both of her home State Senators, she was never given a vote.

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

Mr. LEAHY. I will support Steven Colloton.

Mr. GRASSLEY. Madam President, I urge my colleagues to support an excellent judicial nominee for the U.S. Court of Appeals for the Eighth Circuit. Steven Colloton is an outstanding individual with an extensive record of public service and impressive legal career. I am glad that the Senate is finally voting on this nomination.

Steve Colloton is an Iowan, born in Iowa City. He graduated from Princeton University and Yale Law School. He served as a law clerk to Judge Laurence Silberman on U.S. Court of Appeals for the D.C. Circuit, and then as a law clerk to the Honorable William Rehnquist, Chief Justice of the U.S. Supreme Court. Subsequently, Steve Colloton worked as an attorney with the Office of legal Counsel at the Justice Department and than as an assistance U.S. attorney in the Northern District of Iowa for 8 years, with a brief detail as an associate independent counsel in the Office of Independent Counsel. From 1991 to 2001, he was partner at a law firm in Des Moines, IA.

After the 9/11 terrorist attacks, Steve Colloton returned to government service and was unanimously confirmed by the Senate to the position of U.S. Attorney for the Southern District of Iowa. There he has focused his efforts on combating crime and enforcing drug laws, as well as fighting terrorism. He has done a great job serving our country as an Iowa U.S. Attorney.

In addition, Steve Colloton has many strong supporters. Twenty-seven past presidents of the Iowa State Bar wrote that ''the exceptional quality of Mr. Colloton's experience, together with its relevance to this position, uniquely qualifies him to represent Iowa on the United States Court of Appeals.''

Members of the Polk County Chiefs of Police and Sheriff's Association wrote, ''Steve Colloton is the right choice for the Eighth Circuit Court Judge position, and we fully endorse President Bush's nomination.'' Even people who have worked on the other side of Steve Colloton think very highly of him. George Collins, the attorney for Jim Guy Tucker, wrote, ''I am convinced Steve Colloton is an honorable man, and that, when cases come before him, he will call them as he sees them. . . . I believe that his case will be decided on the law, and, to the extent applicable, the facts. . . .'' These quotes show just how much confidence people have that Steve Colloton will make a good Eighth Circuit judge.

Steve Colloton has all the right qualifications to be a Federal judge. He is a bright lawyer with tremendous legal experience and who is well respected by his peers. He is a man who will follow the law and have a healthy respect for case precedent. He understands that the role of a judge is to interpret the law, rather than create it. Steve Colloton will make an excellent judge on the Eighth Circuit, and I urge my colleagues to join me in supporting his nomination.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Steven M. Colloton, of Iowa, to be United States Circuit Judge for the Eighth Circuit? The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

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

The result was announced—yeas 94, nays 1, as follows:

[Rollcall Vote No. 327 Ex.]

YEAS—94

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

NAYS—1

Hollings

NOT VOTING—5

Edwards	Kerry	Miller
Graham (FL)	Lieberman	

The nomination was confirmed.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the President is notified of the Senate's action and the Senate returns to legislative session.

Mr. DASCHLE. Madam President, I will have a short statement but I ask unanimous consent that, following that, Senator HATCH be recognized for a statement as well.

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

CONGRATULATIONS, SENATOR LAUTENBERG

Mr. DASCHLE. Madam President, I congratulate our friend and colleague, FRANK LAUTENBERG, on reaching a historic milestone: With the last vote, Senator LAUTENBERG became only the fourth New Jersey Senator in history to cast 6,500 votes in the Senate. Not bad for a freshman.

That incredible accomplishment is a reflection of Senator LAUTENBERG's deep commitment to his State, to his Nation, and to this Senate. One of the many reasons we are grateful he decided to end his retirement and return to the Senate is, over one 3-year period, covering the second session of the 101st Congress and both sessions of the 102nd Congress, Senator LAUTENBERG did not miss one vote. Out of 876 cast, he did not miss 1 single vote. The following year, he missed only 1 of 394 votes cast. He is what we all know to be a workhorse.

