

many people will look at very seriously.

But one of the criteria that I think we take to heart very seriously is not only that an individual who comes forward to us seeking our support from our caucus, 20 members, if I am correct, it is very important for them to outline what they believe what their intentions are.

It is just like a job interview. If I were an employer and an prospective employee comes to me and asks me to give them a job, I certainly want them to answer very important questions, like where they stand on very important issues that as an employer I need to know. This gentleman did not answer those questions for us appropriately, and my understanding is he did not do that as well with the other House.

My concern is that I am being somehow evaluated because I am viewed as being non-Hispanic or un-American because I refuse to support someone who is of Hispanic ancestry, but yet does not believe, in my opinion, in the principles that I and other members of the Hispanic Caucus espouse, and that is communities, that is tradition and values, to support members of our community, but to give back, to demonstrate a willingness to give back. And we have not seen any of those points at least reflected in any information that we have received from Mr. Estrada.

I want to say that the Hispanic Caucus has, on occasion, supported Republican nominees, and we have done that with the full enforcement of our caucus. In fact, two nominees that came before us, Republican Hispanics, were Jose Martinez of Florida and Jose Luis Linarez of New Jersey. They were supported by the Hispanic Caucus proudly and were able to reflect on their background and the things they have done to give back to the communities. Those are noble things to talk about. We did not hear that from Mr. Estrada.

One of the things I am concerned about, too, is there are some accusations we do not have the support of other Hispanic members or traditional organizations out there in the community. Nothing could be farther from the truth. I would like to just give you an indication of who those individuals and organizations are.

The United Farm Workers of America has come out strongly against the nomination of Miguel Estrada; 15 past presidents of the Hispanic Bar Association, which many of us are affiliated with; the United States Hispanic Leadership Institute; the Southwest Voter Registration and Education Project; the Labor Council for Latin American Advancement, known as LCLAA, one of the largest union representative groups in the country; the California Chapter of the League of United Latin American Citizens. In fact, my own chapter came out opposing this nomination. We received a letter a few days ago from Rosemary Lopez.

Mr. Estrada is opposed by the Farm Labor Organizing Committee; the

Farmworker Association of Florida; La Raza Lawyers Association of California; the Mexican American Legal Defense and Education Fund; the Puerto Rican Legal Defense and Educational Fund; the National Farm Workers Ministry; the National Latino Institute for Reproductive Health; and the Willie C. Velasquez Institute. These groups all oppose the nomination of Miguel Estrada.

I would ask people when they consider what position we took as a caucus, that they recognize what we had to go through. This is a very elaborate process that we took into consideration. We take very, very seriously the decisions that we make.

I can tell you today that I am still not convinced that this is the best nominee to represent us, who be there for a lifetime appointment, and then possibly move on to a higher position.

I have some serious questions. If I were an employer and the prospective employee did not respond to any questions I asked, I would say that person may not be the best qualified for that position.

Mr. RODRIGUEZ. Mr. Speaker, I want to thank the gentlewoman, and want to take this opportunity to also indicate that as a caucus we have stuck strong, all 20 of us, and, once again, it does not happen that often, but we did and we continue to be in opposition to the nomination of Miguel Estrada.

OPPOSING THE NOMINATION OF MIGUEL ESTRADA

The SPEAKER pro tempore (Mr. BISHOP of Utah). Under the Speaker's announced policy of January 7, 2003, the gentleman from Texas (Mr. GONZALEZ) is recognized for the balance of the minority leader's hour, 32 minutes.

Mr. GONZALEZ. Mr. Speaker, it is a great honor again to appear before the House on this most important and weighty topic.

The nomination of Mr. Estrada means a great deal to all Americans, but especially to the minority communities. The President should be commended and applauded for seeking diversity in all departments, agencies and branches of government. To the extent that he actually accomplishes that is the true question that lies before us in the Miguel Estrada nomination.

I want to start off with, I guess, my understanding of how Federal judges gain their positions, which in many ways are the most powerful positions held by any public official. To start with, it is a lifetime appointment. There is no election, there is no review. That individual, once appointed, will remain there for an indefinite period of time.

