antonia Hernandez and Antonio Gonzalez:

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.

Two of the Nation's most respected Hispanic leaders.

They go on to analyze an array of issues that affect not only the Latino community but all Americans on which they find this nomination wanting. Of course, MALDEF outlined its concerns in advance of the hearing last fall in a memorandum to the White House. As their recent letter says:

[T]he Judiciary Committee gave Mr. Estrada ample opportunity to address [their concerns]. 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 and 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.

My view of the record is similar to theirs. It is also shared by the respected Puerto Rican Legal Defense and Education Fund.

Senator SCHUMER chaired a fair hearing for Mr. Estrada last September. Every Senator—Republican and Democrat—had ample time to ask whatever questions they wanted. I was hoping that the hearing would allay concerns because I have been impressed with Mr. Estrada as a person in meeting with him. But what I wanted to know was not Mr. Estrada the person, somebody who lived next door to you, but what would a Judge Estrada—the person sitting up at the bench when you appear there—how would that person be?

When he avoided answering question after question after question, then I ended up with more questions than answers.

The recent statement from Latino labor leaders makes the following point:

Mr. Estrada is a "stealth candidate" whose views and qualifications have been hidden from the American people and from the U.S. Senate. Since his nomination, Mr. Estrada has consistently refused to answer important questions about his views and his judicial philosophy.

These Latino leaders went on to say that it would be "simply irresponsible for the Senate to put him on the bench."

After a thorough review, the Puerto Rican Legal Defense and Education Fund concluded that Mr. Estrada was not sufficiently qualified for a lifetime seat on the Nation's second highest court and said that his "extreme views should be disqualifying; that he has not had a demonstrated interest in or any involvement with the Hispanic commu-

nity or Hispanic activities of any kind; and that he lacks the maturity and judicial temperament necessary to be a circuit judge."

PRLDEF said Mr. Estrada has "made strong statements that have been interpreted as hostile to criminal defendants' rights, affirmative action and women's rights." They expressed concern about his temperament. People they interviewed about Mr. Estrada described him as "arrogant and elitist" and that he "harangues his colleagues" and "doesn't listen to other people," that he is not even tempered and he is "contentious, confrontational, aggressive and even offensive in his verbal exchanges" with them.

As I said before, some of his supporters have said, if a Senator opposes him, that Senator is racist or anti-Hispanic.

These claims are offensive and absurd. Well-respected leaders of the Hispanic community itself have raised very serious objections and concerns about his nomination. In fact, to say that those who vote against him are racist or anti-Hispanic is as false as the statements made last fall that those who voted against Judge Pickering were anti-Christian.

No one has worked harder to increase Hispanic representation on our courts than PRLDEF, MALDEF, and the congressional Hispanic caucus. In fact, they didn't begin their review of Mr. Estrada's record with the expectation of opposing his nomination. Instead, they started with their strong record of supporting more diversity on the Federal bench, something they have done for years, President after President, urging more diversity on the Federal bench. This was before the 10 Hispanics on the court of appeals. I know President Clinton listened to them because he appointed eight of those 10. They actually would have had three more had the Republican-controlled committee allowed them to come to a vote.

Now there is all this talk about how can we possibly be stopping President Bush when he is trying so hard to have Latinos on the bench. There are 42 vacancies that have existed in the 13 circuit courts of appeal during President Bush's tenure. Mr. Estrada is the only Hispanic he has nominated. Unlike the eight that were confirmed of President Clinton's and the other three that he had in there, 11 that he nominated, President Bush has nominated one, and he had 42 chances to nominate. Out of those 42 chances, the only one he nominates is not somebody who could form a consensus within the Hispanic or non-Hispanic community, but he has one that is rejected by much of the Hispanic community, is guaranteed to be divisive. And one more time—one more time but consistent as always—the administration seeks to divide, not to unite, something that has been their hallmark.

They didn't find any Hispanics to nominate for the four vacancies on the Tenth Circuit. That includes New Mex-

ico and Colorado, both States with large Hispanic populations. They didn't find any Hispanics to nominate for the three vacancies in the Fifth Circuit, which includes Texas, certainly a State with a large Hispanic population, or the six vacancies on the Ninth Circuit. They couldn't find any Hispanics to nominate there, but that includes California and Arizona, certainly States with large Hispanic populations. There are three vacancies on the Second Circuit, no Hispanics, even though that includes New York and Puerto Rico. Certainly, they should have found some there. Or the Third Circuit, New Jersey and Pennsylvania, they couldn't find any Hispanics there to appoint.

And we know that there are some outstanding Hispanic lawyers in each of those circuits. Some are sitting on the State courts doing a superb job where there is a record and where there would be a consensus and where you would have somebody who would unite rather than divide.

In fact, there are more than 1,000 local, State, or Federal judges of Hispanic heritage, and out of those 1,000, for these 42 vacancies, the President finds one, and that one is there with no experience, no background as a judge, and is there solely because he has been put forward to carry on a particular judicial ideology.

I don't want to leave the impression that the President sent nobody up here of Latino descent. He did. And a Democratic-controlled Congress confirmed them all. Judge Christina Armijo of New Mexico, Judge Phillip Marinez, and Randy Crane of Texas, Judge Jose Martinez of Florida, Magistrate Judge Alia Ludlum, and Jose Linares of New Jersey—they were all nominated. We confirmed every one of them. In fact, we just held a hearing on Judge James Otero of California. I told him at the end of the hearing that I assumed we would be confirming him very quickly. Actually, we would have, had the nominee had his hearing last year, had his paperwork been completed.

But also, as I have said before, there are 10 Latino appellate judges currently seated in the Federal courts. Eighty percent of them were appointed by President Clinton. Even there, a number of them were denied Senate consideration for years while the Republicans controlled the Senate.

For example, the confirmation of Judge Richard Paez to the Ninth Circuit took more than 1,500 days, even though he was strongly supported by both his home State Senators. And after Republicans delayed Judge Paez for 5 years, 39 voted against him.

Judge Sonia Sotomayor is in the Second Circuit, my circuit; everybody agreed that she was a superb candidate, but then for month after month after month—we wanted to bring her up for a vote—an anonymous hold on the Republican side of the aisle blocked consideration—anonymous hold after anonymous hold.

The irony there is that she had a strong court record. She had first been

appointed to the Federal bench by the first President Bush. He appointed her. She had this record. She had a unanimously well qualified, the highest rating possible. They stalled her and stalled her with an anonymous hold. Finally, the embarrassment got too much. And when it came to a vote, 29 Republicans voted against her.

Now a number of the circuit court nominees President Clinton sent up here never even received a hearing or vote. Jorge Rangel and Enrique Moreno of Texas were both nominated to the Court of Appeals for the Fifth Circuit. President Clinton was able to find qualified Hispanics for the Fifth Circuit, but the Republican leadership would not allow them to come to a vote. And Christine Arguello of Colorado was nominated to the Tenth Circuit. An awful lot of President Clinton's judicial nominees were never even given hearings or votes. Many of them were qualified Hispanics, African American, or women.

That is why during the past Congress, in the year and a half the Democrats were in control, we tried to restore fairness to the confirmation process. We tried to address the vacancies we had inherited. Even though those vacancies were caused because Republicans would not allow votes on Democratic nominees, we brought forward Republican nominees for the same places. Diversity has been the greatest strength of our Nation. That diversity of backgrounds should be reflected in our Federal courts, not just on the streets of our cities and towns. We also should accept the fact that race or ethnicity or gender are no substitute for the wisdom, experience, fairness, and impartiality that qualify someone to be a Federal judge—especially a Federal judge—entrusted with a lifetime appointment.

No potential candidate for a lifetime appointment to the Federal courts should get a presumption of competence or entitlement. You are not automatically competent or entitled simply because you are appointed. It makes no difference which party the President is from. If it were otherwise, we should do away with the advise and consent clause of the Constitution and change it to advise or rubber stamp, or something like that.

Nominees should be treated fairly, but the proof of suitability for a lifetime appointment rests on the nominee and on the administration. The Senate is not required to prove they are qualified for a lifetime appointment. We have to satisfy ourselves as individual Senators, as 100 Senators, that they are qualified and suitable for this lifetime appointment. It is up to the nominee himself or herself and the administration to make the case that allows us to reach the conclusion that they are qualified.

We have to look at their records, listen to their answers to the questions—if they will answer the questions—and if they refuse to answer the questions,

I don't know why any Senator would think that he or she has an obligation to vote for this person if they will not even answer the question of why they are qualified, beyond a political connection, to a lifetime appointment on what is supposed to be an independent, nonpolitical Federal bench.

Certainly, we know the benefits of diversity and how it contributes to achieving and improving justice in America. That is fine. We should look at that and the President should. All of these questions should be looked at, and the answers to the questions should be looked at. But if all we have are questions and no answers, where do we go?

As Antonia Hernandez wrote in the *Wall Street Journal*:

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.

She continued:

It is vital to know more about a nominee's philosophies for interpreting and applying the Constitution and the laws.

It was in connection with the nomination of Judge Dennis Shedd, a white male and former staffer to Senator Thurmond, that Republicans argued he would bring diversity to the Fourth Circuit. Maybe that is their sense of diversity. I suspect it is not the sense of many others. Be that as it may, each Senator has to make up his or her mind about the qualifications. I defy any Senator to make up his or her mind satisfactorily when they don't have a record before them or answers to questions.

The Fourth Circuit was a Federal circuit court that had the longest history without an African-American judge, speaking of diversity. It wasn't until President Clinton's recess appointment of Judge Roger Gregory that the Fourth Circuit was finally desegregated.

The reason we were not able to get him through before was the Republican majority used blue slips and secret objections to block the integration of that court for years during the Clinton administration as the Clinton administration nominated one qualified African American after another. He was accorded a hearing, but they did say Judge Shedd would bring diversity to that court. In that regard, I am glad that common sense came out, and I applaud the two Senators from Virginia—Republican Senators—for convincing the President to renominate Judge Gregory, this outstanding African-American jurist. I commend both Senator ALLEN and Senator WARNER for standing up for him. When he came to the Senate floor and we had a rollcall vote on him, every Senator, except one, voted for him. It shows the quality of the nominee, but also it is a strong signal to that court that here is a judge who has been looked at by both Republicans and Democrats in 1990, and 100 Senators came to the conclusion that he was qualified.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Congressional Hispanic Caucus and a CHC civil rights task force scorecard.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, September 25, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Judiciary Committee, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Congressional Hispanic Caucus (CHC), we wish to inform you that the CHC has decided to oppose Miguel Estrada's nomination to the United States Court of Appeals for the District of Columbia Circuit. After reviewing Mr. Estrada's record and meeting with him in person, we have concluded that he fails to meet the CHC's evaluation criteria for endorsing judicial nominees.

As you know, the judicial nomination process is important to the CHC because we believe that our nation's courts should reflect the diversity of thought and action that enrich America. Earlier this year, we launched the Hispanic Judiciary Initiative to further formalize our involvement in this issue by establishing a set of evaluation criteria and an internal process for endorsing nominees. We hope that this initiative will allow us to continue our work to ensure fair treatment of Latino judicial nominees and tackle the lack of diversity in the federal judiciary.

In evaluating Mr. Estrada, we considered not only his honesty, integrity, character, temperament, and intellect, but also his commitment to equal justice and advancement opportunities for Latinos working in the field of law. Because of the nature of the CHC's mission and the important role that the courts play in achieving that mission, in order to support a judicial nominee the CHC requires that he or she has a demonstrated commitment to protecting the rights of Latinos through his or her professional work, pro bono work, and volunteer activities; to preserving and expanding the progress that has been made on civil rights and individual liberties; and to expanding advancement opportunities for Latinos in the law profession. On this measure, Mr. Estrada fails to convince us that he would contribute under-represented perspectives to the U.S. Court of Appeals for the District of Columbia Circuit.

As stated by Mr. Estrada during his meeting with us, he has never provided any pro bono legal expertise to the Latino community or organizations. Nor has he ever joined, supported, volunteered for or participated in events of any organization dedicated to serving and advancing the Latino community. As an attorney working in government and the private sector, he has never made efforts to open doors of opportunity to Latino law students or junior lawyers through internships, mentoring or other means. While he has not been in the position to create internships or recruit new staff, he never appealed to his superiors about the importance of making such efforts on behalf of Latinos. Furthermore, Mr. Estrada declined to commit that he would be engaged in Hispanic community activities once appointed to the bench or that he would pro-actively seek to promote increased access to positions where Latinos have been traditionally under-represented, such as clerkships.

Mr. Estrada shared with us that he believes being Hispanic would be irrelevant in his day-to-day duties on the court, which leads us to conclude that he does not see himself

as being capable of bringing new perspectives to the bench. This is deeply troubling since the CHC's primary objective in increasing ethnic diversity of the courts is to increase the presence of under-presented perspectives.

Mr. Estrada's limited record makes it difficult to determine whether he would be a forceful voice on the bench for advancing civil rights and other protections for minorities. He has never served as a judge and has not written any substantive articles or publications. However, we did note that in responding to inquiries about case law, Mr. Estrada did not demonstrate a sense of inherent "unfairness" or "justice" in cases that have had a great impact on the Hispanic community.

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, Miguel Estrada fails to meet the CHC's criteria for endorsing a judicial 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. We respectfully urge you to take this into account as you consider his nomination to the U.S. Court of Appeals.

Sincerely,

SILVESTRE REYES,
Chair, Congressional
Hispanic Caucus
CHARLES A. GONZALEZ,
Chair, CHC Civil
Rights Task Force.

CONGRESSIONAL HISPANIC CAUCUS HISPANIC JUDICIARY INITIATIVE—SCORECARD FOR CIRCUIT COURT NOMINEE MIGUEL ESTRADA

| Evaluation criteria | Mr. Estrada's record | Conclusion |
|---|----------------------|------------|
| Commitment to equal justice for Latinos. | No record | |
| Commitment to protecting Latino interests in the courts. | None | Failed. |
| Support for Congress' right to pass civil rights law. | No record | |
| Support for individuals access to the courts. | Unclear | |
| Support for Latino organizations or causes through pro bono legal expertise. | No | Failed. |
| Support for Latino organizations or causes through volunteerism. | No | Failed. |
| Support for Latino law students or young legal professionals through mentoring and increasing internship opportunities. | No | Failed. |
| Commitment to increase Latinos' access to clerkships once on the bench. | No | Failed. |

Mr. LEAHY. Mr. President, before my voice goes, I see the distinguished Senator from Utah in the Chamber. Obviously, he will be recognized next. Then I hope we will go to Senator SCHUMER. I will have more to say, but the spirit is more willing than the vocal cords.

I yield the floor.

Mr. SCHUMER. Mr. President, will the Senator yield for a unanimous consent request?

Mr. HATCH. I yield to Senator SCHUMER for a unanimous consent request.

Mr. SCHUMER. Mr. President, I ask unanimous consent that immediately after Senator from Utah finishes, I be recognized for a period of time.

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

The Senator from Utah.

Mr. HATCH. Mr. President, I thought I would make some points here because the distinguished Senator from Vermont is mistaken in a number of accusations he makes.

I wish to list the following Hispanic groups or Hispanic-owned businesses that express their support for Miguel Estrada. One of the oldest Hispanic organizations in the country is the League of Latin American Citizens. It is well known, well respected, and bipartisan. They are firmly behind Miguel Estrada. Next is the U.S. Hispanic Chamber of Commerce; Hispanic National Bar Association; Hispanic Business Roundtable; National Association of Small Disadvantaged Business; Mexican American Grocers Association; ATL, Inc.; PlastiComm Industries, Inc.; Phoenix Construction Services; Hispanic Chamber of Commerce of Greater Kansas City; eHEBC Hispanic Engineers Business Corporation; Hispano Chamber of Commerce de Las Cruces; Casa Del Sinaloense; Republican National Hispanic Assembly; Hispanic Engineers Business Corporation; Hispanic Contractors of America, Inc.; and the Charo-Community Development Corporation.

That is to mention a few. There are dozens of organizations that support Miguel Estrada. As anybody would understand, there is a lot of pride in Hispanic organizations for this type of a nominee, who has achieved so much in his life, and has done it basically on his own and has achieved the heights that very few lawyers and people have achieved, who has not had a glove laid on him in our committee hearing—other than complaints that they don't know his philosophy. My goodness, they have had almost 2 years to learn his philosophy and they could have asked any question, and they did ask a lot of questions.