I am not sure if we should call him New Jersey's senior Senator or New Jersey's junior Senator, but there is no doubt he is a remarkable Senator.

I congratulate him again on this milestone. I look forward to seeing him cast many more votes in this Chamber. Congratulations.

I ask unanimous consent that Senator LAUTENBERG be recognized for a couple of minutes to respond.

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

Mr. LAUTENBERG. I thank our leader, the Democrat leader, for the kind comments, and my colleagues, some of whom are more accustomed to differing with me than applauding for me, but I respect their views when they register a vote and I am sure the feeling would be returned.

I thank all of my colleagues for their many indulgences and their encouragement and willingness to take me back because here I stand in probably another record, maybe the oldest freshman who ever served in the Senate. I feel fresh, and I am glad to be here. I thank all of my colleagues for their friendship.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I compliment my colleague from New Jersey and am very proud of him for having cast those many votes.

I ask that my remarks be as in morning business.

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

WITHDRAWAL OF ESTRADA NOMINATION

Mr. HATCH. Madam President, I rise today to speak on the unfortunate

withdrawal of the nomination of Miguel Estrada for the United States Court of Appeals for the District of Columbia Circuit. It is truly a sad record that the Senate, for the first time ever, has terminated a circuit court nomination by filibuster rather than by an up-or-down vote. It is particularly troubling that political tactics were used to destroy this extremely qualified nominee.

Let me state that a clear majority of this body supported this nomination, as has been demonstrated in the unprecedented seven cloture votes which have taken place. So it is regrettable that a minority of Senators followed their script of extraordinary obstructionism to prevent the Senate from concluding the debate on this nomination and proceeding to a final vote. It goes against all the honorable traditions of this body for Senators to rest behind a veil of procedural votes rather than taking a public stand on the merits of this outstanding nominee.

After all, all he or any of us wanted was an up-or-down vote, something we have always given every nominee who has come to the Senate floor and has been called up on the Senate floor.

While it is shameful that Miguel Estrada was subjugated to political whims, it is not entirely surprising. Opponents from the very outset, for their own ideological purposes, have been determined to defeat this nomination. Last fall, a Democratic staffer on the Judiciary Committee was quoted in the Nation magazine as saying:

> Estrada is 40 and if he makes it to the circuit then he will be Bush's first Supreme Court nominee. He could be on the Supreme Court for 30 years and do a lot of damage. We have to stop him now.

So it appears that the real reason for the filibuster against Miguel Estrada was the concern by opponents of a possible Justice Estrada on the U.S. Supreme Court.

An editorial appearing in the Atlanta Journal-Constitution said it best:

> The fear with Owen and Estrada is that one or both will be nominated to the United States Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the circuit court bench any perceived conservative who has the credentials to serve on the United States Supreme Court.

There is an additional factor not based on any substantive objection to his nomination. I believe some Senate Democrats do not want the current President, a Republican President, to appoint the first Hispanic as the U.S. Circuit Court Judge for the District of Columbia Circuit. Let me read from an editorial published by the Dallas Morning News addressing this point. On February 17, 2003, the News wrote:

> Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology—which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods when he goes into his reelection campaign next year. They are even less interested in putting a conservative Republican in line to become the first Hispanic Justice on the Supreme Court.

In an effort to prevent Mr. Estrada's confirmation, his opponents resorted to a number of troubling tactics. During his hearing there were frequent attempts to inject political ideology into the judicial nomination process. This was most evident as related to questions about his views on Roe v. Wade, the apparent litmus test for many Senate Democrats.

In response to this concern, he offered cases he had taken on as an attorney to illustrate his commitment to following the law instead of imposing any political agenda. He also testified under oath that he would follow Roe and Casey if he were confirmed. But even his outstanding record and testimony before the committee was apparently not enough to satisfy those determined to destroy his nomination.

Opponents repeatedly raised red herring issues with two additional demands. One was that Mr. Estrada answer their questions, though the record is clear that his responses were complete. Mr. Estrada spent hours during a day-long hearing answering my Democratic colleagues' questions. He answered written questions submitted after the hearing, although only two, only two committee Democrats bothered to ask him written questions.