Constitutionally, the President of the United States does have the authority, the duty and the responsibility to nominate individuals to the Federal bench, all the way up to the Supreme

Court of the United States. Constitutionally, though, that nomination, not the appointment, but the nomination itself, because there is never an appointment actually until the Senate acts, and that other body under the Constitution of the United States has the power to advise and consent, without which the nomination would not proceed to the appointment and finalization.

The scheme of things and the brilliance of our Founding Fathers as reflected in this document is all part of a checks and balances scheme. That is, we have three equal branches of government. We have the legislative branch, obviously, the executive branch and the judicial branch.

Many will argue which is the most powerful of all those branches. My own opinion is that it is the judicial branch. The reason I say that is, in the final analysis, they actually interpret the laws that we pass in this Chamber. They actually interpret the laws that we pass in this Congress, and they apply the law.

So the very will of the people as expressed through their elected representatives could be frustrated by a judicial branch that did not give life and meaning and substance to what we do in the legislative branch. The executive branch proposes, obviously, and leads in great measure, and then we obviously will legislate. But none of it will ever bear fruit without the judicial branch.

It is one of the most important duties that the legislative branch has as part of the checks and balances system to review these nominees. My colleague from California, I think, put it very well, it is a job interview. It a little more sophisticated. There is pomp and circumstance, it is ceremonial in nature, but that particular hearing really is a job interview. The advise and consent function is a job interview, no more and no less. Important, yes.

There is an individual who, for whatever reason, seeks this nomination and appointment. It seems only fair that those qualifications of that individual will be subject to scrutiny. So we will have a formal hearing in the other Chamber.

It is so important that anyone appearing in this process that will subject himself or herself to that process be forthcoming. You ask, well, what is relevant, what would be relevant that one would ask someone who aspires to put on those black robes and interpret and apply the laws of the United States, statutory and constitutional?

You can have a good faith disagreement as to what might be appropriate or not, but we have not had that debate. No one has really said that the questions posed to Miguel Estrada are inappropriate. No one has said that these questions should not be answered. They have not been answered, but no one has said these are not relevant to judging this individual's qualifications to hold this particular

judgeship, which truly is the second most powerful court in the United States of America, second only to the Supreme Court of the United States. We have never gotten to that.

The duty and responsibility of advise and consent has to be done knowledgeably and informed, and that is where we are today. We are at an impasse, because we have certain individuals that are saying we do not have the necessary information in order to fulfill our constitutional duties, and that is what this argument is all about.

I will go into detail, into the questions that the Congressional Hispanic Caucus were able to pose to Mr. Estrada, and I believe we probably got more information than anybody else that has ever interviewed Mr. Estrada for this particular position.

But this job interview, if you are interviewing somebody, the first thing you are going to ask is what do you know about this job that you seek? Is that so unusual? In this case you would say, what is your judicial philosophy. What is your understanding of the workings of the court? What is your understanding of this third branch of government? Is there something so foreign, so inappropriate, so irrelevant, so immaterial to that question? Of course not.

But you would be surprised that we have not really had anything definitive in response to the question of that nature, which I think goes to the very heart of how one views himself or herself in a particular role. But in the bigger picture as a member of a co-equal branch of government, how you view the job, how you view it, but also a historical perspective.

Are we holding a minority to a higher standard or a different standard than anyone else? No. The President of the United States has indicated, and in this particular appointment has made it very clear, that this is important to the Hispanic community and important to the entire United States because it represents diversity. That wonderful word, diversity. But, standing alone, it has no meaning.

□ 1600

Diversity means that an individual brings a particular viewpoint or experience which enriches that particular job, that particular environment, those particular duties and responsibilities. Otherwise, what is diversity all about? We seek diversity because someone brings a different viewpoint or life experience to round out and make more full and complete that environment; in this case, the judicial branch.

This is not to say that a minority nominee had to have suffered through extreme poverty and hardship; has to be completely fluent in a foreign language, Spanish. No, not at all. It does not mean they have to be a Democrat or a Republican, a liberal or a conservative.

What it does mean, though, is that they have an appreciation for the His-

panic or Latino experience in the United States of America and the direct roles that the courts have taken in shaping that experience for the good and for the bad.