Let me say there is a double standard here on judicial qualifications. On January 30, 2003, the Senate Judiciary Committee voted 10 to 9 to approve the nomination of Miguel Estrada to the U.S. Court of Appeals for the DC Circuit. On January 24, 2003, Senator LEAHY questioned Mr. Estrada's qualifications, saying he "has no judicial experience. He has no publications since law school."

He is not a distinguished legal scholar or professor of law.

I might add that in 1997, the distinguished Senator from Vermont praised Merrick Garland—as did I, by the way; I supported him strongly; he was another DC Circuit nominee with no judicial experience, no professional experience, no publications—as "highly qualified for this appointment" and

someone who would make "an outstanding Federal judge." That is in the CONGRESSIONAL RECORD of March 19, 1997, at S2518.

That is what was said about Merrick Garland. I agree with Senator LEAHY on that point. He was an excellent candidate, an excellent judge. I supported him strongly and broke down barriers to make sure he could become a judge on the Circuit Court of Appeals.

Mr. Estrada's and Mr. Garland's credentials, or should I say Judge Garland's credentials, were exactly the same at the time. Let me go down through a list of credentials.

The age of the nominee: Miguel Estrada was 41. That was 2 years ago almost; Merrick Garland was 44.

Phi Beta Kappa: Yes for Miguel Estrada; yes for Merrick Garland.

Harvard Law School, magna cum laude: Yes for Miguel Estrada; yes for Merrick Garland.

Editor of the Harvard Law Review: Yes for Miguel Estrada; yes for Merrick Garland.

Law clerk, U.S. Court of Appeals, the Second Circuit: Yes for Miguel Estrada; yes for Merrick Garland.

Law clerk of the U.S. Supreme Court: Yes for both of them.

Private practice: 7 years for Miguel Estrada; 7 years for Merrick Garland.

Assistant U.S. attorney: 2 years for Miguel Estrada; 3 years for Merrick Garland.

U.S. Department of Justice: From 1992 to 1997 for Miguel Estrada; from 1993 to 1997 for Merrick Garland who now sits on the DC Circuit Court of Appeals.

Bipartisan support: Yes for Miguel Estrada; yes for Merrick Garland.

Race: Miguel Estrada is Hispanic. Merrick Garland is white.

Days from nomination to Judiciary Committee approval: 631 days for Miguel Estrada; only 100 for Merrick Garland. They are not quite equal there.

Seven current Judiciary Committee Democrats served in the Senate in 1997. Seven of them are current Democrats on the committee. Every one of those Democrats voted for Merrick Garland, and every one of them voted against Miguel Estrada—all seven of them.

Let me say that the statement of Senator KENNEDY, our distinguished former chairman of the committee way back when, about Merrick Garland in the CONGRESSIONAL RECORD of March 19, 1997 at S2518 I think applies to Miguel Estrada. This is our distinguished colleague from Massachusetts:

No one can question Mr. Garland's qualifications and fitness to serve on the DC Circuit. He is a respected lawyer, a former Supreme Court law clerk, a partner at a prestigious law firm, and has served with distinction in the Department of Justice under both Republican and Democratic administrations. Support for him is bipartisan.

I think that statement in every detail applies to Miguel Estrada. I do not think there is any question about it.

What is going on here? What is wrong with this tremendous lawyer who has

made it on his own under very trying circumstances; who has an ABA rating of unanimously well qualified; who has argued 15 cases before the U.S. Supreme Court—I am not sure Merrick Garland did that, although I think Merrick Garland is a terrific individual—Columbia and Harvard Law, magna cum laude; editor of the Harvard Law Review, something that is about as prestigious as it gets in law school; a law clerk for U.S. Supreme Court Justice Kennedy; Assistant Solicitor General not only for George Bush I, but for President Clinton as well, praised by the person who supervised him, who later, not knowing we had all of those praises, besmirched him. But it is pretty hard to go against what he put in writing way back when, and I will get into that before we are through.

I have been listening very carefully to some of the comments of my distinguished friend from Vermont, and I do not believe that bringing up the names of Clinton nominees who happen to be of Hispanic descent has anything to do with how this Senate should treat Mr. Estrada. However, since my Democratic colleagues have criticized my treatment of these nominees when I was chairman, I feel compelled to set the record straight.

The fact is, under Republican leadership, most of President Clinton's Hispanic nominees—14, to be exact—were, indeed, confirmed. Although my Democratic colleagues would have you believe something more nefarious was at work, the fact is the nominations of Jorge Rangel and Enrique Moreno for the Fifth Circuit stalled because there was an utter failure of consultation by the Clinton White House. There is no question about that. And neither sitting Senator in Texas was willing to return their blue slips because there was no consultation, which is a requisite.

My colleagues on the other side are certainly raising consultation questions all the time about this White House, and we have directed the White House to consult. Unfortunately, some of them, I think, take the attitude that unless the White House chooses who they want, it is not consultation. That is not a good definition of consultation.

Tenth Circuit nominee Christine Arguello has been brought up. She was not nominated until July of 2000. It was way too late in the session to effectively move her nomination under those circumstances. We did not receive her questionnaire until August of 2000 and, if my records are correct, I do not believe we ever did receive her FBI file. So to raise that is sophistry at best.

It is unfortunate for the nominee when he or she is not confirmed because of these obstacles, but none of these face Mr. Estrada. As we all know, he has been pending for 2 years now and has been rated unanimously well qualified, the highest rating by the American Bar Association.

As for Ninth Circuit Court nominee Richard Paez, I was a vocal supporter of Judge Paez in the face of harsh criticism from some in my own party. I was one of two Republicans to vote for him in this committee, and I led the effort on the Republican side to get him confirmed on the floor. I believe my Democratic colleagues know this, so I take exception when they cite his name as an example of my alleged stonewalling on Clinton nominees. There was none.

Let me talk about the hearing testimony of Mr. Estrada. Mr. Estrada repeatedly answered the questions that were put to him. Let me give some examples.

Mr. Estrada testified he was committed to following the precedents of higher courts faithfully and giving them full force and effect, even if he disagrees with them and even if he believes such precedents are erroneous. That is pretty important testimony, and it is testimony that should be in his favor.

When asked how he would decide cases presenting an issue for which there was no controlling authority, Mr. Estrada testified:

When facing a problem for which there is not a decisive answer from a higher court, my cardinal rule would be to seize aid from anyplace I could get it.

He testified this would include related case law and other areas of legislative history and views of academics.

When asked if he sees the local process as a political game, Mr. Estrada testified: The first duty of a judge is to self-consciously put that aside and look at each case by withholding judgment, with an open mind, and listening to the points. I think the job of a judge is to put all that aside and to the best of his human capacity to give a judgment based solely on the arguments on the law.

Miguel Estrada said: I will follow binding case law on every case, and I don't even know if I can say whether I concur in the case or not without actually having gone through all the work of doing it from scratch. He further says: I may have a personal moral philosophical view on the subject matter, but I undertake to you that I would put all that aside and decide cases in accordance with binding case law, and even in accordance with the case law that is not binding but seems instructive on the area, without any influence whatsoever from a personal view I may have about that subject matter.

Mr. President, I could go on and on. What is clear from this testimony is Mr. Estrada will be a judge who sets aside his personal convictions, whatever they may be, and follow the law. This is precisely the type of a person we want on the Federal bench.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the senior Senator from New York for permitting me to go for 5 minutes.

Mr. SCHUMER. Mr. President, I ask unanimous consent before I speak the Senator from Pennsylvania be given 5 minutes. I also ask unanimous consent Senator KENNEDY be allowed to speak at 5:40.

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

Mr. SPECTER. Mr. President, I have sought recognition to support the nomination of Miguel Estrada. We have heard a lot about his academic record. The Senator from New York knows what a taste of being magna cum laude at Harvard is like. He is a Harvard graduate himself. I know what it is like to be magna cum laude of Harvard, too, and the Phi Beta Kappa standing from Columbia and magna cum laude there, and editor of the Harvard Law Review.

These academic credentials are unsurpassable. Fifteen cases argued before the Supreme Court, extraordinary. Clerk for the U.S. Supreme Court Justice—again, an "A+" rating. There could be no doubt about the qualifications of this man.

Now, there is an objection raised that not enough is known about his philosophy. What is really being attempted here is to impose a test that you have to be in philosophical agreement in order to get the vote of a Senator for confirmation. I suggest that is an inappropriate test. It is not the traditional test. It is going much too far.

When Justice Scalia was confirmed, he would not even give his opinion on whether he would uphold *Marbury v. Madison*. There have been many Supreme Court nominees and circuit court nominees with whom I have disagreed philosophically on major points, but I have not withheld my vote in confirmation for Chief Justice Rehnquist, Justice Scalia, Justice Kennedy and Justice Thomas because I did not like their views on the issue of choice.

If a nominee is outside of the mainstream, that is one thing. I did not hesitate to oppose the nomination of Judge Robert Bork, where he was outside of the mainstream, even though he was nominated by my party, where he articulated the view of original intent, which simply could not be comprehended, and did not accept judicial review. He said absent original intent, there is no judicial legitimacy, and absent judicial legitimacy there cannot be judicial review. That is beyond the mainstream.

No one can contend Miguel Estrada is beyond the mainstream. If there are specific objections, let's hear them. But we have not heard them.

Then you have the business about the refusal to turn over his memoranda when he was in Solicitor General general's office, and you have the letter from seven ex-Solicitors General, which I ask unanimous consent to have printed in the RECORD—both Democrat and Republicans.

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

WILMER, CUTLER & PICKERING,
Washington, DC, June 24, 2002.

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

DEAR CHAIRMAN LEAHY: We write to express our concern about your recent request that the Department of Justice turn over "appeal recommendations, certiorari recommendations, and amicus recommendations" that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of the Solicitor General—under Presidents of both parties—we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review of adverse appellate decisions, and whether to participate as amicus curiae in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these and other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis, if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

Any attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself.

Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Sincerely,

SETH P. WAXMAN,
On behalf of
WALTER DELLINGER,
DREW S. DAYS, III,
KENNETH W. STARR,
CHARLES FRIED,
ROBERT H. BORK,
ARCHIBALD COX.

Mr. SPECTER. It is absolutely chilling to the operation of the Solicitor General's office or the operation of any governmental office with lawyers working to say their work product, their views, will be subject to review and scrutiny if they are later nominated to some judicial position.

I think it boils down to—I will not call the request for the opinions of the Solicitor General's office a red herring; that could be a little too harsh—it certainly is a subterfuge. It is not what they are really looking for. They are looking for an excuse.

The news reports today are that the Democrats plan a filibuster. That is the headline: "Democrats Plan Fili-

buster on Estrada Nomination." If that is so, the Senate is going to come to a grinding halt. If Miguel Estrada cannot be confirmed, then I doubt that anybody can be confirmed. We may be locked in debate on this matter—I heard an estimate of 3 months at lunch; that may be an understatement.

I don't think the American people are going to tolerate this. There has been much too much judicial politics. Republicans are as guilty of it as are the Democrats. When President Clinton was in office and Republicans controlled the Senate, nominations were blocked inappropriately. I was prepared to cross party lines where I thought it was justified. Now that we have a Republican in the White House and the Democrats have controlled the Judiciary Committee for most of the last 2 years, the shoe is on the other foot and there have been inappropriate blocking of nominees.

The only filibuster which we can find is the one on Abe Fortis for Chief Justice of the United States Supreme Court, which is hardly a judgeship for the court of appeals.

I say to my colleagues on the other side of the aisle, the Democrats on the Judiciary Committee, and the Democrats generally, we have to come to some accommodation. We have to come to a judicial protocol so we consider the issues on the basis of merit and qualification without politicizing and without looking for people who agree with us philosophically.

I may come back to speak later, but I wanted to speak at an early point in this proceeding because of my participation in the confirmation hearings of some seven Supreme Court nominees and hundreds of lower Federal court nominees. I hope we will take Estrada out of politics and confirm him.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, this is going to be a long debate, whatever happens. I very much appreciate the sincere concerns of my colleagues from Utah and Pennsylvania.

I say to my friend from Pennsylvania before he leaves, he asked, if Miguel Estrada cannot get confirmed, who can? I, for one, have voted for 96 of the 102 judges President Bush has nominated. We passed over 100 of them.

There seems to be an idea on the other side if we oppose a single judge we are totally blocking the President's program. I argue just the opposite. I argue to my friend, as he well knows because he knows the Constitution better than just about anyone else in this Chamber, with maybe the exception of our good friend from West Virginia, the Founding Fathers wanted debate. They wanted the Senate to have a role. Read the Federalist Papers. That is how it was for many years.

To sum up, the White House has started to nominate ideological nominees—not like President Clinton, not like the first President Bush—but when we try to examine the ideology of these

nominees, that is wrong. We do virtually no moderates before us. Everyone is from conservative, to way out of the mainstream, and we have voted for most of the conservative judges. Let's be honest about it. This debate was not started by Democrats in the Senate. This debate was started by a White House that is intent on changing the character of the Federal bench, to go way beyond what is the mainstream of America. Everyone will agree, Justice Scalia and Justice Thomas are the two most conservative judges on the court. President Bush said it in his campaign. He said: I will nominate Justices like Scalia and Thomas.

That is not saying moderation. He promised the American people moderation when he ran. But when it comes to the article III section of Government, we don't see a drop of moderation.

We will continue to make this argument because we believe we are defending the Constitution. We are doing just what James Madison and John Jay and Alexander Hamilton and all of the great writers of this Constitution wanted us to do, which is have some influence on the article III section of Government.

I am going to speak at some length, which is not what I usually do here. I usually say I think you can say everything in 5 or 10 minutes. But this issue is so important to me that I intend to be on the floor here today for a period of time, and regularly after that.

I rise in opposition to the nomination before us today. Mr. Estrada has been nominated to a lifetime appointment, a lifetime seat on the DC Circuit, the Nation's second most important court. If confirmed, this 42-year-old man will spend the next half century making important decisions that will affect our children, our grandchildren, our great-grandchildren, and generations beyond. If we vote to confirm Mr. Estrada, there is no going back. There is no opportunity to look at what he does in his first years as judge and reconsider. The vote here is final. If he is confirmed, we are all going to have to live with the consequences for decades to come.

So this is not a trivial matter. This is not a trifling matter. This is one of the most important matters that comes before us. The ability to ratify or reject a President's nomination to a lifetime appointment in article III, the third branch of Government, is a solemn obligation. It is one that should not be taken lightly. To rush through the nomination, to not have questions fully answered and explored, does violation to the very Constitution that we all revere. Yet that is what the other side is asking us to do.

The Senate has a solemn, almost sacred duty when evaluating applicants for such powerful posts. I will quote my good friend from Utah, Senator HATCH:

The Senate has a duty not to be a rubberstamp.

Those are his words. That is every bit as true today as it was when he uttered them.

The Founding Fathers, in my opinion—not just mine, almost everybody's—were really quite brilliant in devising a system of checks and balances. When it came to judicial nominations, they had a robust debate. For a good period of time at the Constitutional Convention they were considering vesting all the power in the Senate. There was a period where they considered vesting all the power in the President. They realized, as they did with most matters, that our country was best off with a system of shared power.

The Framers gave the President the power to select nominees but gave the Senate coordinate responsibilities to advise the President on whom to nominate, and to decide whether the nominees deserve confirmation. By and large, the system has worked well for over 200 years. For those of us who revere the Constitution and who believe in the rule of law, it is a beautiful work of art.

I believe to this day what was said when America was founded, that we are God's noble experiment. We still are. That is why the debate today and in the following weeks has so much vitality. For this beautiful work of art to maintain its beauty and brilliance, the Senate must hold up its end of the bargain. We have a duty, a responsibility, an obligation to the judiciary, to the Constitution, and, yes, to the American people, to carefully evaluate these nominees and decide whether they merit confirmation.