He gave answers to questions that were substantially similar to answers given by Clinton nominees who were confirmed. Yet my Democratic colleagues continue to complain that he had not answered their questions. Really, their complaint is that in answering their questions, Mr. Estrada did not say anything that gave them a reason to vote against him. Simply put, they were not really interested in his answers to their questions. They were interested only in defeating his nomination.

This is why every effort to make Mr. Estrada available to answer additional questions has gone virtually unacknowledged. Only one Democratic Senator met with Mr. Estrada and only one submitted written questions to Mr. Estrada after the floor debate on his nomination began.

Their second demand was the unreasonable request that the administration release confidential internal memoranda he authored at the Solicitor General's office. This issue has been fully debated. The short response is that never before has a Presidential administration released confidential appeal, certiorari and amicus recommendations on the scale that my Democratic colleagues sought from Mr. Estrada. They attempted a full-scale fishing expedition, pure and simple, and the Justice Department was right to oppose it.

Furthermore, this demand constituted a double standard for Miguel Estrada. The Judiciary Committee confirmed numerous Clinton circuit court nominees who, like Miguel Estrada, had no prior judicial experience. A number of these nominees had worked in the Justice Department or other branches of the Federal Government, but Senate Democrats made no demands for their confidential memoranda or privileged work product. Yet Senate Democrats persisted in this demand, knowing full well that for sound reasons the administration, with the support of all seven living former Solicitors General, both Democrat and Republican—four of them were Democrats—would not and could not accede to that request.

When all other tactics failed, opponents turned to their ultimate weapon, the filibuster. Filibusters of judicial nominees allow a vocal majority to prevent the majority of Senators from voting on the confirmation of a Federal judge, a prospective member of our third, coequal branch of Government. It is tyranny of the minority and it is unfair to the nominee, to the judiciary, and to the majority of the Members of this body, and to the President. The unprecedented filibuster of Mr. Estrada was certainly unfair to a majority of Senators who stood ready to fulfill their constitutional responsibility by voting on Mr. Estrada's nomination.

It has been more than 2 years since Miguel Estrada was nominated by President Bush, on May 9, 2001, and nearly a year since his hearing before the committee. In all of that time, my Democratic colleagues had unlimited opportunities to make their case. Some of them opposed him. Others supported him. But one thing remained clear through this whole debate: There was no good reason to deny Mr. Estrada an up-or-down vote, the dignity of an up-or-down vote.

On the merits, Mr. Estrada was extremely qualified to serve on the court to which he was nominated. The qualifications of Miguel Estrada are well known to the Senate. He represents an American success story. After immigrating to the United States, after overcoming a language barrier and speech impediment, he graduated magna cum laud and Phi Beta Kappa in 1983 from Columbia College. At Harvard Law School he was an editor of the Harvard Law Review and graduated magna cum laude in 1986.

Mr. Estrada's professional career has been marked by one success after another. After graduation, he clerked for Second Circuit Judge Amalya Kearse, a Carter appointee and then Supreme Court Justice Anthony Kennedy. He worked as an associate in the distinguished firm of Wachtell Lipton in New York. He then worked as a Federal prosecutor in Manhattan, rising to become deputy chief of the appellate division. In recognition of his appellate skills, 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

the Solicitor General's office, he joined the DC office of Gibson, Dunn & Crutcher, one of the great law firms in this country, where he continued to excel as a partner and rose to the top of the ranks of oral advocates nationwide, having argued 15 cases before the U.S. Supreme Court.

The legal bar's wide regard for Mr. Estrada is reflected in his evaluation by the American Bar Association. The ABA evaluates judicial nominees based on their professional qualifications, their integrity, their professional competence, and their judicial temperament. Based on an assessment of all of those factors, the ABA bestowed upon Mr. Estrada its highest rating of ''unanimously well qualified.''