Where are we today? History is prologue, and we have to have an appreciation for what the legal system has meant to minorities in this country. No matter how well intentioned a chief executive may have been, no matter how well intentioned a legislature may have been, it has been the courts, in the final analysis, that have really provided the equal rights, the civil rights, the opportunities to minorities in this country of ours. It looms large, larger than it ever has, because we finally are saying that all branches of government should reflect the diversity of this great country. That is all we are asking here.

So it is interesting that when the Congressional Hispanic Caucus interviewed Mr. Estrada that we did ask these questions. We did ask him how he viewed his role as a judge by the fact that he is a Hispanic and was touted as a Hispanic nominee by President Bush. The response was that it would be irrelevant.

To a certain extent, I understand that response. It does not necessarily define one, it should not limit one; but, by the same token, it should not render one irrelevant. What one brings to the table is an appreciation for the roles of the courts in the minority communities. One did not have to experience it oneself. One did not have to be a plaintiff, but surely one understands the landmark cases on which our communities rely day in and day out to make sure that the children in our homes are extended equal opportunity in the schools and for health care, jobs, on and on. That did not happen.

If someone comes in and we are interviewing him for a job, we would think there was a tremendous interest and desire for that job; that somehow they ended up before us because they were seeking it. When we asked Mr. Estrada about his aspirations and desires, career aspirations, he said he did not seek this position; that they sought him, that the administration sought him out.

Standing alone, that is fine, but it is cumulative in nature. Why did the administration go out on such a search when we have many qualified Hispanics out there who would do anything for this type of nomination, highly qualified people, experienced, with judicial experience?

Mr. Estrada does not have any judicial experience; but on that alone I would stand here and tell Members that I do not think it is an asset, but I do not think it should be determinative of whether he would become a Federal judge or not. We have many judges that have had no judicial experience who, seeking appointment, are appointed and confirmed, and have made wonderful jurists.

But it is cumulative, because there is no record there. When an individual is

not forthcoming in responding to questions that are posed that are relevant and material, and there is no record, no judicial decisions and so on, what do we have?

We do have memoranda that were prepared by this particular nominee, but they are not going to be released for review by Members of the other Chamber. There is not enough information at this point for them to truly, responsibly, and on an informed basis fulfill their duty of advise and consent.

But the specific questions we did ask Mr. Estrada, I think, are very telling. There should be some understanding of that great body of law that has impacted minorities more so than anyone else. That was not present. There has to be an appreciation for the legal difficulties that minorities still face in this country, because that is a fact. It is a sad fact, but one that we address day in and day out in our courtrooms. That was not present.

Based on that interview of over an hour, the Congressional Hispanic Caucus unanimously wrote to the committee in the other Chamber saying that we would oppose Mr. Estrada's nomination to the circuit Court of Appeals for the District of Columbia. We feel more strongly today than we did then. That was back in June and July of last year. There has been no new information that addresses any of the concerns of the caucus; and we do represent the minority communities, Latino minority communities, in this country. The caucus is comprised of 20 of the 24 Latino Members of this House.

Why should we know an individual's philosophy and understanding as it relates to the third branch of government, the judicial branch? It is not complicated. All judges take an oath that they will uphold the Constitution of the United States and such. All judges will say they will be fair and impartial. All judges say they will strictly interpret the Constitution and the statutes, and follow the common law to the extent that it has been codified one way or the other. That is nothing new. They all say that.

But the truth of the matter is that judges are human beings. They are the sum total of their life experiences and their education. When they discuss that judicial philosophy, we learn a great deal. We are not asking them how they will rule on a case, because that would be truly improper.

Felix Frankfurter said this: "Law touches every concern of man. Nothing that is human is alien to it." Judges have tremendous power. They have tremendous discretion. They have powers of logic and rationale, deductive reasoning, and interpretation and application of the law. If it was a simple matter of opening the law book or reading the case and reaching a conclusion, then we would have machines simply judging all cases; but there is discretion, and there are varying degrees of interpretation and application.

The President of the United States today enjoys that office as a result of a

five to four Supreme Court decision. If the law was so simple and the facts were so clear, how could we have five to four decisions? Because there is discretion, because there are different philosophies and views.