This cannot be a rote process where the President sends us names and we just say "OK," without undertaking an independent evaluation. As we hear so often from Senator BYRD, the keeper of tradition in this body, we have a duty to be vigilant defenders of constitutional principles and the Senate's role in checking executive power. For the Senate to retain its historical role in our system of government, we must live up to the standards set by those who came before us and ensure that we have balance in Government.

Too often, debates around here devolve into rancor and partisan backbiting. Too often in the past, debates involved personal attacks on people. Because we don't like a nominee, someone goes back and finds they smoked marijuana when they were in college, or they took out the wrong kind of movie when they were a young man or woman. That demeans the process.

To have a full debate and a fulsome discussion with the nominee about how he or she feels about important issues such as the first amendment and the second and the fourth and the commerce clause and the sovereignty clause and the right to privacy is not simply fun. It is not simply optional. It is deeply and solemnly necessary to uphold the will of the Founding Fathers, to uphold the very structure of the Government we revere. We should focus on facts in what we do and, equally important, on what we know and, equally

important to this debate, what we don't know about this nominee.

When a nominee is seeking such a powerful post, this lifetime position on the Nation's second highest court, I believe the nominee has an obligation to answer questions. I believe the nominee has a duty to tell us what he thinks about the law, how he views vexing legal questions of the day, and to share with us his approach to the Constitution and his judicial philosophy. These are not only reasonable areas of inquiry, they are urgent and important areas of inquiry. We cannot be expected to undertake our constitutional duties without answers to these questions.

In the words of Mr. DOOLEY, "this ain't beanbag." This isn't fun or a political game. This isn't trying one-upmanship. This goes to the very sacred obligation each of us has, when we take that oath of office upon our election or our reelection.

I know my friends on the other side of the aisle agree with me on this fundamental view. While I expect they will take to the floor and denounce the inquiries we have made, if we go back and look at the questions they asked—my friend from Utah and all the members of the Judiciary Committee, the questions they asked of President Clinton's nominees—they will see our questions pale in comparison. The questions we asked were exactly the kinds of questions the Founding Fathers expected us to ask to ensure balance in our system of government and justice. We asked nearly 100 questions of this nominee and he refused to answer all too many of them. He refused to answer most of the important ones. It is his right to duck or dodge or hide behind legal subterfuge. That he can do. But that doesn't mean we have to confirm him, plain and simple.

I have sat through a good number of judicial hearings in my years in the Senate. I followed many more in my career in the House. I have never seen such an incredible sense of avoidance and of ultimate stonewalling in any confirmation process as I saw when Miguel Estrada came before our committee. I chaired that hearing, as my good friend from Utah will remember, and one exchange we had was particularly memorable to me. Mr. Estrada kept saying, when we asked him about his views, that he didn't want to discuss it because future cases might come before him.

I'm a lawyer. Many of us are lawyers. We know, when you are asked what's your view of the first amendment, and you say: Well, a case might come before me on the first amendment and I can't discuss it, that is not the appropriate response. Certainly, if we were to ask Mr. Estrada how he might rule on, say, WorldCom and the suits against WorldCom, or on an existing case before the lower courts, he would have a right and an obligation not to answer that question. But to say he cannot discuss his views of the expan-

siveness or the narrowness of the commerce clause because eventually he will have to rule on the commerce clause makes a mockery of every judicial hearing we have had or will have.

But I kept trying. I decided if Mr. Estrada would answer nothing about his prospective views, why not look at what happened in the past.

So I asked him to discuss cases that by definition could never come before him if he were confirmed to a lifetime seat on the District of Columbia Circuit. I asked him about Supreme Court cases which are already decided. These cases are already the law of the land and can be reconsidered only by the Supreme Court. So there is no fear that a nominee would be doing something unethical by taking such a position. There is not only nothing wrong with discussing these cases, but there is a lot right about discussing these cases.

Answers to these questions will give us insight as to what kind of judge he will be:

Whether the nominee will fairly assess the claims of average people who want their basic rights vindicated in Federal courts;

Whether the nominee will approve the administration's environmental rollbacks against the interests of people who would protect the environment;

Whether the nominee has a general inclination to side with business interests or labor interests;

And whether this nominee basically supports States' rights or the rights of individuals within those States.

We have seen in the Supreme Court in the last decade these decisions being carefully discussed by the Justices with great differences of opinion.

These are the things the public wants to know. These are the things that determine, in my judgment, whether somebody should become a judge.

Everyone in this Chamber will come to a different conclusion once they know those answers. People will weigh answers differently. That is fair, and that is good.

But there is no question, my colleagues, that we should know something about how this nominee views the first amendment, the second amendment, the fourth amendment, the 11th amendment, and the 14th amendment before we just hand him such an important job.

We should know whether the nominee has an expansive view of the commerce clause or a narrow view; an expansive right to privacy or a narrow view.

These are the issues that are the sinew, that are the warp and woof of what our Republic is about. When the Founding Fathers in their beautiful and infinite wisdom decided that they would be careful with the one unelected branch of government—article III section of Government, the Judiciary—they knew what they were doing. They didn't want to vest too much power in any one person—the

President, any Member of this body—and simply appoint judges, because they knew with a lifetime appointment, which in its wisdom insulates people from the vicissitudes of political pressures—that was too serious and solemn a happening to just pass off to one person.

So the questions we hoped Mr. Estrada would answer honestly and forthrightly are the kinds of questions the American people depend on us to ask. These are the kinds of questions that should be answered before we vote on a nominee. Realizing Mr. Estrada would not answer anything about the future, despite the fact that countless others have—it hasn't interfered with their ability to be fine judges—I went back and asked him, Mr. Estrada, to answer questions about the past so we might get some feeling for his views. I asked him to name any one Supreme Court case from the history of all Supreme Court jurisprudence he was critical of. To the surprise of myself and some on the committee, he even declined to do that.

I asked him to tell me his views on a particular case I disagree with, *Buckley v. Valeo*. I don't think a millionaire has an absolute first amendment right to spend all the money he or she wants on putting on the same political commercial 411 times. I don't think it is what the Founding Fathers intended. There are two views on that. The Court disagrees with me. But I wanted to know Mr. Estrada's view. No matter how many times I tried, no matter how many opportunities he was given, Mr. Estrada insisted he could not state a view on a single court case—not *Korematsu*, not *Dred Scott*, not *Plessy v. Ferguson*, not *Brown v. Board of Education*, not *Miranda v. Arizona*, not *Griswold v. Connecticut*, not *Roe v. Wade*, not a single case.

Mr. HATCH. Mr. President, will the Senator yield for one question?

Mr. SCHUMER. I would be happy to yield.

Mr. HATCH. Is it not true that the question the Senator asked was whether he could name three cases in the last 40 years and not in all of jurisprudence? The specific question was in the last 3 years, and he said there were cases. But that is a little different than saying in all the jurisprudence.

Mr. SCHUMER. I say to my colleague, if I might reclaim my time, I first asked him about the first 40 years. And when he refused to answer that, frustrated as I was, I said, How about in all of jurisprudence?

Mr. HATCH. Could I just ask the question again? All I wanted to make sure of was the Senator said, Please tell us what three cases from the last 40 years of the Supreme Court jurisprudence you are most critical of, and just give me all of the sentences and as to why for each one. Then Mr. Estrada said, Senator, I think there are cases that I have been critical of that I can think of—and then he goes on to say more. Then you asked again on page

210, With all your legal background and legal work, you can't think of three or even one single case that the Supreme Court has decided that you disagree with. And then Mr. Estrada said he wasn't sure he was even in a position to disagree, et cetera. Then on page 211, you then asked this question.

Mr. SCHUMER. Could I reclaim my time?

Mr. HATCH. Let me finish this one last question. You don't know a single case in the last 40 years? I will tell you that for me, I think *Buckley v. Valeo*. But all I am trying to say is, Isn't it true that in the last 40 years, not in all jurisprudence.

Mr. SCHUMER. I will say to my colleague, reading from the transcript, I asked 40 years first. And then I said to him, So with all of your legal background and your immersion in the legal world, you can't think of three or even one single case that the Supreme Court has decided that you disagree with? I didn't say in the last 40 years at that point.

Mr. HATCH. On the next page, 40 years.

Mr. SCHUMER. I asked both, as I said to my colleague. And he didn't say. And I will argue to my colleague—I will not yield on that point—I asked him about 40 years. And then I asked him about it permanently on page 211. But I will say this.

Mr. HATCH. Will the Senator yield again?

Mr. SCHUMER. I will say this. I think it is amazing he couldn't name a case he disagreed with in 40 years alone. I don't think that is really the point here, whether it is 40 years or all the way back in jurisprudence. But I will continue with my remarks, and then I will yield for a question.

(Ms. COLLINS assumed the chair.)

Mr. HATCH. Will the Senator yield for one last question?

Mr. SCHUMER. I will yield for one last question.

Mr. HATCH. That is on the one page, the first page limited to 40 years, and on the second page it was more broad. But it wasn't clear that it meant all of jurisprudence. On the next page, again, 40 years.

That is just my point. All I am saying is in the heat of the moment someone may not be able to conjure up some cases. But be that as it may, he indicated he had some he was critical of. But I think the Supreme Court advocate, not knowing whether he will be confirmed, he probably wasn't about to antagonize anyone on the Court.

Mr. SCHUMER. That is for each of us to judge, whether a nominee who is worried about his confirmation should not speak about any case he might disagree with, whether it be 40 years or in all of jurisprudence.

But I just wanted to say, if you look at the record, it is clear. I gave him many different opportunities to answer that question. I asked the question in different ways. I came back to it. And Mr. Estrada didn't answer. To the aver-

age citizen who looked at it, he was stonewalling. He was just not giving answers that every law professor, or law student, or lawyer when asked would venture a guess at.

Let me tell you why many of us think he refused to answer the question. I would like my colleagues to hear this, because I don't think this has come out. Mr. Estrada stonewalled because that is the game plan he was given by the Justice Department and the White House. They told him not to answer questions. That was what they told him to do. Because again, they know Mr. Estrada's views. They do not want anybody else to know, because I believe if they were revealed, they are so far out of the mainstream he would not be approved. I don't know if that prediction will prove to be true. Maybe we will know, if we find the views on the issue.

But there is no secret to this. This has been the game plan of those who have sought to stack the judiciary to the far right side for years.

Let me review with my colleagues an article in the *Legal Times* which talked about a meeting that Judge Laurence Silberman—a leading conservative judge, a very erudite man, but he shared his strategy with prospective judicial nominees at a Federalist Society meeting just last year.

The Federalist Society is the breeding ground for most of the States rights agenda, supporting nominees the administration is sending us. It is no secret that Federalist Society members are among the most active in the White House and Justice Department in choosing judges. I will let the American people judge for themselves, but most believe the Federalist Society is not moderate and not conservative but way over to the hard right.

Judge Silberman appeared along with Senator KYL and Fred Fielding, President Reagan's counsel, to discuss with the group how to get these out-of-the-mainstream nominees on the bench, because they realized if they told the truth, they would have a difficult time because America is not far left or far right but moderate.

If President Clinton tried to stack the bench with far left nominees, we heard howls. He did not. But that is just what President Bush is trying to do. President Clinton, as I mentioned, nominated mostly partners in law firms and prosecutors, not many legal aid society people, not many ACLU advocates. President Bush is not doing the mirror image himself.

In any case, this is what was reported about that meeting. And I am quoting from an article in the *Legal Times*:

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

This is the article, not me—

"Keep your mouths shut."

The warning came from someone who has been a part of the process. Laurence Silberman, a senior judge on the U.S. Court of Appeals for the D.C. Circuit—

The very court we are talking about—

Told an audience of 150 at a Federalist Society luncheon that he served as an informal adviser to his then-D.C. Circuit colleague Antonin Scalia when Scalia was nominated to the Supreme Court in 1986.

This is a quote from the article:

"I was his counsel, and I counseled him to say nothing [at his confirmation hearings] concerning any matter that could be thought to bear on any cases coming before the Court," Silberman said.

Silberman said his advice led to Scalia's speedy confirmation by keeping the nominee out of trouble on Capitol Hill. He also explained that the advice was intended to be rather far-reaching.

Scalia called Silberman at one point, the latter recalled, and told him he was about to be questioned about his views about *Marbury v. Madison*, the nearly 200-year-old case that established the principle of judicial review.

"I told him that as a matter of principle, he shouldn't answer that question either," Silberman said. He explained that once a prospective judge discusses any case at all, the floodgates open and he would be forced to discuss other cases.

Does that help shed some light on why this nominee refused to discuss and answer an innocuous softball of a question: to name a case—whether it be in the last 40 years or all the way back—with which you disagree?

My colleagues, is the idea that a nominee to a powerful lifetime post on the Federal bench would be "forced" to discuss with the Senate his or her views on important historical cases really so terrifying?

If we cannot talk about *Marbury v. Madison* with nominees, if we cannot discuss the case that provides the foundation for jurisprudence in America, we are in pretty bad shape.

I was not in the Senate at the time of Justice Scalia's confirmation hearing, but I cannot imagine us confirming any nominee refusing to discuss a case that is 200 years old, a case that establishes the judiciary's power.

I do not think there was a philosophical reason by Judge Silberman. I think he thought that if the nominee's real views were known, many of the American people would rise up and say: This is not the kind of nominee we want. This is the kind of nominee who will not just interpret the laws as the Constitution calls for but make law.

It so happens judges on the far right and on the far left have a proclivity to want to make law because they feel things are so bad that they have to change them on their own.

I have to tell you that a nominee who refuses to discuss the single most important case in the history of the Supreme Court will have a hard time winning many Senators' votes. Confirming such a nominee would confirm that the Senate's role is nothing more than a mere formality. If the President picks you, and we cannot find something in your ancient past, some little personal transgression, then you go to the bench.

Balance becomes the baby that gets thrown out with the bath water. Our

system of government gets thrown out of whack.

It is very interesting that Mr. Estrada seems to be executing the Federalist Society's game plan, remaining silent and stonewalling, while other nominees, who are generating less opposition, are simply answering questions.

There were five district court nominees at the hearing where Mr. Estrada testified. Because we spent so much time trying to get answers out of Mr. Estrada, we had little time to question each of them. So I asked each of them to answer, in writing, the very same question I asked of Mr. Estrada. I asked them to identify three Supreme Court cases with which they disagree. And do you know what? Each of them answered. Each was able to give me three cases with which they disagreed.

Some of them picked obvious cases, such as *Korematsu*, the Supreme Court case upholding the Government's power to put Japanese-American citizens into interment camps, a case which has been thoroughly discredited; cases such as *Plessy v. Ferguson* which held that separate was equal, a case that was later overruled by *Brown v. Board of Education*. But many of these nominees picked cases that have not been overruled.

Judge Linda Reade, a judge who I voted for in committee and on the floor—one of 96 judicial nominees by President Bush that I have supported so far, and who we unanimously confirmed to a district court judgeship in Iowa—gave some particularly interesting answers.

Judge Reade was critical of two Supreme Court cases that expanded police powers and diminished privacy rights under the fourth amendment.

One of the these 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 reflected a heightened sensitivity to privacy rights protected by the fourth amendment. I do not 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.

Her answers suggested to me that Judge Reade would be attuned to the privacy side of the argument. I may not have fully agreed with her—I tend to be more conservative on these criminal justice issues—but I appreciated her candor and her forthrightness. I appreciated her straightforwardness. She was not hiding a thing. She was telling us what she thinks. And I voted for her.

Obviously, there is 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. And the same is true of the four other nominees we asked questions of the day of Mr. Estrada's hearing. They answered the questions forthrightly. They didn't hide the ball. They appeared to be within the mainstream. We confirmed them all quickly.

Just last week we held a confirmation hearing for Jeffrey Sutton, a very controversial nominee to the Sixth Circuit.

He is one of the leaders in the States rights movement. He has argued many of the seminal cases, and clearly he evokes much controversy. As my good friend from Utah will recall, the disabled community was so upset that they came out in large numbers, and we had to move the hearing room to a larger room, to which my friend from Utah graciously acceded.

I haven't decided how I will vote on Mr. Sutton's nomination, and there are still questions I have asked him to answer. But I will say this about him: He started on the right foot with me by at least telling us what he thinks of some cases. Twice Jeffrey Sutton told us on his own, without being asked, that he was critical of Supreme Court cases *Buck v. Bell* and *Kiryas Joel*.