Yet despite the superb record of Miguel Estrada, opponents chose to deny him a simple up-or-down vote, injecting politics into the judicial confirmation process. Opponents have not only treated Miguel Estrada unfairly; they have further damaged this process.

One casualty is enough. I hope all Senators will consider the dangerous ramifications of the actions of the Senate in causing Miguel Estrada to withdraw his nomination through the use of the filibuster. This should never happen again.

Just one other thing on this. He was asked to comply when he couldn't do it, with a fishing expedition into the Solicitor General's most privileged documents, documents that have never been given in toto as requested by the Democrats, never before. Four Democrat former Solicitors General said they would never give these documents. Those Democrat former Solicitors General and three others said they opposed the release of these documents.

If this was a legitimate request, why didn't they ask for similar documents in the case of John Roberts? In other words, Miguel Estrada was treated completely different from other people. Why didn't Senate Democrats ask for these documents in the case of others through the years who worked in the Solicitor General's office? It was just a red herring that some in the media bought off on, to prevent this man from ever having the dignity of an up-or-down vote on the Senate floor.

The reason they prevented that is because they knew he would have won and he would have won a bipartisan vote in the Senate.

Frankly, filibusters should never occur again. Yet more judicial nominees face continuing filibusters on the Senate floor. We will soon once again put to the test the respect the Members of our body have for our constitutional duty to advise and consent on judicial nominations. We will continue to file for cloture to end debate and to give Priscilla Owen, Bill Pryor, and other judicial nominees that the left is intent on blocking the up-or-down votes they deserve.

These are outstanding nominees. Priscilla Owen broke through the glass ceiling, becoming one of the great partners of a major law firm in this country, and broke through the glass ceiling for women, yet she is being treated like dirt on the Senate floor. Also, Bill Pryor, who has more than shown his propensity to always follow the law, even though the law may differ from his own personal, deeply held beliefs.

There are, no doubt, factions of far left interest groups that are delighted to see Miguel Estrada has withdrawn his nomination. These same groups no doubt will declare victory and mount even more vigorous campaigns in an effort to ensure that other judicial nominees suffer the same fate. From what I understand, some of my colleagues in the Senate share those sentiments. But let me tell you right now, this is no occasion for celebration. We should be embarrassed that Miguel Estrada, having had enough of serving as a political football instead of as a Federal judge, decided to end his nomination. And we should be embarrassed of the continued attempts to usurp the nomination function from the President and the consent function from the Senate majority.

We should not stand back and allow a minority of Senators to prevent an up-or-down vote on any judicial nominee and especially those once they have come to the floor.

We should not inflict upon Priscilla Owen, Bill Pryor, or any others the same shabby treatment that led Miguel Estrada to withdraw his nomination. These all deserve better. And nominees in the future deserve better. The majority of the Senate that stands ready to confirm the ones I have mentioned deserve better. Most importantly, the American people expect their Senators to hold up-or-down votes on judicial nominees and deserve the opportunity to hold their Senators accountable for the votes they cast on the President's judicial nominees.

I have been around here a long time. Both sides have committed errors with regard to judicial nominees over the years. But nothing has ever reached the dimensions of what has been done to Miguel Estrada. Nothing has even come close. He has been treated in an especially onerous way that no other nominee I know of in the history of the Senate has been treated. He has been singled out primarily because he was viewed as being on the fast track to the Supreme Court, and because he is a conservative Republican Hispanic who might be pro-life and who is on the fast track to the Supreme Court. I don't think anybody who is honest can refute that statement.

I think it is pitiful what has happened. I just hope we wake up in this body and start treating people with fairness which the advise and consent clause of the Constitution demands. I hope that works on both sides.

There were those who wanted to filibuster on our side during the Clinton years. We stopped it. We were not going to set that precedent, nor were we going to do that type of activity. Frankly, everyone who came to the floor had a vote, and only one, if I recall correctly, was defeated by an up-and-down vote. But at least he had a vote. And Miguel Estrada deserved that just as much as any of the past nominees.

Mr. MCCONNELL. Madam President, will the Senator yield?

Mr. HATCH. Yes, I yield for a question.