What we are hoping is that a judge will keep an open mind on an issue. That is what we seek in this particular nomination. Remember, and I will say it again, as Justice Frankfurter once said, "Law touches every concern of man. Nothing that is human is alien to it." The judge is human, and what he does touches every activity of our lives.

The Circuit Court of Appeals for the District of Columbia is a lightning rod. It will hear cases that will resonate and affect individuals throughout the United States, more so than any other circuit court, if Members understand the scheme of the circuit courts, because jurisdictionally, venue will lie with them when it comes to major decisions regarding governmental policy, the execution and implementation by the regulatory agencies, the departments of our government. This is a most important nomination and appointment process, and we must not fail to fulfill our duties. That is what this debate is all about. Some have cast it in some terrible terms.

When I was first elected and I was there with some of my fellow freshmen in the back, we all in our previous lives had been lawyers. I had been a State district judge, and we had a former district attorney and another prosecutor. We were talking about what a great honor it is to serve in the legislative branch, but we were wondering which of the three branches of government was the most powerful.

I was outnumbered. My dear colleague, the gentleman from Oregon, and my dear colleague, the gentleman from Kansas, pointed simply to the fact that this House appropriates. We hold those strings to that money bag; and if we wanted to, we could simply starve another branch of government, if we wanted to.

That is not exactly true, by the way. When it comes to the courts, there is something referred to as the "inherent power of the courts." It is understood that, by mandate and fiat, a court can order what it takes for it to survive. I am not sure on the Federal level, because we ran into this on the State level, whenever we had commissioners or legislators on the State level and county level that would not fund the courts properly for many reasons. The inherent power of the court is that it will not depend financially on another branch of government for its existence. So I was telling them, take that argument away.

Let us go to the next one. I earlier touched on that. It does not matter what the President may propose in his agenda, it does not matter what we adopt in the House or in the Senate, if it is well intended and it reflects the will of the people, because we were

properly elected; but it will be an appointed individual who will breathe life into our legislation, that will interpret it and will apply it, who will decide whether what we have done in this Chamber is constitutional or unconstitutional.

They will pass judgment on the legitimacy of our actions in this body. As a matter of fact, they will also determine whether someone will sit in this body. They will determine how our districts are configured. They will determine who is eligible to vote. They will even determine who has won an election.

I still like to think that I won that debate; but if we ask my colleagues, I believe they still believe that the strongest and most powerful branch of government remains the legislative. I do not share that. We could be stopped in our tracks today by a ruling from a Federal court. We could be stopped in our tracks today by a ruling from the Supreme Court of the United States.

That is as it should be. This Nation is really about the rule of law and not of man. We have heard that often. What do we mean by that? Let us harken back to December of 2000, when the Supreme Court ruled, based on Florida statute and the Constitution of the United States of America, that the winner in essence would be George Bush and that he would ascend to the Presidency.

If that does not demonstrate what power the courts have in this country, I have no idea what would be a better example.

But that is the issue before us today. That is why our Founding Fathers, in the scheme of our constitutional system, said we cannot let one branch really dictate how the other is going to be composed. Should we have the executive branch independently determine what a third branch of government will look like, the judicial branch? The answer was no. We will bring in the legislative branch, one of the chambers, to advise and consent. Checks and balances. It has served us well. It has served us well when the nominees are forthcoming in answering questions that are relevant and material to their performance. That is the argument today. That is how we are framing this debate, unlike many others out there.

I want to end this as far as describing what is going on and what is really at stake. This is not an attack, this is not a criticism, of an individual's integrity or character; that is not the issue. It is a given that anyone nominated by the President of the United States to a Federal bench is a man or woman of integrity and character. It is a given that anyone nominated to the Federal bench by the President of the United States has had a good education, got out of law school, passed the bar, and distinguished himself or herself in private practice or in Federal service or State or county service.

Those are givens. Let us expect that. The people expect that. We have the best and the brightest available, so let us take them.

But where we start drawing that line, just because you are bright, you graduated from law school, passed the bar and such, and you were successful in your profession does not mean that you will make a good judge. I guarantee Members, talk to any practitioner out there. There is judicial temperament, there is understanding of the role, there is relevancy, there is history, all combined.