When I asked him about other cases he was critical of, he said he had problems with *Korematsu* and *Plessy v. Ferguson*. I will grant these are not hard cases to be critical of, and I will repeat that there is still ground to cover with Mr. Sutton, but at least Mr. Sutton said that much and was committed to discussing other cases in writing.

Mr. Estrada told us nothing, not a single thing. This is reminiscent of what I thought was one of the least fine moments of the Judiciary Committee. It is reminiscent of Clarence Thomas telling America that he had never discussed *Roe v. Wade* and had no views on the case whatsoever. How many of us believed him then? How many of us believe him now? It is simply not credible. It is totally unbelievable that this nominee, Mr. Estrada, had no critical views on any Supreme Court case in history. Every lawyer in America, and most nonlawyers in America, can point to one Supreme Court case he or she is critical of. Of course, we all know Mr. Estrada has thoughts on the subject. Every single person, ask every one of the 100 Senators to bet all their money on whether Estrada has opinions on certain cases. We would all bet he does.

The bottom line is simple: If we confirm Miguel Estrada, we are ratifying a "don't ask, don't tell" policy for judicial nominees. Mr. Estrada sat there and said nothing, believing if he didn't say a word, we would rubberstamp him. By remaining silent, Mr. Estrada only buttressed the fear that he is a far-right stealth nominee, a sphinx-like candidate who will drive the Nation's

second most important court way out of the mainstream. I had hoped he would choose candor over secrecy. He refused to do so. All he said is: I will follow the law.

In my book, that doesn't explain much.

There is a myth that the law is something automatic, that the facts of a case, the applicable statutes can be dumped into a computer, and the right answer will just pop out, that a person's philosophy and ideology have nothing to do with determining how they vote when they get to be a judge. We all know that is poppycock. Anyone who studied the system knows that is not how the law works. If we did, we would have IBM build a computer, put some black robes on the computer, and obviate the need for these confirmation hearings or any judges. But we all know there is more to judging than that. We all know judges bring their experiences, their values, their judgment and, yes, their ideology to the bench with them.

If ideology didn't matter, both Republican and Democratic Presidents would nominate judges from across the political spectrum. Instead, Democrats tend to nominate Democrats; Republicans tend to nominate Republicans. That is fine. I know that as long as President Bush is President, I will be voting on mainly Republican nominees. I still voted for 96 out of 102, as did most of my colleagues. But that doesn't mean we have to rubberstamp each one. And certainly it doesn't mean that ideology is in play. If ideology was not in play, if we were just relying on the legal quality of the mind, then Estrada's mind is of good legal quality, excellent legal quality. But then the appointees of Democratic Presidents to the Supreme Court and other courts and the appointees of Republican Presidents to the Supreme Court and the other courts would be scattered all over the lot when it came to rendering decisions.

We know that is not true. There are always exceptions. Earl Warren became a very liberal Chief Justice although he was nominated by President Eisenhower. But by and large, the ideology matters. And that is why Democratic nominees tend to support different opinions and decisions than Republican nominees. That is our system, and that is great.

But to say ideology doesn't matter would mean President Bush would be nominating a whole lot of Democrats for judge and a whole lot of moderate Republicans. He has hardly nominated any of either category. The best you get is someone who is a conservative, not a hard right conservative.

Now let's go back to Mr. Estrada. There are some other ways to get at what Mr. Estrada actually believes and how he will act as a judge. By the way, this is all we have. If he refuses to answer questions at a hearing, and he doesn't, he is not a judge and he is not a law professor who opines on these issues.

Mr. DOMENICI. Might I inquire from the Senator, how much longer do you think you will be?

Mr. SCHUMER. I would say to my colleague, I will probably be another 15 minutes. I appreciate it. I rarely speak on the floor very long. I speak often, but usually for 5 or 10-minute amounts. But as my good friend from New Mexico knows, I feel very strongly about this issue.

Mr. DOMENICI. I had assumed your usual.

Mr. SCHUMER. I will try to finish as quickly as possible, in deference to my good friend from New Mexico.

So we don't have much on the record about Mr. Estrada. That is why his papers as Solicitor General mean so much. Because when Mr. Estrada worked in the Justice Department, he looked at cases and analyzed them and assessed the constitutionality of laws. That is, for all intents and purposes, what appellate judges do. Unlike a lawyer in a law firm who is looking out for a client with a vested interest, Mr. Estrada was working for the Government. His client was the Constitution. His memos would help show how he interprets the Constitution. Similar memoranda have been requested and produced when Congress was evaluating other nominees, both to the executive and judicial branches, creating ample precedent for such a request.

I know there has been a series of letters that have gone back and forth. I know we have differing views about the propriety of sharing these memoranda. But one thing is clear, there is precedent because others, including Bradford Reynolds and Justice Rehnquist, submitted those papers. It is clear there is no privilege. And it is clear these memos are needed to lift the veil covering whatever it is Mr. Estrada wants to remain covered.

So, in other words, because we have so little information on how Mr. Estrada thinks, these memos are more important to understand his thinking than they would be for the typical judicial nominees.

Mr. Estrada did work that was quintessentially judge-like, but we are being denied the opportunity to examine it, evaluate it, and assess for ourselves what kind of judge he would be. That doesn't seem right. A former supervisor has charged that Mr. Estrada advocated extreme positions, more aligned with his own interests than the Government's interest, when he was Solicitor General.

My friend from Utah said at a hearing that he had backed off those positions. He has not backed off those positions.

Many have said: Well, his evaluations were excellent.

We have talked to Mr. Bender, and he has said, first, when you look at those evaluations, they don't talk about his views and whether he would have fidelity to the Constitution or try to impose his own views. They talk about whether he was a hard worker. But

what Mr. Bender said is: Everyone gets checked off excellent on those—we will have to check the record there—because it helps them get merit advancements.

So here you have the supervisor saying he was extreme, saying he would take his own views and not follow the law. Guess what the best way is to disprove that supervisor. Make the memos public. If the memos prove the supervisor wrong, Mr. Estrada has nothing to fear from their disclosure. If the memos prove the supervisor is right, this is someone no one in the Senate should want on the DC Circuit.

Mr. President, I have always used three criteria in evaluating judicial nominees. I call them excellence, moderation, and diversity.

Excellence is legal excellence, the quality of the mind. We don't want political hacks on these important courts. No one disputes that Mr. Estrada passes this point with flying colors. He comes highly recommended in this regard. When the ABA recommends him, that is all they are evaluating.

My second criteria is diversity. Clearly, he passes on this point. I have fought for as long as I have been in public service to promote diversity. A principal goal of mine in New York is to put more people of color on the Federal bench—and I have, as my record shows. We are going to talk a lot about the push for diversity, and we are going to see Mr. Estrada is the only Hispanic nominee of President Bush. Diversity seems to be limited at this point to Mr. Estrada when it comes to the court of appeals; whereas, those of us on this side, in the Hispanic caucus and others who oppose the nomination, have done far more for diversity than those who claim they are moving its cause forward today. In any case, I am for diversity. I will not talk more about that today. I will give that part of the speech next week.

The third factor forces me to take the floor today, and that is moderation. I don't like judges too far to the right, and I don't like them too far to the left. To be honest with you, when my judicial committee sends me recommendations, those are their instructions. I think judges too far left, as well as those too far right, want to make the law, not interpret it. I think they don't belong on the bench, with certain exceptions—rare, but certain.

So is Mr. Estrada moderate? Is he even a moderate conservative? Well, he gives every appearance of being extreme. People who know him say that, people who have talked to him about his views. That is one of the reasons, again, many of us feel he doesn't want to speak out, because if we knew his real views, he might well be rejected. Why has the Congressional Hispanic Caucus, the Puerto Rican Legal Defense and Education Fund, and the Mexican American Legal Defense Fund opposed Mr. Estrada? These groups have acted courageously in opposing

him because they share my commitment to promoting Latinos on the Federal judiciary. I have worked with them for years to diversify the bench. But the concerns about his views are overwhelming.

Let me tell you what Mr. Paul Bender had to say. He oversaw Mr. Estrada's work in the Solicitor General's office. He said he was too much of an ideologue to serve as a Federal judge. Mr. Bender said Mr. Estrada would bring his own personal agenda—an extreme agenda—to the courts if we confirm him.

My friend from Utah suggested Professor Bender has backed off. I assure my colleagues that is not the case. He stands by them 100 percent.

Again, my friends on the other side have suggested Bender is not credible because he gave Mr. Estrada high marks on his work evaluations. Every one of those evaluations went to legal excellence. I am not disputing that. Those evaluations did not deal with Mr. Estrada's potential extreme ideological nature. But don't take Professor Bender's word for it. Here is what Ann Coulter, the conservative pundit and Mr. Estrada's close friend, said about him this week:

The second [Mr. Estrada] gets in there, he'll overrule everything you love.

This is a close friend of Mr. Estrada's, a conservative columnist. What was Ms. Coulter talking about? She was talking to Paul Begala. Was she saying Mr. Estrada will approve the Bush administration's rollback of environmental protections? Was she saying he would side with big business and special interests against the rights of labor and workers every time?

When Ms. Coulter says Miguel Estrada will overrule everything Mr. Begala cares about, it is not hard to worry that he will be another in a long line of rightwing judicial activists who prioritize States' rights over people's rights.

This is a lifetime appointment. Once it is done, it cannot be undone. If we approve Mr. Estrada, he is there for life and his decisions will affect all of us for generations to come. This Senate deserves a full and open debate. This Senate deserves answers to questions that may sound esoteric but will affect the lives of every single American. The people of this country, the American people, deserve these answers. They are so important to the future of this country.

When you have judges who try to make law, they make this Senate, the House, and the President—the elected branches of Government—less significant and less important. I say to my colleagues, many of us on this side of the aisle feel very strongly about this issue. We urge Mr. Estrada and the administration to reconsider. We urge them to give a fulsome view of how Mr. Estrada feels on the important issues of the day, and not simply to say he has a good legal mind, not simply to talk about the fact he has a nice his-

tory—which he does, and I give him credit for it—but to talk about the main thing that will influence what he does when he becomes a judge—his views.

We will continue this debate over the next few weeks and it could be one of the Senate's finest moments. I hope—no, I pray—we will rise to the occasion. I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Madam President, anyone who doubted whether or not there were certain Democrats who intend to filibuster this nomination just heard a leading Senator who is going to espouse that. Two weeks of debate, he said; he hopes we will still be discussing this nomination then. It is the desire of at least one Senator, the Senator from New York, that this nominee not be approved, and that we will not have the opportunity to vote because they will not give us time.

Madam President, I come from a State, New Mexico, where 42 percent of the people are from what we generally call Hispanic descent—42 percent. Some people wonder why the Senator from New Mexico has different views than some of you around here. Well, we have 8 to 10 percent Native American Indians. If my arithmetic is right, when you add the two, there is about 51 percent either Hispanics or Native American Indians in my State.

I say right up front, I am not afraid of the views of a Hispanic whether he is a Democrat or a Republican. I don't niche Hispanics because they are Democrats and say they must be liberals who I would not approve for anything. Neither do I niche Republican Hispanics and say because they are Republicans—there is an implication they should not be, they should be Democrats—but if they are, they obviously should not be on the bench because they are obviously too conservative, or they would not be Hispanic Republicans.

I believe we are perilously close to determining it is OK to discriminate against Hispanics if they are conservative. I don't even know how conservative Mr. Estrada is, but the allegation is he is too conservative. He happens to also be Hispanic.

Just imagine, Madam President, if there was a Democrat nominee with the name Espinoza—I just picked one that came to mind—and Republicans found something wrong with him as a candidate—imagine what they might be saying: Republicans oppose a Hispanic for the circuit court of the United States. They don't want people of color on the circuit court of appeals.

I have not said that of the Democrats yet, but I am getting perilously close to wondering why, if he does not know enough about this nominee, he would call him unqualified for the bench in the circuit court. Is it because of his color? Is it because of from where he came? He epitomizes the American dream beyond what anyone in this Sen-

ate would probably epitomize. Coming here at 17 years of age and speaking no English; in a short period of time he learned the English language; graduated magna cum laude from law school, none other than Harvard—and we have people here wondering whether he is qualified.

In New Mexico, nobody would say of that man, Miguel Estrada: He is not qualified because he probably is too conservative, because he joined the Republican Party or, at least, he is one of them. I believe that would be wrong.

Again, I want to make sure everybody understands that I am doing my very best to tell it like I see it, but I am also doing a bit of surmising because my good friend from New York has not been here very long, and we welcome him. But there is no doubt in my mind that if they ever get a nominee on their side of the aisle who is a Hispanic Democrat for the circuit court of the United States and a Republican or a group of them are against that nominee, they might say the Republicans do not want to put a Hispanic on the bench.

Mr. SCHUMER. Will my colleague yield?

Mr. DOMENICI. I sat here for 30 minutes. I am very sorry.

Mr. SCHUMER. There were Hispanic nominees opposed by your side, and we never raised the issue because they were Hispanic—Paez, Rangel, Moreno.

Mr. DOMENICI. Madam President, I have the floor.

The PRESIDING OFFICER. The Senator from New Mexico has the floor.

Mr. DOMENICI. I did not interrupt his comments when there was tremendous opportunity to point out inconsistencies. I made only five notes and I could have stopped and asked him if something he said is really what he meant, but I chose not to. I am going to finish my few remarks. I will not be much longer.

I did not say that would happen, nor that they were discriminating against him, but the implication is clearly that it is kind of strange that this bright Hispanic young man is a Republican. I believe that is in the marketplace of ideas on the Democratic side.

I suggest there are some things happening in our country. In my own State, a young Hispanic came up to me the other day from a very large family—young people, middle-age people, grandmas, grandpas. They all have very beautiful Spanish names for all of those categories of people. He put his arm around me and he said: We have all been Democrats. There are probably 200 people in my family. We have all been Democrats. But you know, I am wondering if I should not join with you and become a Republican. It seems like you think like we do, and wouldn't it be something if I did and my whole family decided that I was right?

I said to him: I believe there are thousands like you who feel that way in New Mexico and in our country, and we welcome you.

If this young man, Miguel Estrada, when he became a citizen, became a Republican—and I do not know that, but there is an implication he is one of us or he is conservative—I welcome him. I am proud of him. I am glad he did it. I do not believe he ought to be eliminated from consideration on the circuit court of appeals or even a higher court because of that issue. I honestly believe it takes people of diversity in our country to join both parties and speak through their ideology and their feelings about what they think of our country.

I am not at all sure the argument being made today by the distinguished Senator from New York is anything other than “we are afraid of this guy; we’re not so sure he should be on the bench,” but they really do not know why.

I hope that many Republicans join with Democrats and decide that if the distinguished Senator from New York wants to speak and wants to be joined for 2 weeks, that we will do him the favor and let him talk for 2 weeks. I am not sure our leader will do that because maybe we should shut off debate, but maybe it would be doing a favor for America and Hispanics across this country if we let him speak for 2 weeks. I do not think their cause will get any better. I think it might get even worse with the passage of time.

This young man went through all this effort thinking that he might complete the American dream. What must it have been like for this young man who learned English so quickly, went on to school and law school at Harvard? He must have thought the American dream for him might mean fulfillment as a judge.

He was appointed by the President of the United States more than 630 days ago, and instead of a dream, he has had a nightmare. I think it should end. The nightmare should be over. If they would like to make it 2 weeks longer and want to talk that long in the Senate, I hope the Senate insists that those who want to talk long on the Senate floor can talk long.

Certainly I am a very knowledgeable Senator about the institution. I love it, where some Senators do not even like to hear people say that. They think we waste too much time; we do this, that, and the other. I really love it. I did not at first, but I do now. I do not believe the other side will spend 2 weeks talking about this man unless they clearly do not want him to be on the bench, perhaps because of what I have said here; that maybe he does not belong as a Hispanic because, after all, he is conservative. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I am one who really cares for the distinguished Senator from New York. I understand him. I know him very well, and I care a great deal for him. He is just totally wrong.