Mr. MCCONNELL. I ask my friend from Utah, the chairman of the Judiciary Committee, if it is the case that the President's nominee, John Roberts, and the President's nominee, Miguel Estrada, both served in the Solicitor's Office at some point in their careers?

Mr. HATCH. They both did, and both were nominated at the same time, over 2 years ago.

Mr. MCCONNELL. I ask my friend from Utah, the chairman of the Judiciary Committee, if it is also true that the internal work product documents that were requested of nominee Miguel Estrada were not requested of nominee John Roberts.

Mr. HATCH. Absolutely right. They were not requested. There was a different standard used with regard to Mr. Estrada—a very unfair standard knowing that the Solicitor General's Office could not allow a fishing expedition into those documents.

Mr. MCCONNELL. Is it not the case that every former Solicitor—most of whom are Democrats—had the view that these internal working documents should not be shared?

Mr. HATCH. That is correct. Four of the seven former Solicitors General who are living today are Democrats, and all seven of them came out and said that these documents should not be given to the Senators of the United States because of their sensitivity and their privileged nature.

Mr. MCCONNELL. Is it also not true that nominee John Roberts was confirmed unanimously?

Mr. HATCH. It is true that he was confirmed unanimously.

Mr. MCCONNELL. We all know that Miguel Estrada was filibustered to the point where he subsequently withdrew today.

Mr. HATCH. The Senator is correct.

Mr. REID. Madam President, will my friend from Utah yield for a question?

Mr. HATCH. If my friend from Kentucky has concluded.

Mr. MCCONNELL. I thank the chairman of the committee for yielding so we could point out the differences in treatment between these two nominees with very similar backgrounds and who were nominated for the same court at the same time.

Mr. HATCH. The illustration should not be limited to just John Roberts and Miguel Estrada. There are a number of people who are on the Federal bench and who have served on the Federal bench who also served in the Solicitor's Office who were never asked those questions, and rightly so. They should

never have been asked. It was a red herring that many of my colleagues hid behind to justify this outrageous and, I think, shabby treatment of Miguel Estrada.

I yield to my friend for a question.

Mr. REID. Madam President, I understand the strength and feeling of the Senator from Utah and the Senator from Kentucky. The record has been spread with that for many months now. I would only say if the Senator wants to speak more, we have no problem.

Mr. HATCH. I yield the floor.

Mr. REID. Madam President, I draw the attention of my colleagues to the same statement which I made earlier today in response to the remarks of Senator FRIST about Miguel Estrada.

Madam President, I ask unanimous consent that a CONGRESSIONAL RECORD statement made by Senator FEINSTEIN on February 13, 2003, on the nomination of Miguel Estrada be printed in the RECORD.

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

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

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

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

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

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

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

Although I believe that every nominee deserves an up-or-down vote, an up-or-down vote on final confirmation should only occur after the Senate has had a full opportunity to learn about the nominee and to properly judge whether or not that nominee can serve impartially in the Federal judiciary. In this case, I don't believe we have enough information to make such a decision, as a direct result of the lack of cooperation by this nominee and by the White House. As a result, we should not be asked to make such an important decision.

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

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

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

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

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

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

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

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

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

So the question is not whether this nominee—or any nominee—is liberal or conservative, White or Hispanic, Jewish or Catholic, or any other group or inclination. The question with this nominee—and with every nominee—is whether the nominee can put aside personal beliefs to rule fairly and impartially on the cases that come before him or her.

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

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

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

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

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

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

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

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

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

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

For instance, when Senator Durbin asked this nominee, in writing: ''Do you have an opinion on the merits of Roe v. Wade?'' Mr. Estrada responded, as he did to me in committee, ''it would not be appropriate for me to express such a view without doing the intensive work that a judge hearing the case would have to undertake—not only reading briefs and hearing the arguments of counsel, but also independently investigating the relevant constitutional text, case law, and history.''