□ 1615

And that is where we find ourselves today with this particular debate and it is a legitimate one. And we should be taking the high road rather than casting aspersions as certain individuals have. Let us not politicize this. Let us all meet the challenge of our responsibilities and duties under the Constitution. That is what we should be doing.

There should not be one nominee for any bench, whether it is a municipal court, a county court, a district court or any State court, or on the Federal level, that does not understand what I am about to read. There is a wonderful book "The Fixer" by Bernard Malamud. It takes place in Russia. And we have an individual who was of the Jewish faith, who is basically a handy plan. He is a fixer. He fixes all these things. He ventures out of his small town to strike out on a new adventure to improve his life, and he is wrongly accused of a crime, and he is imprisoned with no hope, no hope that he is going to get any fair treatment.

The state actually investigates you and the chances that the state is going to be impartial and fair are barely nil, but there is this investigator person who takes a great interest in the life of this man and wants to exonerate him because he is truly innocent, and this man does not understand why someone would take such an interest in his life. And this is what this government official investigator, prosecutor, whatever you want to call him. This is what he tells that prisoner behind those bars:

"There is so much to be done that demands the full capacities of our hearts and souls, but truly where shall we begin? Perhaps I will begin with you. Keep in mind that if your life is without value so is mine. If the law does not protect you, it will not, in the end, protect me. Therefore, I dare not fail you. And that is what causes me anxiety, that I must not fail you."

This is what this nomination is all about. Individuals that will be nominated to courts, such as the Circuit Court of Appeals for the District of Columbia, need to understand the essence of this quote, the essence of this lesson here, and that is that the world is much bigger than all of us, but still part of us, and that our individual experience is brought to bear every day and that we should have some sort of understanding of the leadership of our role when we put those black robes on, the experience of individuals that come before us, especially minorities. For if

you protect and understand the rights of the minority, the majority will always be well served.

FAIRNESS TO MIGUEL ESTRADA
AND TO ARMED FORCES

The SPEAKER pro tempore (Mrs. MILLER of Michigan). Under the Speaker's announced policy of January 7, 2003, the gentleman from Georgia (Mr. KINGSTON) is recognized for 60 minutes as the designee of the majority leader.

Mr. KINGSTON. Madam Speaker, it is great to be here. And I am always so proud to have an opportunity to come down on the floor of the United States Congress and have an opportunity to debate topics of the day, and I do so with great respect to anybody who has the opposing view.

Madam Speaker, I notice my friend, the gentleman from California (Mr. CUNNINGHAM) is here. Maybe he is going to join in. He is going to be talking about aviators later on.

I do want to say a few comments on a number of topics. One of the things I want to talk about this Miguel Estrada nomination is, I think, it is ironic that here we are, we have the guy who has been rated was one of the most highly qualified by the American lawyers, by the American Bar Association. Here is a guy who graduated from Harvard magna cum laude, editor of the Law Review. He has argued 15 cases before the Supreme Court, and yet our Democrat colleagues and liberal colleagues are so offended by his success that they are holding him up in the face of war, troops overseas, national security, and economy that is in the tank.

How absurd is it, Madam Speaker? I wanted to give you this. The liberal Democrats over in the Senate have objected and we want to give you some hours, 6 hours of debate was not enough. That was on February 6. So they went to 8 hours.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair must remind Members to avoid improper references to the Senate.

Mr. KINGSTON. Madam Speaker, liberal Democrats did not want to debate it for 10 hours so they went to 12 hours. That was not enough. So the next day on February 11 they went to 6 hours. It was not enough. They went to 14, then 24 hours, then 44 hours, and then on the 12th 6 hours.

PARLIAMENTARY INQUIRY

Mr. KINGSTON. Madam Speaker, I am not allowed to say U.S. Senate?

The SPEAKER pro tempore. The gentleman may refer to the existence of the Senate, but may not characterize Senate action or inaction.

Mr. KINGSTON. So you have this other body and they have already spent 85 hours debating a guy who the American Bar Association has rated as one of the most highly qualified. He has worked under the Clinton administration. He has worked under, I think, even the Carter administration. This

guy came to America when he was 17 years old. He was raised in Honduras, did not speak any English. He graduates from Harvard. He is a distinguished lawyer by anybody's measure. And the only thing the Democrats want to do is debate him. Bush wants to put in his own team. We have a war going, but this is the number one issue now for the liberal Democrats.