For instance, Senator SCHUMER, the distinguished Senator from New York,

submitted no written questions to Mr. Estrada. We waited 631 days to have a hearing. They conducted the hearing. The distinguished Senator from New York conducted the hearing. He could have asked any questions he wanted. He is saying he did not get good answers. I think some are interpreting that to mean he—or other Democrats as well—did not get the answers he wanted and he could not get anything on this man.

Following Mr. Estrada’s hearing, the distinguished Senator from New York did not submit any questions. That is his right. I think sometimes we do submit too many written questions, and I respect him for not doing that. In fact, only two of my Democratic colleagues submitted any written questions at all to Mr. Estrada, which, of course, he answered immediately.

I find it amusing that the Senator from New York now claims he has questions for Mr. Estrada. If he did, why not write some questions? He certainly had a right to do that. With regard to the hearing testimony, Mr. Estrada repeatedly answered the questions put to him.

Let me give some examples. Mr. Estrada testified he is committed to following the precedents of higher courts faithfully and giving them full force and effect, even if he disagrees and even if he believes the precedents are erroneous. He will follow them. That is mainstream. That is not out of the mainstream. That is mainstream. I would not support anyone who would not answer the question that way.

When asked how he would decide cases presenting an issue with no controlling authority, Mr. Estrada testified: When facing a problem to which there is not a decisive answer from a higher court, my cardinal rule would be to seize it from any place I could get it. He testified this would include related case law and other areas, legislative history and views of academics.

How do you answer better than that? I guess you can using semantics that might be better than that, but I don’t think you can do so.

When asked if he sees the legal process as a political game, Mr. Estrada testified: The first duty of a judge is to self-consciously put that aside and look at each case by withholding judgment with an open mind and listening to the parties. So I think that the job of a judge is to put all that aside and, to the best of his human capacity, give a judgment based solely on the arguments on the law.

Mr. Estrada also said: I will follow binding case law in every case. I don’t even know that I can say whether I concur in the case or not without actually having gone through the work of doing it from scratch. I may have a personal, moral, philosophical view on the subject matter, but I undertake to you I would put all that aside and decide cases in accordance with binding case law and even in accordance with the case law that is not binding but

seems instructive on the area without any influence whatever from any personal view I may have about the subject matter.

That is a pretty good answer. I could go on and on.

What is clear from his testimony is that Mr. Estrada will be a judge who will set aside his personal convictions, whatever they may be, and will follow the law. This is precisely the type of person we want to be a Federal judge.

I have heard the comments about the Federalist Society for years. The Federalist Society does not take positions in the law, but they put on the best seminars and conferences in the country today. And in every conference they have put on that I know of since I am a member of the board of advisers, along with a lot of other very distinguished people, far more important than I am, who have been mainstream thinkers through all the years, they put on these conferences with both sides being fully represented—plenty of Democrats representing the liberal side, to be brutally honest about it.

Now, let me just put one other thing to bed. I am so doggone tired of hearing about this Professor Bender. I ask unanimous consent I be permitted to talk about Professor Bender for a few minutes.

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

Mr. HATCH. As far as I can tell, Mr. Estrada’s primary critic is Paul Bender, who supervised Mr. Estrada at the Clinton Solicitor General’s office. I caution my Democratic colleagues that, before they rely too heavily on Mr. Bender to make their case against Mr. Estrada, there are many reasons why Mr. Bender’s allegations lack credibility.

According to published reports, Mr. Bender himself was the source of much conflict during his tenure at the Clinton Solicitor General’s office.

According to published reports, while Mr. Bender was serving as the principal deputy from 1993 to 1996, about 1/3 of the assistants, including one 16-year career veteran, left the office.

Mr. Bender is an extremist by even the most liberal standards, as his 30-year history of hostility to Federal efforts to regulate pornography illustrates.

Mr. Bender has stated publicly that sexually explicit material should not be banned “any more than material about war, crime, housing, poetry and music.”

In 1993, Mr. Bender pressed his agenda on pornography while serving as principal deputy Solicitor General, forcing President Clinton and the United States Congress—including 9 of my 10 Democratic colleagues on the Committee—to publicly reject his views.

In a case which became a political embarrassment for the Clinton Administration and the Reno Justice Department, Mr. Bender approved a brief filed with the U.S. Supreme Court in September 1993 which sought to overturn

the conviction of a repeat child pornographer and known pedophile.

The facts of the Knox case are straightforward. Stephen Knox was convicted of receiving and possessing child pornography under the Child Protection Act after the U.S. Customs Service found in Knox's apartment several videotapes of partially-clad girls—some as young as age ten—wearing bathing suits, leotards, or underwear in sexually seductive poses.

The brief that Mr. Bender approved sought to reverse the previous Bush Administration's policy of liberally interpreting the Child Protection Act to define as child pornography any materials which showed clothed but suggestively posed young children.

In response, on November 3, 1993, the United States Senate voted 100-0 for a resolution to reject Mr. Bender's position in the case.

Upon learning of the Justice Department's position in the case, and after the Senate's unanimous vote denouncing it, President Clinton wrote to Attorney General Reno in November 1993 to argue that the Department's new interpretation of the Child Protection Act left the child pornography law too narrow and emphasized that he wanted "the broadest possible protections against child pornography and exploitation."

In 1994, the House voted 425-3 to condemn the Department's position, finding that Mr. Bender's argument would "bring back commercial child pornography and lead to a substantial increase of sexual exploitation of children."

Each of my Democratic colleague on the Committee who were Members of Congress at the time voted for either the Senate or House resolutions.

Bowing to congressional pressure and the rebuke by President Clinton, Attorney General Reno reversed Mr. Bender's position and filed her own brief, which restored the first Bush Administration's interpretation of the Child Protection Act.

My democratic colleagues who once condemned Mr. Bender now appear to rely on his views of Mr. Estrada's qualifications for the federal bench and continue to repeat his description of Mr. Estrada as "an ideologue." I find this illogical, given that their determination in the past that Mr. Bender's views were out of the mainstream.

The Knox case is only one example of Mr. Bender's extremism.

In 1977, he testified before the Committee against tough anti-child pornography laws in a hearing entitled "Protection of Children Against Sexual Children Against Sexual Exploitation."

According to Mr. Bender's testimony, he rejected the notion that Congress could prohibit child pornography in order to protect children from harm because "the conclusion that child pornography causes child abuse involves too much speculation in view of the social situation as we know it, and the fact that it seems that most kids who

act in these films probably are doing these acts aside from the films anyway. . . ."

This is the hero they are quoting?

Mr. Bender testified that in order to prohibit child pornography and not run afoul of the First Amendment, "you would have to have a finding, based on evidence, that in fact, the distribution of this type of film substantially increases the incidence of child abuse before you could possibly support the constitutionality" of new laws prohibiting child pornography.

He noted that, in his experience, "the estimates of the size of the pornography problem are usually much, much too large."

Tell that to the millions of people who see child pornography all over the internet.

Mr. Bender concluded that he "could not find any discernible harm to children from being exposed to explicit sexual materials as children . . . the harms that we found to children who were exposed to these things were harms that flowed, not from the materials, but from the social settings in which they saw them."

Mr. Bender's testimony before this Committee exposes his ultra-liberal, pro-pornography views that are difficult to characterize as anything but out of the mainstream.

From 1968 to 1979, Mr. Bender served as the controversial Chief Counsel to the President's Commission on Obscenity and Pornography. Once again, his views were roundly rejected by the Senate.

Mr. Bender was the architect of the commission's report recommending the abolishment of all federal, state, and local laws interfering with the rights of adults to obtain and view any type of pornography, including hard-core pornography.

Dissenting members of the commission described the Bender Report as a "Magna Carta for the pornographer."

In 1970, the Senate vote 60-5 for a resolution rejecting the Commission's report and recommendations, with nine additional Senators announcing that if they had been present they would have supported the resolution.

No current member of the Senate supported Mr. Bender's views.

One Democratic Senator noted during the debate on the resolution that:

The Congress might just as well have asked the pornographers to write the report, although I doubt that even they would have had the temerity and effrontery to make the ludicrous recommendations that were made by the Commission.

Mr. Bender's extreme views aren't limited to pornography. In 1998, he argued that convicted murderer James Hamm should be admitted to the Arizona bar. Hamm was convicted in 1974 and sentenced to 25 years to life after pleading guilty to killing a Tucson, AZ man during a drug deal. Mr. Bender, who taught Hamm constitutional law at Arizona State Law School, called him "a poster boy for rehabilitation in

prison" and argued that he should be admitted to the bar because "he's not going to steal from clients or file frivolous suits."

Mr. Bender's views are certainly out of the mainstream of society in general. What's more, he appears to be out of the mainstream even among former members of the Clinton administration—hardly a conservative bunch—when it comes to Mr. Estrada.

Ron Klain, former chief of staff to Vice President Gore, praised Mr. Estrada, saying that he would be able to "faithfully follow the law." Ron Klain was a former member of the Judiciary Committee. He is a wonderful Democrat and, no question, he's a wonderful attorney. We all know him and appreciate him and respect him.

Former Solicitor General Drew Days opined of Mr. Estrada, "I think he's a superb lawyer."

Another Clinton era Solicitor General, Seth Waxman, called Mr. Estrada an "exceptionally well-qualified appellate advocate." Seth Waxman was a great Solicitor General. We all respect him. I know him personally. He's a very fine lawyer and a wonderful Democrat. I'm not calling him a wonderful Democrat because he's on our side with Estrada. I am calling him that because that's the way he is. He's a great attorney. I strongly supported him at that time.

Randolph Moss, former Chief of the Justice Department's Office of Legal Counsel, wrote the Committee:

to express my strong support for the nomination of Miguel Estrada . . . Although I am Democrat and Miguel and I do not see eye-to-eye on every issue, I hold Miguel in the highest regard, and I urge the Committee to give favorable consideration to his nomination.

These are people who know him forward and backwards, who know what a great lawyer he is. These are mainstream Democrats calling him a mainstream person, we ought to listen to them.

And Robert Litt, Deputy Assistant Attorney General in the Clinton Justice Department, said:

Miguel has an absolutely brilliant mind. He is a superb analytical lawyer and he's an outstanding oral advocate.

With all of this glowing support from former high-ranking, well respected Clinton administration lawyers, you have to wonder why my Democratic colleagues choose to listen instead to the unsubstantiated criticisms of Mr. Bender, a liberal extremist whose out-of-the-mainstream views have been twice condemned by the U.S. Senate.

There are many reasons to discredit Paul Bender's criticisms of Mr. Estrada. That is why I am taking this time to do it and I will try to finish so the distinguished Senator from Massachusetts can have the floor.

There are many reasons to discredit Paul Bender's criticisms of Mr. Estrada, not the least of which is the fact that he is the lone voice of criticism amid a sea of admiration and praise for Mr. Estrada.

One of Mr. Estrada's most ardent supporters from the Clinton administration is Seth Waxman, who specifically disputed Mr. Bender's criticisms of Mr. Estrada, yet they are being brought up on the floor again. There is a time to quit bringing these types of people to try to hurt Mr. Estrada. Let me read you what Mr. Waxman said in a letter to the Committee dated September 17, 2001.

I understand from published reports that . . . Paul Bender[] has criticized Mr. Estrada's professional conduct while in the Solicitor General's Office. I do not share those criticisms at all. During the time Mr. Estrada and I worked together, he was a model of professionalism and competence. In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his personal views—or indeed that they reflected any consideration other than the long-term interests of the United States. I greatly enjoyed working with Miguel, profited from our interaction, and was genuinely sorry when he decided to leave the office in favor of private practice.

Much has been said about Mr. Estrada's views regarding policy and social issues. I have never had a conversation with Mr. Estrada about either. To my mind—and I believe Mr. Estrada's as well—those views were entirely irrelevant to the work we had before us in the Solicitor General's office. I have great respect both for Mr. Estrada's intellect and for his integrity.

Now, this is not some right-wing fanatic who is praising Mr. Estrada's intellect and integrity. This is former Clinton Solicitor General Seth Waxman. Can there be any genuine doubt about his sincerity? The answer is no.

Mr. President, I ask unanimous consent that a copy of this letter be printed in the RECORD.

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

WILMER, CUTLER & PICKERING,
Washington, DC, September 17, 2001.

Chairman PATRICK J. LEAHY,
Senate Judiciary Committee, Washington, DC.
Senator ORRIN G. HATCH,
Senate Judiciary Committee, Washington, DC.

Re: Miguel Estrada

DEAR CHAIRMAN LEAHY AND SENATOR HATCH: During much of the year in which I served as Principal Deputy Solicitor General (1996-1997), Miguel Estrada and I were colleagues. I understand from published reports that my predecessor, Paul Bender, has criticized Mr. Estrada's professional conduct while in the Solicitor General's Office. I do not share those criticisms at all. During the time Mr. Estrada and I worked together, he was a model of professionalism and competence. In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his personal views—or indeed that they reflected any consideration other than the long-term interests of the United States. I greatly enjoyed working with Miguel, profited from our interactions, and was genuinely sorry when he decided to leave the office in favor of private practice.

Much has been said about Mr. Estrada's views regarding policy and social issues. I have never had a conversation with Mr. Estrada about either. To my mind—and I believe Mr. Estrada's as well—those views were entirely irrelevant to the work before us in the Solicitor General's office. I have great

respect both for Mr. Estrada's intellect and for his integrity.

Yours sincerely,

SETH P. WAXMAN.

Mr. HATCH. I will put Seth Waxman up against Paul Bender any day, any time, anywhere. This is not some right-wing fanatic.

Mr. KENNEDY. Mr. President, I want to permit my friend and colleague to complete his thought, but we are trying to get some idea—

Mr. HATCH. I think I will only be a few more minutes.

Mr. KENNEDY. I believe there was an order before the Senate that I be recognized at 5:40, as I understood it?

Mr. HATCH. As I understand it, you were not here at the time and I had to make these points.

Mr. KENNEDY. I believe I was in the Chamber at 5:40. I heard the Senator speak at that time.

Mr. HATCH. I will try to finish as soon as I can. As I understand it, I have the floor.

The PRESIDING OFFICER. The Senator from Utah does have the floor.

Mr. HATCH. I will certainly try—

Mr. KENNEDY. Just as an parliamentary inquiry, what was the understanding?

The PRESIDING OFFICER. The order was to recognize the Senator from Massachusetts at 5:40. But the Senator was not present at that time.

Mr. KENNEDY. And what is the time now?

The PRESIDING OFFICER. The time is 5:56.

Mr. KENNEDY. Fine. I wasn't here at 5:40. I think I was at the entrance to the Chamber when the Senator asked consent to be able to proceed. If he wants to take advantage of that, so be it. But I think that it is unfortunate and unfair.

Mr. HATCH. If I might remark, I have been a friend of the Senator from Massachusetts for a long time.

Mr. KENNEDY. I just stated that—

Mr. HATCH. Who has the floor?

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. KENNEDY. You have the floor.

Mr. HATCH. I ask for the regular order.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I have been his friend for a long time, and I am going to finish this very quickly in deference to him. But he wasn't here. I did not see him at the door. And I had to make these comments because of some of the comments that were made that I thought were improper, against Mr. Estrada. And I am going to defend Mr. Estrada on the floor when these kinds of comments are made. I think it is the right thing to do. I am certainly not trying to take advantage of the distinguished Senator from Massachusetts, but I exercise my rights as a coequal Senator. Let me just finish this, and I will do it as quickly as I can.

Mr. President, at the request of the Committee, Mr. Estrada provided cop-

ies of his annual performance evaluations during this 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 SG's Office, he received the highest possible rating of "outstanding" in every job performance category.

The rating official who prepared and signed the performance reviews for 1994 to 1996 was none other than Paul Bender.

Let me read a few excerpts from the evaluations that 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. . . .

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 positions to others. . . .

All dealings, oral, and written, with the courts, clients, and others are conducted in a diplomatic, cooperative, and candid manner.

I might add this doesn't sound like some radical rightwing fanatic some would portray Mr. Estrada as.

He goes on to say:

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. . . .

Is constantly sought for advice and counsel. Inspires co-workers by example.

These comments represent Mr. Bender's contemporaneous evaluation of Mr. Estrada's legal ability, judgment, temperament, and reputation for fairness and integrity.

In short, 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 Mr. Estrada and hurt his chances for confirmation.