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

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

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

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

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

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

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

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

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

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

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

He did not simply say he thinks Plessy v. Ferguson was wrongly decided. That is the case that upheld the concept of separate but equal. And even the Supreme Court has since overturned it. I know of few people who would claim Plessy was correctly decided. But Miguel Estrada apparently thinks he could not say so without having heard the oral arguments. He did not say he disagreed with the Dred Scott decision, which upheld slavery. He did not say he believed Korematsu, which upheld the right of the United States to put American citizens of Japanese descent into internment camps. He named none of these cases. He simply said he could not answer the question.

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

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

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

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

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

In Miguel Estrada's questionnaire, he admitted to having written no books, articles, or reports of any kind, save one Law Review article in law school. That was titled ''The Policies Behind Lending Limits.'' He wrote that in 1985. At Miguel Estrada's hearing, he would not comment on whether any case had ever been wrongly decided, even cases that have been overturned. He would not name any single judge he would want to emulate on the bench in any way. He would not answer written questions put to him that would help us learn more about how he thinks about cases and how he would judge them. He would not even try to convince the Justice Department to turn over some of the memos he wrote for the Solicitor General's Office, nor would he himself turn them over.

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

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

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

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

I would like to read the concluding sentence from the editorial in today's New York Times: 6

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

I yield the floor.

Mr. REID. Madam President, the reason I am not going to give a statement is because we have Members here on the Senate floor today who could give a long statement on the misfortune of Miguel Estrada. But we have been asked by the two leaders to try to get some votes lined up for tomorrow. We have a manager of the bill who has been waiting. We have a Senator from New York who has been waiting.

I just simply say before we go to the Senator from Ohio and the Senator from New York, who have amendments to offer, that we have debated Miguel Estrada a lot. I don't know how many votes we have had—10 or 12—and not a single vote was changed.

We can debate this ad infinitum. The fact is, Miguel Estrada didn't respond to questions that we thought appropriate and didn't divulge information in the form of memos from the Solicitor's Office. The reason he is different than some others who worked in that same office is because we got the full information.

For example, we reviewed Judge Roberts off and on for more than 10 years. So he and Miguel Estrada are totally different.

The real victim in all of this is Miguel Estrada. I acknowledge that by virtue of the fact that the White House had the theory they were not going to allow questions nor submit information from the Solicitor's Office.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004—Continued

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, my colleague from New York and other Members who are on the Senate floor have several amendments that I ask unanimous consent to have set aside. I anticipate speaking probably for about 10 minutes.

Mr. SPECTER. Madam President, will the Senator from Ohio yield for an announcement?

Mr. DEWINE. I yield.

Mr. FRIST. Madam President, just for the information of our colleagues, we will have no more rollcall votes tonight. The plan at this juncture is that most likely we will have two stacked rollcall votes in the morning. That is subject to change. People should stay in touch with the cloakrooms. But for tonight, there will be no more rollcall votes.

We will continue with amendments, and I ask Members to come to the floor so we can prepare for tomorrow. We will have stacked votes in the morning.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 1561 TO AMENDMENT NO. 1542

Mr. DEWINE. Madam President, I call up my amendment numbered 1561.

The PRESIDING OFFICER. Without objection, the pending amendments will be set aside and the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE] proposes an amendment numbered 1561 to amendment No. 1542.

Mr. DEWINE. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide funds to support graduate medical education programs in children's hospitals)

On page 61, between lines 14 and 15, insert the following:

SEC. ___. (a) IN GENERAL.—To carry out programs to support graduate medical education programs in children's hospitals under section 340E of the Public Health Service Act (42 U.S.C. 256e et seq.), there are appropriated a total of $305,000,000, including amounts otherwise made available in this Act for such programs.

(b) OFFSET.—Amounts appropriated under title III under the heading ''Program Administration'' shall be reduced by $15,000,000.

Mr. DEWINE. Madam President, this amendment would increase the amount of pediatric graduate medical education funding to $305 million—up from the $290 million currently in the bill.

I remind my colleagues that a sense-of-the-Senate amendment was attached to this year's budget resolution which indicated that children's graduate medical education should be funded at $305 million.