Madam Speaker, I yield to my friend from California (Mr. CUNNINGHAM).

Mr. CUNNINGHAM. Madam Speaker, I thank the gentleman for yielding.

I have got better things to do than stay up at night and watch C-SPAN. But I was captivated. I watched the gentleman from the other body debate this issue. The other body Democrats stood up and said, well, he never answered the questions. The gentleman from Ohio who was not even at the meeting, he was there for a few minutes and left, did submit questions at the end, said he never answered the questions. The Chairman of the Judiciary in the other body stood up and read every single one of the questions that the Democrats asked for.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The gentleman may not refer to individual Senators.

Mr. CUNNINGHAM. I did not think I did.

Anyway, someone over there asked for every question. And every response that Mr. Estrada gave was presented. They were A-plus answers. And now my colleagues on the other side, I just asked the gentleman, I said, did you invite any outside people within this caucus to listen to Mr. Estrada? Of course not. The answer is no.

The memo to the other body was written before the caucus meeting ever took place.

We are watching the same thing as we did in the Clinton, what is the word I am looking for?

Mr. KINGSTON. Investigation.

Mr. CUNNINGHAM. Investigation. We are watching them gang up. They are being good little soldiers, supporters, the other body.

Every paper, The San Diego Union, The San Francisco Chronicle, The Washington Post, The Washington Times editorializes against their position. They have drawn a line in the sand against someone that may be a little more conservative than they are.

Mr. KINGSTON. It is ridiculous, though, because as I understand it, most Hispanic and Latino national organizations have endorsed Estrada. And yet our friend from Florida (Mr. MARIO DIAZ-BALART) says, Well, his big problem is he is not Hispanic enough.

Now this is from a guy who is raised in Honduras, but he is not Hispanic enough for the liberals. As the gentleman also said, they do not even know how to speak Spanish themselves but they are telling somebody else that he is not Hispanic enough.

The reality is, this is a very strong guy but they cannot stand the fact

that there might be a minority group getting off the plantation. And that is the reality of it. It is a sad, sick commentary.

Mr. CUNNINGHAM. It is very sad.

Watching C-SPAN, I watch the other side in the other body point by point come out and accuse Republicans. And every single point was countered by the chairman.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair reminds the gentleman not to characterize Senate action.

Mr. KINGSTON. I guess the problem though really is what is his crime? The crime is he is Hispanic and in the liberal welfare support society out there, if you are a minority group in America, you are supposed to think and act in a certain way, and if you do not, by golly, look what happens.

My friend, Clarence Thomas from Sandfly, Georgia, he went through the same living hell and personal accusations and everything else because he was an African American and did not believe in everything that he was told he was supposed to believe in. His problem was he was an independent thinker. And I guess Estrada is an independent thinker who does not look to liberal institutions to tell him how he is supposed to think and behave and that is what this is about.

Mr. CUNNINGHAM. I think it is very telling that most of the other Hispanic associations are endorsing this individual, but our House caucus is opposing it. Why?

The gentleman over there a minute ago mentioned that memoranda was not available. Well, again, the other body presented all of the facts that none of the confidential memoranda, not once in the history of confidential memoranda had ever been released. Well, the Democrats in the other body came forward and said, well, here is a case in this and here is a case where it was released in these individuals. Again, in the other body's side they pointed out that none of this memoranda was confidential. And so for my Democratic colleagues over here in their partisan bid to support the other body, it is just wrong when the rest of the world is saying you are wrong. At least let them vote.

And something else that the other body pointed out was that they opposed at different times Hispanic candidates. That is fair. But at least let it come to a vote. The two that they opposed are now sitting on the Ninth Circuit Court in California because they allowed a vote. What my colleagues are doing by filibustering is preventing totally a vote on this issue which has never been done in the history of Congress.

Mr. KINGSTON. And I agree with the gentleman. By golly, vote yes, vote no, but have the guts enough to vote. Do not hide behind parliamentary procedures.

One of the charges against Mr. Estrada is that he does not have judicial experience, and yet I believe there