The performance evaluations confirm what other Clinton Administration lawyers, and virtually every other lawyer who knows Mr. Estrada, have said about him: That is he a brilliant attorney who will make a fine federal judge.

Having said all that, I apologize to my colleague from Massachusetts for having to make these comments after the comments made by the distinguished Senator from New York. But I think I would have been remiss had I not made those comments to correct the Record to show this man Bender may be a law professor at an institution in the West, but he certainly has not been very fair to Mr. Estrada. And his own reputation would lead one to believe he is not worth listening to with regard to his opinion, which I believe and I think any fair person would believe was nothing but a politically motivated smear.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from New York is recognized.

Mr. KENNEDY. Mr. President, first of all, as I stated at the hearing, the personal attacks on Paul Bender are really beneath this body. Paul Bender has a long and esteemed history in public and private practice. He clerked for Felix Frankfurter on the Supreme Court. He argued dozens of cases before the Supreme Court. He taught constitutional law at the University of Pennsylvania and the University of Arizona. To criticize Paul Bender because you disagree with his statements is also chilling to anyone who wishes to express their personal opinions about a nominee. I really hope we can talk about the issues without resorting to personal attacks.

Others as well have echoed the Bender criticism.

Among the great debates at the Constitutional Convention two centuries ago was the issue of judicial appointments. Initially, there was broad agreement among the delegates that either the Senate alone or the legislature as a whole should appoint federal judges, and in June of 1787, the delegates tentatively adopted a proposal to give the appointment power to the Senate. But opposition soon arose. The delegates re-opened the issue and considered alternatives such as giving the power of appointment to both the Senate and the House, or to the President with the advice and consent of Congress, or to the President alone.

After months of debate, the issue was finally resolved in September. It was decided the President was to nominate, and the Senate would be asked to concur before the appointment could be made. The Framers believed that one person should have the responsibility for nominating judges, but they clearly wanted to avoid vesting too much power on this issue in the President. The Senate would have the power to prevent the President from shaping a judiciary in his own image. As Alexander Hamilton said in *Federalist No. 77*, "If by influencing the President meant restraining him, this is precisely what must have been intended."

By requiring the President and the Senate to share the responsibility of appointing federal judges, the Framers created one of the most important checks and balances in the Constitution and laid a solid foundation for the independence of the judiciary that has served the Nation so well.

In keeping with this shared responsibility, the Senate must fulfill its constitutional duty to review the nominations sent to us by President Bush—including the nomination of Miguel Estrada. We must assure ourselves that every nominee has the qualifications, temperament, and commitment to enforcing the constitutional and federal statutory protections that are central to our American democracy.

This is not a role we take lightly. At stake are lifetime appointments to courts that have the power to make far-reaching decisions affecting the lives of our people and the life of our

Nation. The D.C. Circuit is one of the most important courts in the country—second only to the Supreme Court. It is particularly important to workers, immigrants, and those seeking to enforce their civil rights. It has a unique and prominent role among the Federal courts of appeals, particularly in the area of administrative law, and has exclusive jurisdiction over many workplace, environmental, civil rights, and consumer protection statutes.

If confirmed, Mr. Estrada would make decisions about the rights of workers. He would decide cases involving the right to form a union without intimidation by an employer and cases that affect health and safety rules and regulations—regulations affecting workers exposed to tuberculosis, and dangerous, even toxic, chemicals. These problems aren't going away—they are increasing. The administration continues to issue anti-worker Executive Orders and undermine the labor rights of airline workers. It refuses to put a plan in place to address the serious problem of ergonomic injuries in the workplace. We need judges who will interpret the law fairly—not judges tied to special interests that drive the administration's agenda.

In recent years, the D.C. Circuit has become a safe haven for employers eager to defy the orders of the National Labor Relations Board. In 1980, 83 percent of all NLRB decisions were enforced in full by the D.C. Circuit. Deference was given to the Board by the court. In 2000, however, only 57 percent of NLRB decisions were enforced in full. Time after time, the closely-divided D.C. Circuit has refused to defer to the NLRB's expertise.

Jose Castro knows that one judge's vote can make a difference. A few years ago, the Hoffman Plastics Company fired workers in retaliation for their attempts to organize a union. In response, the National Labor Relations Board ordered reinstatement and backpay for the workers affected. The board later denied reinstatement and granted only limited backpay to Mr. Castro, an undocumented worker. When Hoffman Plastics challenged the board's decision, the D.C. Circuit—in a 5 to 4 decision—rejected the employer's argument and enforced the board's order. The court determined that the board had appropriately crafted its order to take into account the policies underlying both the National Labor Relations Act and the Immigration Reform and Control Act.

Last year, however, the Supreme Court reversed the board and the D.C. Circuit and held—in a 5 to 4 decision—that many immigrant workers are not entitled to backpay remedies under the National Labor Relations Act. The Supreme Court's decision affects as many as 6 million immigrant workers across the United States, and employers have used it to claim that those workers have no labor protections.

If confirmed, Mr. Estrada would make decisions about our environ-

mental laws—such as challenges to clean water regulations, Superfund clean-up of toxic sites, and Clean Air Act regulations. He will decide cases such as *American Trucking Associations v. EPA*, which denied EPA the authority to establish health standards for smog and soot. The issue in that case directly affects the thousands of children who suffer and die from asthma every year.

Mr. Estrada will be making these decisions as the Bush administration takes dramatic steps to curtail enforcement of our environmental laws. The administration has proposed rules to remove 20 million acres of wetlands from Federal protection, new regulations to weaken national forest protections enacted by the Reagan administration, approved natural gas drilling in Texas along the Nation's longest stretch of undeveloped beach, and proposed to scale back environmental reviews and judicial oversight over national forests and public lands.

Mr. Estrada will also make decisions about the enforcement of our nation's civil rights laws when he reviews race, gender, and disability discrimination cases like *Kolstad v. American Dental Association*. Carole Kolstad sued her employer for gender discrimination, and a one-vote majority of the D.C. Circuit upheld a very high standard for the collection of punitive damages. The Supreme Court later vacated the D.C. Circuit's decision, but once again it is clear that one vote can make a difference on the D.C. Circuit.

The question before the Senate is what role Mr. Estrada will play on this important court and in the lives of the American people. Will he be a fair and impartial advocate for the law and the Constitution, or will he be at the forefront of efforts to deny basic rights and protections for those who need them?

Mr. Estrada's record and his testimony before the Judiciary Committee provides little information and even less assurance that he is the right person for this important position. It is difficult—if not impossible—for us to exercise our constitutional duty of advice and consent, and to satisfy ourselves that Mr. Estrada is fit for a lifetime appointment without full information. Yet, Mr. Estrada remains a mystery. He refused to provide candid answers to questions during his hearing or in writing to the committee. And the Justice Department refuses to provide memoranda produced by Mr. Estrada when he served in the Solicitor General's office.

These Solicitor General memoranda would be helpful in understanding Mr. Estrada's fitness for a judgeship. They would aid us in determining how he would approach the complex task of judging, and whether he would be able to separate his own personal views from an objective analysis of the law. This administration and previous administrations have provided us with this kind of information in the past, and it is incumbent upon the administration to provide the Senate with the

information necessary to evaluate nominees to our Nation's Federal courts.

The little we do know of Mr. Estrada's record raises grave concerns. In fact, his direct supervisor in the Office of the Solicitor General has raised questions about whether Mr. Estrada has the temperament and requisite moderation to sit on the D.C. Circuit. The supervisor, Mr. Bender, has expressed his belief that Mr. Estrada would have difficulty separating himself from his personal ideological views.

It has been reported, for instance, that some of Mr. Estrada's colleagues have said that he is not openminded 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 was not "even-tempered"—he became angry during their meetings with him, and he even threatened the group with legal action because they had raised concerns about his record.

These reports are very troubling. What we seek in our judges is a quality that makes them more than just talented lawyers or advocates. We want to know that a judge is openminded and fair. I am not persuaded that Mr. Estrada possesses the key qualities of moderation, openness and fairness required of our judges.

The cases that Mr. Estrada has made the primary focus of his pro bono activity also raise concerns about whether he will be fair in the wide range of cases that come before him. In two cases, Mr. Estrada tried to limit the first amendment rights of minorities to congregate and associate on public streets. He also sits on the board of the Center for Community Interest, which advocates the kind of police tactics that have often led to harassment and racial profiling in minority communities.

Mr. Estrada's single-minded focus on justifying such ordinances is cause for great concern. Even after the clear rebuke from the Supreme Court about the Chicago ordinance, he devoted many hours to defending the City of Annapolis against challenges to the constitutionality of its own 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, when a Federal district court struck down the law as unconstitutional.

We know that decades of important civil rights precedents may well be at stake in coming years. These issues raise very serious concerns about Mr. Estrada's nomination. He is an intelligent and talented lawyer. But that is

not enough. To serve as a Federal judge—particularly on the second most important court in the land requires a commitment to the core constitutional values of our democracy. It requires the special qualities that enable judges to meet their own important responsibilities—fairness, impartiality, and openmindedness.

There is nothing anti-Latino about our objections to Mr. Estrada. President Bush has nominated five Latinos to the Federal courts, four of whom were confirmed last year, when the Democrats controlled the Senate. It is the Democrats who have taken the lead in appointing Latinos to the Federal courts. During the Clinton administration, 23 Latino nominees were confirmed to the Federal courts—more than in any previous administration, Republican or Democrat. More Latinos would have been confirmed had it not been for the unfair tactics of Senate Republicans.

In fact, five Latino nominees sent to the Senate by President Clinton were not confirmed by the Republican-controlled Senate. Two of them, nominated to the Fifth Circuit Court of Appeals from Texas, were not even given hearings. One waited more than a year in the Senate before his nomination was returned to the President because of inaction by the Judiciary Committee. The other waited more than a year, and was then renominated by President Clinton in January of 2001, but President Bush withdrew it.

All five Latino nominees blocked by Senate Republicans had the full support of the Latino community—but the same cannot be said of Mr. Estrada. The major Latino organizations have raised strong concerns about Mr. Estrada. The Congressional Hispanic Caucus has opposed his nomination. The Latino organizations opposing or raising 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.

The Congressional Hispanic Caucus has told the Senate Judiciary Committee that Mr. Estrada does not meet their criteria for endorsement of a nominee. As the letter they sent to the committee states:

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 CHC's criteria for endorsing a nominee.

The Mexican American Legal Defense Fund opposes Mr. Estrada as well. According to their statement:

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 whom President Bush has nominated in two years to any Federal circuit court in the country 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. 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.

Recently, the Puerto Rican Legal Defense Fund also issued a statement reaffirming its opposition to Mr. Estrada's nomination.

Many of us have deep concerns about Mr. Estrada's record and his unwillingness to supplement the record with answers to important questions or production of the memoranda from his days in the Solicitor General's office.

I urge the Senate to reject this nomination. A lifetime appointment to a court so important in deciding so many basic issues should not be given to a nominee about whom we know so little.

The basic values of our society—whether we will continue to be committed to equality, opportunity, freedom of expression, the right to privacy, and many other fundamental rights—are at stake in all of these nominations. On the role of the Senate in the appointment process, the genius of the Constitution is the clear system of checks and balances that it provides. The Constitution says "advice and consent"—not "rubber stamp." When this or any other administration nominates judges who would weaken the core values of our country and roll back the basic rights that make our country a genuine democracy, the Senate should reject them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, today I rise in support of Miguel Estrada, the nominee for the 12th Circuit Court of Appeals.

It is an honor to serve my State of Georgia in this great institution, and I am pleased that the work we are undertaking today pertains to such an important issue for our country—filling the vacancies in our courts with good and honorable judges.

One of the most important burdens that has been placed on the shoulders

of the Senate is the sanction of Federal judges. I relish this task because it grants us an opportunity to have a hand in the future of the laws that govern this great land. And there is no better way to help craft the America of the next generation, the America to be served by our children and our grandchildren.

Before I came to Congress, I practiced law for 26 years and I can say that it is rare to meet someone as qualified for the bench as Miguel Estrada. The American Bar Association unanimously rated Mr. Estrada as "well qualified." I understand that some of my colleagues in the past have referred to this rating as the "gold standard" for judicial nominees. It seems then that a unanimous "well qualified" rating should speak volumes about Mr. Estrada's merit.

Some critics have said that Mr. Estrada should not be confirmed because he lacks judicial experience. I would simply highlight the examples of Justice White and Chief Justice Rehnquist. Both men had no prior judicial experience when they were appointed to the Supreme Court. Also on the same court that Mr. Estrada would join, five of the eight sitting judges had no prior judicial experience, two of which were nominated by President Clinton.

Mr. Estrada, however, has had exceptional experience both in the government and in private practice. From 1992 to 1997, he served in the Clinton administration as Assistant to the Solicitor General in the Department of Justice. He has argued 15 cases before the Supreme Court and is widely regarded as one of America's leading appellate advocates. He is currently a partner for a leading law firm with their appellate and constitutional law practice group. I believe that this represents sufficient experience for his nomination.

Another argument made by some is that Mr. Estrada has refused to produce confidential memoranda that he wrote when he was with the Solicitor General's office. I would argue that this request, if met, would have a debilitating effect on the ability of the Department of Justice to represent the United States before the Supreme Court and I have a letter signed by every living former Solicitor General—Democrat and Republican alike—saying the same. I would ask unanimous consent to print this letter in the RECORD.

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

WILMER, CUTLER & PICKERING,
WASHINGTON, DC,
June 24, 2002.

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

DEAR CHAIRMAN LEAHY: We write to express our concern about your recent request that the Department of Justice turn over "appeal recommendations, certiorari recommendations, and amicus recommenda-

tions" that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of the Solicitor General—under Presidents of both parties—we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review of adverse appellate decisions, and whether to participate as *amicus curiae* in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these and other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

Any attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself.

Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Sincerely,

On behalf of: Seth P. Waxman, Walter Dellinger, Drew S. Days, III, Kenneth W. Starr, Charles Fried, Robert H. Bork, Archibald Cox.

Mr. CHAMBLISS. Also, as we have heard, Mr. Estrada has a great story; he is accomplished, competent, and experienced. This man came to America to seek the American Dream and he is now living that dream. He came to the United States from Honduras when he was seventeen years old and has spent his life gaining credibility as a Hispanic man of distinction. If confirmed, Mr. Estrada would break a glass ceiling by being the first Latino judge to serve on the DC Court of Appeals. However, if he is not confirmed, it would not just be terrible for the District of Columbia, but it would send the wrong message to Hispanic communities in my home state of Georgia and across the nation. But I would say to my colleagues that you should not vote for Miguel Estrada because he is Hispanic, you should vote to confirm him because he is a world-class lawyer and he will make a world-class judge.

Mr. Estrada is a great lawyer and will make a superb judge. He has the qualifications, the capacity, the integrity, and the temperament to serve on the federal bench. I was happy to support his nomination last week in the Judiciary Committee and I urge my

colleagues to join me in supporting the President's nominee for this important position.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, just a few remarks. The distinguished Senator from Massachusetts is very concerned about this court and how judges function on it, as am I. It is a very important court. In fact, next to the Supreme Court, it is the next most important court in the country—no question about it—because the decisions they make affect almost every American in many instances.

In terms of straightforward application of the law, the DC Circuit is one of the best functioning courts in the country. Recent years have seen DC circuit judges agreeing in the overwhelming majority of cases, including ones of great political significance, even when Republicans outnumbered Democrats six to four.

I might also add that the DC Circuit is in the midst of a vacancy crisis unseen in recent memory. Only eight of the court's 12 authorized judgeships currently are filled. In the past 2 years, two of the court's judges have taken senior status.

The DC Circuit has not been down to eight active judges since 1980. It is a crisis situation because it is extremely important. The vacancy crisis is substantially interfering with the DC Circuit's ability to decide cases in a timely fashion. As a result, litigants find themselves waiting longer and longer for the court to resolve their disputes. Because so many DC Circuit Court cases involve constitutional and administrative law, this means that the validity of challenged government policies is likely to remain in legal limbo.

In the 2001–2002 term, the court had to cancel several scheduled days of oral argument. As a result, cases that would have been heard in 2001–2002 will not be heard until September of 2002 at the earliest. For the 2002–2003 term, the court will be able to hear cases on just 96 days and will be able to schedule just 336 cases. Because of the limited number of sitting days, the court's oral argument calendar is already nearly full through March of 2003.

The vacancy crisis is also interfering with the operation of the court's emergency panel which hears emergency cases and various motions. Because only seven judges are now available for emergency panels, each one has to serve 6 weeks of overtime emergency duty on top of the 16 weeks he or she ordinarily serves throughout the year.

The court often has been forced to constitute emergency panels with fewer than the usual complement of three judges.

The chief judge of the DC Circuit, at a recent circuit conference said:

If the court does not have additional judges soon, our ability to manage our workload in a timely fashion will be seriously compromised.

He further explained that:

. . . it is clear that the Senate's inaction is coming to jeopardize the administration of justice in this Circuit.

That is important stuff. It is really important that we put Miguel Estrada on the court.

We have had some comments about a few Latino groups that are known for liberal politics and have been opposed to Miguel Estrada. Let me list a few groups that support him. The following groups are just some that have announced support for him: League of United Latin American Citizens, LULAC, the Nation's oldest and largest Hispanic civil rights organization; U.S. Hispanic Chamber of Commerce; Hispanic National Bar Association; Hispanic Association of Corporate Responsibility; Association for the Advancement of Mexican Americans; MANA, a national Latina organization; Cuban American National Council; U.S.-Mexico Chamber of Commerce; Hispanic Business Roundtable; The Latino Coalition; National Association of Small Disadvantaged Businesses; Mexican American Grocers Association; Phoenix Construction Services; Hispanic Chamber of Commerce of Greater Kansas City; HEBC, Hispanic Engineers Business Corporation; Hispano Chamber of Commerce de Las Cruces; Casa Del Sinaloense; Republican National Hispanic Assembly; Hispanic Engineers Business Corporation; Hispanic Contractors of America; Charo, Community Development Corporation; Cuban American National Foundation.

The League of United Latin American Citizens is the oldest Hispanic civil rights organization. Established in 1927, it has more than 700 councils and more than 120,000 individual members.

The U.S. Hispanic Chamber of Commerce was established in 1979, with a network of more than 200 local chambers across the country, and it advocates on behalf of the 1.8 million Hispanic-owned businesses in the country.

The Hispanics National Bar Association was established in 1972 and has more than 25,000 members, consisting of lawyers and judges.

MANA, a national Latino organization, was established in 1974 to give a voice to the more than 20 million Hispanic women of all backgrounds and professions across the U.S.

The AAMA, Association for the Advancement of Mexican Americans, with over 30 years of service to the community, has been ranked the ninth largest Hispanic nonprofit in the country, providing education, employment and training, health care, and related services to more than 30,000 people annually.

The Cuban American National Council has served the Cuban American community of Florida for the past 23 years, through education, housing, health and human services, and employment and training.

I just thought the record needed to show that Miguel Estrada has tremendous support among Hispanic people.

Now, things we've heard in the debate against Miguel have been some of the saddest things I have ever witnessed. It is akin to the lioness eating her cubs—Democratic Latino community leaders turning on one of their own because he doesn't fit their definition of "Latino."

Among their concerns is he is a recent immigrant, he hasn't lived in this country long enough to understand the plight of Hispanic Americans, he wasn't poor enough, his family was middle class and he attended private schools, he speaks English too well, he speaks Spanish too well—these are comments made by some of the liberal Latino groups. He is not from Mexico or Puerto Rico, he is from Honduras; he didn't do the right kind of pro bono work; he sought to protect victims of crime, not criminals. Jeepers.

His critics would have you believe that to be Hispanic you have to be poor, attend only inner city schools, work for the public defenders office, and never aspire to work for the Department of Justice, or to clerk for the U.S. Supreme Court. I don't think the vast majority of Hispanic people think that way. I think they are proud of Miguel Estrada, and they ought to be because he is a man who has really made something of his life, and he is still a very young man.

Miguel Estrada is the American dream incarnate. I think this should be celebrated by all Americans, but certainly by Hispanic Americans, and especially Hispanic mothers and fathers who dream of a bright future for their children. Tell those mothers and fathers that in order to be considered Hispanic, your children have to remain poor, forgo a quality education, and give up their dreams of succeeding in the legal profession. That is pure bunk and everybody knows it. But these are some of the arguments that have been made against Miguel Estrada.

Lest anybody think I am just saying these things because I am supporting Miguel Estrada, I have spent most of my Senate career working very closely with the Hispanic community in the United States, getting to know the issues and addressing the community's concerns through legislation. In fact, in 1986, I started the U.S. Senate Republican Conference Task Force on Hispanic Affairs to ensure that the Hispanic community had a strong voice in the Senate. Over my lifetime, I have grown to love the Hispanic culture, their people, and their history. I believe their values and culture have infused and invigorated the American dream. The Latinos I have come to know over the past 26-plus years tell me it is all about heart. It is the "corazon." Frankly, I have come to feel like I personally have a Latino heart beating in my breast. That is how important this community is to me. That is how close I feel to my Hispanic brothers and sisters. I have the credentials to make that case. I happen to know Miguel Estrada. He, too, has "corazon."

The Hispanic community leaders I respect and admire have dedicated themselves to ensuring that people such as Miguel have the very opportunity Miguel has used to his advantage. They want Hispanics to succeed. They are not trying to force all Latinos into cookie cutter shapes. They want Hispanics to be as free to find their own way as American citizens. Organizations such as the League of United Latin American Citizens, the oldest Hispanic civil rights organization in the country, and the United States Hispanic Chamber of Commerce have existed for decades. Their mission has been to ensure that the downtrodden, the poor, the recent immigrant, and his heirs have an opportunity to succeed absent discrimination.

Hector Flores, president of LULAC, and George Herrera, the Hispanic Chamber's President, work hard to get more Hispanic kids into Columbia and Harvard, more Latino youth to clerk in at the U.S. Supreme Court, to work at the Department of Justice, and to become partners of a prestigious law firm. Miguel Estrada deserves credit, rather than this constant worry that he might be too conservative, or he might be too conservative than some of these liberal groups would like.

I have a lot more to say, but I will yield the floor at this point.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I didn't want the night to go by without commenting on some remarks made by two Senators on the other side, the majority, who have suggested that those who oppose Miguel Estrada are doing it on the basis of his ethnicity. In fact, one Senator said it was anti-Hispanic. The Congressional Hispanic Caucus, which is in existence here in Congress and consists of Hispanic members of Congress who have been elected by people from congressional districts all around the country, was formed many years ago. The Congressional Hispanic Caucus has taken a position against the nomination of Miguel Estrada. I hope nobody would suggest that the Congressional Hispanic Caucus is not Hispanic.

In fact, the Congressional Hispanic Caucus was so concerned about the fact there are not enough Hispanics in the judiciary that they formed in the last Congress the Congressional Hispanic Caucus Hispanic Judiciary Initiative to assure fair treatment of judicial nominees and to promote diversity.

While the Congressional Hispanic Caucus has endorsed other Bush judicial nominees who are Hispanic, such as Jose Linares, Mr. Estrada failed most of the factors in their evaluation. Therefore, they oppose his nomination.

The Congressional Hispanic Caucus sent a letter to the Judiciary Committee late last year. It was signed by Congressmen SILVESTRE REYES and CHARLES GONZALEZ on behalf of the entire Hispanic caucus. The letter was based on the review of his qualifications and their interview with him.

I am certainly not a member of the Judiciary Committee, and I am not here to debate the issue with the learned chairman of the committee, but I want everyone within the sound of my voice to understand that someone can oppose this nomination and not do it based on anti-Hispanic grounds. There is no better logic than to look at the Congressional Hispanic Caucus which opposes this nomination.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I wish to make a few points. Some of my colleagues are suggesting that we are playing what amounts to the race card on this nominee. That is ludicrous. Personally, I resent it.

Let me make one point clear: No one is suggesting that anyone in the Senate has a bigoted bone in his or her body. No one is suggesting that for a minute. No one is suggesting Mr. Estrada is being opposed because he is a Hispanic. That is just a red herring. It is a shame on anyone who is arguing that carbuncle.

What I have suggested is exactly what Herman Badillo, a former Democratic Congressman, has written publicly. Some liberal, and, yes, Democrats, show increasing intolerance to Hispanics and African Americans who do not subscribe to their left of mainstream ideology. Their intolerance is not because they are Hispanic or African American but because they are Hispanic or African American and not liberals. That is where the intolerance is.

Some people will simply not accept a Hispanic, African American, or even women who do not toe the line of the radical left of special interest groups. We are finding that all over this instance.

Herman Badillo, a former Democratic Congressman, for whom I have always had respect, has written:

Liberals and their special interest groups want to force these minorities into one monolithic intellectual ghetto demanding that they be of one mind.

I would think that every minority, whether liberal or conservative, would find such patronizing thought, control, and elitism demeaning and insulting. It amounts to an intellectual glass ceiling for minorities, and that is, to a degree, what is happening here.

In the hearing we held last September and in the follow-up questions, I have not heard one argument against Miguel Estrada—not one, not one valid argument. I have not heard one person make a case that the American Bar Association was wrong when they gave Miguel Estrada a unanimously well-qualified rating, the highest rating

that the American Bar Association can give.

I have not heard one person indicate that this man is not of the highest intellect, the highest moral purpose, the highest qualifications, except for Paul Bender, who I think we more than explained away a few minutes ago, and it had to be done because for some reason they keep bringing up this man who has been very unfair and for partisan, cheap political reasons apparently, after having given the highest, most glowing recommendations for Mr. Estrada when he worked for him at the Justice Department.

They try to explain it away: Well, he was not talking about his ideology. Of course, he was. If there had been one indication of bad ideology or too much extreme ideology, I can guarantee you Paul Bender would never have given those glowing performance evaluations.

It is offensive. This man is a law professor in this country and, unfortunately, I hate to say it, but the law professors in this country, as a whole, are extremely to the left, and that is not too far different from many of the political science professors in this country.

I remember I went to one of the major universities a few years ago, and of the 41 members of the faculty, only one claimed to maybe be a moderate. All the rest admitted they were left wing, and yet these are the people teaching our children. That is not bad. They have a right to hear left-wing ideology and more liberal teachers, but I think they also have a right to hear people who are on the other side of the equation who may be right in many ways, not just right ideologically.

To be honest, I get a little tired of this business that we Democrats are the ones who have really done more appointments for Hispanics. Republican Presidents altogether in recent years have appointed 25 Hispanic judges. Sonia Sotomayor of New York was appointed by the first President Bush and was subsequently nominated to the Second Circuit by President Clinton and was confirmed.

The second President Bush has already nominated nine Hispanics, with three more coming up, according to press reports, for a total of 12. His chief counsel in the White House is Hispanic. There is no question he is reaching out and doing a good job. It is one of the things I love about him.

At the current rate of second President Bush, we can expect in 8 years President Bush I think will probably appoint at least 36 to 40 Hispanic judges on his own, more than all the past Republican Presidents put together and more than any single Democratic President.

To try to make the case only Democrats care for Hispanics is just ludicrous. I will say this, my colleagues on the other side are good people. I believe they are sincere in working for minorities as they have done, and I appreciate

them personally, but to try to imply we are not I think is hitting below the belt in ways that should not happen on the Senate floor.

In all honesty—and I have heard arguments today that would cause anybody—I mean the bad arguments—the arguments against Miguel Estrada would cause people to vote for him. Miguel Estrada is a fine man. Miguel Estrada has made it to the top of his profession even with a disability. There are not many people who have argued 15 cases before the Supreme Court or who have the unanimously well-qualified American Bar Association rating or who have been the editor in chief of the Harvard Law Review, who have served various Federal judges.

I am a little surprised about some of my colleagues' confusion as to why Mr. Estrada, they claimed, did not address policy questions put to him. It is quite understandable. Would we policy-makers want another public official, in this case a judicial nominee, to answer policy questions? A judicial nominee is not applying for a job as a policy-maker. He or she is going to be a judge. Judges are not in the business of answering policy questions. It is just that simple.

When one asks the question, What is your view of the first amendment, my gosh, how does one answer that question? It is easy to say: I believe in it. I guess that is what Miguel Estrada could have said. Or if one asks, Are you going to overturn all of the environmental laws of our country, or words to that effect I heard on the floor today, first, it is offensive to ask that kind of question and, second, nobody in his or her right mind as a judicial nominee would want to give an opinion on a broad issue that might foreclose them from sitting on important cases that would come before the court later.

Yes, nominees are told on both sides, whether it is a Clinton judge or George W. Bush judge, that you should not be giving opinions that might involve what you might later have to judge when you get on the bench.

So it is a fine line and it is not an easy thing for witnesses, and frankly especially those who have not served on the Judiciary Committee and have not been through it for a long time. And even if they have, it is not easy.

The important realization in regard to Miguel Estrada is they had every opportunity to ask him any questions they wanted. They were in the majority. They held the committee hearings. I have heard Democrats on the committee say those hearings were conducted fairly and responsibly. Afterwards they had a right to submit any written questions they wanted to submit, and only two Senators submitted them and they were answered. So some of these arguments I have heard today are not arguments at all.

I think it was Walter Mondale who said: Where is the beef? What is it that makes Miguel Estrada unqualified to be on the Circuit Court of Appeals for

the District of Columbia? I do not think there has been even the slightest case made against him.

Then what is it? What is against him? What is against this fine Hispanic man who has made it on his own? I do not see any reason. Maybe we will get some in the next few days, but I do not see any reason. And I sure as heck would not rely on Paul Bender, not after what we all know he has done. He gave glowing performance evaluations when he really had the power—as an honest liberal, which we believed him to be at the time—he gave glowing performance evaluations and then later when this fine person, Miguel Estrada, is offered up as a judicial nominee by the President of the United States, he comes out and says he is an ideologue.

Who are you going to believe? I do not think I would believe Paul Bender on that issue, and I do not think anybody else should, either.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, there have been too many protests on the other side. The majority has said time and time again that they, the Republicans, treat the Hispanics well. I do not know why they have to keep saying that. The record speaks for itself. This side need not do so because our record does speak for itself. And that is the reason, as I said earlier, when people come—one Senator did come and talk about words to the effect I am not anti-Hispanic and then proceeded to lay out everything that was. That is why I thought I would come forward and talk about the fact that the Hispanic Caucus, which certainly could never be judged to be anti-Hispanic, has come out against this nomination, as have numerous other organizations: the Congressional Hispanic Caucus, the Congressional Black Caucus, and Hispanic organizations such as the Puerto Rican Legal Defense and Education Fund, Juan Figueroa, President and General Counsel, the Mexican American Legal Defense and Education Fund, National Association of Latino Elected and Appointed Officials, National Council of La Raza, NCLR, National Puerto Rican Coalition, California La Raza Lawyers, Puerto Rican Bar Association of Illinois, Southwest Voter Registration Education Project, Labor Council for Latin American Advancement, Linda Chavez Thompson, AFL-CIO, 52 different Latino labor leaders, including people from all over the country from California to New York and places in between.

There are civil rights and other organizations that oppose this nomination: the American Federation of Labor and Congress of Industrial Organizations,

AFL-CIO, Sierra Club, Leadership Conference on Civil Rights and Alliance for Justice, Leadership Conference on Civil Rights, National Association for the Advancement of Colored People, National Organization for Women, National Black Women's Health Project, Mexican American Legal Defense and Education Fund, Lawyers' Committee for Civil Rights Under Law, National Association for the Advancement of Colored People, Alliance for Justice, People for the American Way, National Council of Jewish Women, National Family Planning and Reproductive Health Association, Feminist Majority, National Association for the Advancement of Colored People, People for the American Way, Planned Parenthood Federation of America, NARAL Pro-Choice, National Family Planning and Reproductive Health Association, and scores of other organizations.

I think the debate at this stage is being framed improperly. There are people on this side who have not made up their mind what they are going to do, but the way the debate is going forward, it does give me some concern. I hope the debate in during the next whatever period of time it goes forward, we can talk about the man's judicial qualifications and not berate people who say for one reason or another he is not qualified, such as Mr. Bender. I have never met Mr. Bender, but I think he has taken enough lashes today that we should drop the subject. He has a right, in my opinion, to oppose someone. These organizations have a right to oppose him. The organizations who support him have every right to come forward and support him. It should be on the basis of this man's qualifications, whatever they might be, and not on ethnicity and on whether or not groups support people because they are for the poor.

I made some notes here that someone suggested Latinos only support those lawyers who work for the poor or for the public defender's office. I really do believe this debate would be much more structured, civil, and productive if we dealt with Miguel Estrada's qualifications and not berate people who are for or against him.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Let me say about Mr. Bender, I was criticized by the distinguished Senator from Massachusetts for pointing out the biases of Mr. Bender. I was accused of finding fault with him. Well, what about Mr. Bender dishonestly finding fault with Miguel Estrada? I think I more than made a case that this man has done it for partisan political purposes, and I am going to make that case over and over. If they want to keep bringing up Paul Bender, then I am going to make the case that Paul Bender has done a very bigoted, rotten thing, after having given the greatest performance reviews one could get in the Solicitor General's office.

So who would you believe? I think it is important to point that out and not let anybody get away with that.

I will mention one group because it has been mentioned by my friend—and he is my friend—the distinguished Senator from Nevada. A review of the Congressional Hispanic Caucus' statement in opposition is most disappointing to me. It was issued in advance of Miguel's hearing. They did not even listen to him, and they issued it. My colleagues in the House, who have argued persuasively for a fair process, decided Miguel was not so entitled. They did not even wait until he testified to condemn him. They pronounced judgment beforehand. But that should not surprise us because the Democrat Congressional Hispanic Caucus is exactly that. It is a Democrat machine. The Republican members of the caucus who were members at one time were forced out because they did not think and act like their Democrat counterparts. There are no Republican members of the Congressional Hispanic Caucus, not one. They were forced out. The Democrat Congressional Hispanic Caucus may oppose Miguel Estrada, but the Republican Congressional Hispanic members, LINCOLN DIAZ-BALART, ILEANA ROS-LEHTINEN, HENRY BONILLA, MARIO DIAZ-BALART, all support his confirmation.

Again, I say to my colleagues on the other side, where is the beef? All this speculation about what they think that Miguel Estrada will be on the court, where is the proof? There is not any. In fact, there is proof to the contrary.

So that is one reason why I have been a little bit upset today, and I think I am going to continue to be upset if these types of approaches are taken against this really fine man. We are going to defend him. We are going to defend him as the good person he is.

I ask unanimous consent that the Senate now return to legislative session and that it proceed to a period for morning business.

Mr. REID. Mr. President, I object at this time.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. Mr. President, I will respond very briefly.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. I am happy to yield to the distinguished Senator.

Mr. REID. I was involved in a long conference with the Hispanic caucus yesterday. This organization met long and hard with Miguel Estrada. They met for 3 hours on one occasion, and based upon that and other issues they raised in their letter, they thought they could not support him.

As I stated earlier today, the Congressional Hispanic Caucus has supported, and will continue to support, other Bush judicial nominees who are Hispanic, and they have already done so.

I mentioned a number of names earlier. They can speak for themselves.

They are Members of the other body and do not have authority to speak here, but if they could speak, they would speak loudly, with a lot of articulation, about the fact that this man is not qualified, in their opinion. They are entitled to that opinion.

This is a body that is not known for its radicalism; it is a body known for its stability, having a long line of very prominent chairmen.

Maybe with Mr. Bender I should have said he needs to be beaten up some more and he would not have been, but I think the record is replete that those on the other side think Mr. Bender's evaluation of Miguel Estrada is wrong. He has a right to do that. He was his supervisor. He has made and continues to make known his opinion that he is not temperamentally qualified for this job as a circuit court judge. That is what he said.

This debate should focus on the qualifications of this man. That is what this letter to the Senate Judiciary Committee consists of, from the Hispanic caucus, to Senator LEAHY. They say that the man is not qualified. He is not qualified based upon his past experience. They are entitled to that opinion.

As the debate proceeds, a decision will have to be made in this body as to whether people agree with the Hispanic caucus about the qualifications of persons before this body. Debate that has taken place and will take place in the future will be productive in that regard. That is why we have a Senate. That is why we are not limited, as in the House of Representatives, with, on many occasions, 1 minute and sometimes no minutes. We can talk here as long as we want about the qualifications of this man. I hope we do not have to talk a long time about this man's qualifications. We should talk long enough that full debate on his qualifications takes place.

I am happy now to have my friend reoffer his unanimous consent request.

Mr. HATCH. I add one thing. I believe they are entitled to their opinion but they are not entitled to their own facts. They have to live with the facts that exist.

I don't see a fairness in this process. It has not been fair. It has been quite partisan, especially on Mr. Bender's part.

I have been told by those who know, by my Hispanic friends, that the Congressional Democratic Hispanic Caucus was pretty split. But the majority prevailed. There was a real split over whether they should do this to Miguel Estrada. I personally believe that all these liberal groups persuaded them.

I point out, where are the arguments? To say he is not qualified, when their own gold standard, the American Bar Association, says he is unanimously well qualified flies in the face of any facts. That is just my point. Where are the facts?

I ask unanimous consent that a letter from HENRY BONILLA, LINCOLN

DIAZ-BALART, and ILEANA ROS-LEHTINEN be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,

Washington, DC, September 23, 2002.

DEAR SENATORS DASCHLE, LOTT, LEAHY, AND HATCH: We are Hispanic Members of the United States House of Representatives who write to strongly support Miguel Estrada, President Bush's nominee to be a judge on the United States Court of Appeals for the District of Columbia Circuit. If confirmed, Miguel would be the first Hispanic judge on what is widely recognized as the nation's second highest federal court. President Bush made an historic decision by nominating Miguel Estrada, and we urge the Senate to promptly confirm this outstanding Hispanic-American.

Miguel Estrada is an American success story. He immigrated to the United States as a teenager from Honduras speaking little English. He attended Columbia College and Harvard Law School, graduating magna cum laude from both. He clerked for Judge Amalya Kearse on the Second Circuit and Justice Anthony Kennedy on the Supreme Court. Miguel is one of the few Hispanics ever to serve as a law clerk on the Supreme Court of the United States. Miguel worked as an Assistant United States Attorney in the Southern District of New York, and both tried cases in federal district court and argued appeals before the Second Circuit on behalf of the United States. He has worked twice in private practice at leading law firms, in New York at Wachtell, Lipton, Rosen & Katz and in Washington at Gibson, Dunn & Crutcher.

Miguel also served for five years in the Office of Solicitor General at the United States Department of Justice. In that capacity, Miguel argued 14 cases before the Supreme Court and wrote numerous briefs on behalf of the United States. He is widely recognized as a brilliant lawyer and oral advocate, and his official performance reviews noted that he "inspired co-workers by example."

As demonstrated during his service as Assistant to the Solicitor General, Assistant United States Attorney, and law clerk on the Supreme Court, Miguel Estrada believes in the integrity of the courts and the law. He appreciates the difference between law and policy, between the judicial task and the legislative task.

Based on his qualifications, intellect, judgment, and temperament, it is no surprise that Miguel Estrada received a unanimous "well qualified" rating—the highest possible rating—from the American Bar Association Standing Committee on Federal Judiciary. As Hispanic Members of Congress, we are very proud that the American Bar Association gave this outstanding Hispanic-American its highest possible rating.

Miguel has performed significant public service beyond his work in government. Most notably, while in private practice, he represented pro bono a capital defendant before the Supreme Court. Capital cases are very difficult legally and emotionally for the lawyers representing the capital defendants. Miguel's decision to involve himself in a difficult capital case speaks volumes about his integrity and devotion to the legal system, and his willingness to perform difficult public service. He also assisted the former United States Attorney in New York, who was appointed by President Clinton, in discussing how to ensure that more federal prosecutors are Hispanic.

Miguel is widely supported by Hispanic organizations, such as the Hispanic National Bar Association, the League of United Latin

American Citizens, and the U.S. Hispanic Chamber of Commerce. He also is supported by prominent Democrat lawyers, such as Ronald Klain, who served as Counsel to Vice President Gore, Robert Litt, who served as Assistant Attorney General for the Criminal Division under President Clinton, and Randy Moss, who served as Assistant Attorney General for the Office of Legal Counsel under President Clinton. Furthermore, Seth Waxman, who served as Solicitor General under President Clinton, has written to the Judiciary Committee that he has "great respect both for Mr. Estrada's intellect and for his integrity" and that Miguel was "a model of professionalism and competence."

Miguel Estrada would be the first Hispanic judge on the United States Court of Appeals for the District of Columbia Circuit. You and your colleagues have spoken often about the need for balance on the courts. It is past time that an Hispanic judge serve on this important court. Confirmation of Miguel Estrada would provide balance. We urge you to treat Miguel Estrada with fairness and to confirm him promptly.

Thank you for your consideration of our views.

Sincerely,

HENRY BONILLA,
LINCOLN DIAZ-BALART,
ILEANA ROS-LEHTINEN,
Members of Congress.

Mr. REID. I ask unanimous consent that a letter to PAT LEAHY from the Hispanic caucus signed by SILVESTRE REYES and CHARLES GONZALEZ be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,

Washington, DC, September 25, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Judiciary Committee,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Congressional Hispanic Caucus (CHC), we wish to inform you that the CHC has decided to oppose Miguel Estrada's nomination to the United States Court of Appeals for the District of Columbia Circuit. After reviewing Mr. Estrada's record and meeting with him in person, we have concluded that he fails to meet the CHC's evaluation criteria for endorsing judicial nominees.

As you know, the judicial nomination process is important to the CHC because we believe that our Nation's courts should reflect the diversity of thought and action that enrich America. Earlier this year, we launched the Hispanic Judiciary Initiative to further formalize our involvement in this issue by establishing a set of evaluation criteria and an internal process for endorsing nominees. We hope that this initiative will allow us to continue our work to ensure fair treatment of Latino judicial nominees and tackle the lack of diversity in the federal judiciary.

In evaluating Mr. Estrada, we considered not only his honesty, integrity, character, temperament, and intellect, but also his commitment to equal justice and advancement opportunities for Latinos working in the field of law. Because of the nature of the CHC's mission and the important role that the courts play in achieving that mission, in order to support a judicial nominee the CHC requires that he or she has a demonstrated commitment to protecting the rights of Latinos through his or her professional work, pro bono work, and volunteer activities; to preserving and expanding the progress that has been made on civil rights and individual liberties; and to expanding advancement opportunities for Latinos in the

law profession. On this measure, Mr. Estrada fails to convince us that he would contribute under-represented perspectives to the U.S. Court of Appeals for the District of Columbia Circuit.

As stated by Mr. Estrada during his meeting with us, he has never provided any pro bono legal expertise to the Latino community or organizations. Nor has he ever joined, supported, volunteered for or participated in events of any organization dedicated to serving and advancing the Latino community. As an attorney working in government and the private sector, he has never made efforts to open doors of opportunity to Latino law students or junior lawyers through internships, mentoring or other means. While he has not been in the position to create internships or recruit new staff, he never appealed to his superiors about the importance of making such efforts on behalf of Latinos. Furthermore, Mr. Estrada declined to commit that he would be engaged in Hispanic community activities once appointed to the bench or that he would pro-actively seek to promote increased access to positions where Latinos have been traditionally under-represented, such as clerkships.

Mr. Estrada shared with us that he believes being Hispanic would be irrelevant in his day-to-day duties on the court, which leads us to conclude that he does not see himself as being capable of bringing new perspectives to the bench. This is deeply troubling since the CHC's primary objective in increasing ethnic diversity of the courts is to increase the presence of under-represented perspectives.

Mr. Estrada's limited record makes it difficult to determine whether he would be a forceful voice on the bench for advancing civil rights and other protections for minorities. He has never served as a judge and has not written any substantive articles or publications. However, we did note that in responding to inquiries about case law, Mr. Estrada did not demonstrate a sense of inherent "unfairness" or "justice" in cases that have had a great impact on the Hispanic community.

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, Miguel Estrada fails to meet the CHC's criteria for endorsing a judicial 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. We respectfully urge you to take this into account as you consider his nomination to the U.S. Court of Appeals.

Sincerely,

SILVESTRE REYES,
*Chair, Congressional
Hispanic Caucus.*

CHARLES A. GONZALEZ,
*Chair, CHC Civil
Rights Task Force.*

Mr. REID. And I say that the final two sentences of this letter be read:

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.

The Hispanic caucus unanimously opposed the nomination.

Mr. HATCH. I cannot let that go. If they are saying because he lacks judicial experience he should not be on the court—which is what it appears to me they are saying—they are just condemning almost every nonjudge Hispanic to never have a chance to be a Federal district or circuit court of appeals judge. That is ridiculous. Every Democrat President I have served with—President Carter and President Clinton—have appointed a wide variety of people who never served on the bench but who are highly qualified and are doing a good job as judges now.

It may be helpful to have some judicial experience, but not having judicial experience does not mean you cannot serve. If that were the case, some of the greatest judges in the history of the world would never have had a chance.

But if you interpret what they say, that means that any Hispanic who has not had judicial experience really should not be supported. That is ridiculous. That is caving in to the liberal special interest groups in this town with which they continually spend time, and is to the detriment of the Hispanic community. I say that as a chairman of the Republican senatorial Hispanic task force who has worked for the last 13 years to try to solve these problems.

I don't take second seat to anyone with regard to my love for the Hispanic community or my work on their behalf.

LEGISLATIVE SESSION

Mr. HATCH. We have had enough debate. I ask unanimous consent that the Senate return to legislative session.

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

MORNING BUSINESS

Mr. HATCH. I ask unanimous consent that the Senate proceed to a period of morning business.

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

TRIBUTE TO DANNY PELHAM

Mr. DASCHLE. Mr. President, on Monday, I had the chance to visit with Danny Pelham. He came to my office, and we reflected on his nearly 35 years of service to the Senate.

As he walked out, I heard a member of my staff say: "There goes the wisest man I know." I couldn't agree more.

Danny arrived in the Senate on March 25, 1968. In his time here, he has seen the making of Senate history, and American history, and he has seen 237 Senators come and go.

Through it all, Daniel Pehlham conducted himself with utter fairness,

thoroughness, and discretion. It makes sense that—in his off hours—he is a basketball official.

For 35 years, he has walked the halls of power, but he never let it distort his perspective, or his sense of what is truly important. If you have ever seen him with his grandson Corey, or heard him talk about his wife Phyllis, you begin to understand that.

Ralph Waldo Emerson wrote: "we put our love where we have put our labor." For 35 years, Danny labored for—and loved—the Senate. It is fitting that we adopt this resolution expressing our appreciation—and love—for Danny Pelham.

MEDICAID REFORM

Mr. BINGAMAN. Mr. President, I want to speak for just a few minutes on the Senate floor about the proposal made last Friday by the Bush administration regarding Medicaid. The proposal was a disturbing one, in my view. It was to reform the Medicaid program by shifting to a block grant to the States. That is a recycled proposal, one we have seen before. It was touted, when described last Friday, as giving the States flexibility. It would give them flexibility.

It would give them flexibility to drop benefits to low-income children, to drop benefits to pregnant women, to people with disabilities, and to the elderly. And it would give them flexibility to dramatically increase the cost sharing for those vulnerable populations. With over 41 million Americans who are currently uninsured, in my view, we should be trying to find ways to expand health coverage rather than finding new ways to reduce it.

Unfortunately, the proposal allows States to continue Medicaid as it is or to convert the program into a block grant. This was tried in 1981 and again in 1996. The administration would encourage States to take the latter option; that is, to move to receipt of a block grant by encouragement of being temporarily offered increased dollars. That would be coupled with this offer of added flexibility to be able to reduce the benefits for their Medicaid beneficiaries and increase the costs being charged to those low-income and vulnerable populations. Secretary Thompson notes the proposal would clearly save the States money. This would only happen if the States decided to do what would almost certainly occur; that is, to cut benefits and increase cost sharing.

Also, this proposal takes the Federal Government off the hook for helping States address their uninsured problems because under the proposal there would be no additional Federal money available to States if they attempted to expand coverage in the future. In order to expand coverage, the only option States would have would be to essentially rob Peter to pay Paul. In