

Upon retiring from Gannett News Service, Al Neuharth founded the Freedom Forum in 1991 and has since dedicated his work to the pursuit of "free press, free speech, and free spirit for all people." I have had the pleasure of working with Al on many occasions and have seen his genuine commitment to preserving free expression for all Americans.

In addition to his ongoing efforts to preserve free speech, Al Neuharth has also dedicated both time and treasure to his hometown of Eureka, SD, and has never forgotten his South Dakota roots. Most notably, he contributed greatly to the Eureka Information Center. This center houses community nonprofits and civic organizations, providing a space for the involvement and dialogue that strengthens small towns.

On September 25, 2003, Mr. Neuharth's alma mater, the University of South Dakota, will dedicate its Al Neuharth Media Center. This center, funded by the Freedom Foundation and the University Foundation, will house the Freedom Foundation's regional offices, South Dakota Public Broadcasting, the University's Department of Contemporary Media and Journalism, the Native American Journalists Association, the University's publication *The Volante*, campus radio station KAOR and television station KYOT.

Freedom of the press is an essential component of America's experiment in democracy and one of the principal reasons the experiment has succeeded. By training future journalists and defenders of the first amendment, the Neuharth Media Center will convey Al's passion for free speech and help ensure that this great experiment in democracy will be preserved for generations to come.

I am proud to honor Al Neuharth and the University of South Dakota Neuharth Media Center and proud to know Al Neuharth.

TRIBUTE TO GOVERNOR O'BANNON

Mr. LUGAR. Mr. President, it is my sad duty today to inform the Senate that the State of Indiana has lost its beloved Governor, Frank O'Bannon. He passed away on Saturday at Northwestern Memorial Hospital in Chicago, where he was being treated for a massive stroke suffered five days earlier. He was 73 years old.

All of us in Indiana mourn the loss of this fine man, whose kind and gentle nature had won the hearts of so many Hoosiers over the years. Frank O'Bannon will always be remembered for the warmth and friendliness that were essential elements of his character. He was a true Hoosier.

He and his wife, Judy, had been married 46 years and were part of a close-knit family that includes their three children and five grandchildren. Judy was at his side at the hospital when he passed away. I extend my deepest condolences to Judy, and I know she will

draw strength and support from her family and many dear friends.

I consider it a privilege to have known Frank O'Bannon. He grew up in Southern Indiana in the town of Corydon during the 1940s, where he experienced first-hand the special charm of that era captured so wonderfully in the movie *Hoosiers*. After graduating from Indiana University in 1952, he served in the Air Force, went to law school and then came home to settle down and work as a lawyer and publisher of weekly newspapers.

He was first elected to the Indiana State Senate in 1970 and went on to serve 18 years there—much of it as the Democratic floor leader. He was Lieutenant Governor for 8 years before being elected Governor in 1996 and then re-elected by a wide margin in 2000. He was an optimist by nature, a consensus builder and a man of absolute integrity. I always looked forward to my visits with him. I will miss him greatly.

On Saturday, our Lieutenant Governor, Joe Kernan, was sworn in as Indiana's 48th Governor. He will serve the remainder of Governor O'Bannon's term, until January 2005.

Frank O'Bannon's remains will be buried near other family members in a small cemetery in Corydon. He touched many people in his life. May he rest in peace.

WITHDRAWAL OF THE ESTRADA NOMINATION

Mr. LEAHY. Mr. President, earlier this month the President withdrew the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia Circuit. This was a nomination for a lifetime appointment to the second highest court in the land. The Constitution accords the Senate the duty to make informed judgments for these lifetime appointments to our Federal courts. Senators cannot make informed judgments if the White House stonewalls the Senate.

This withdrawn nomination is another example of the White House's insistence on dividing instead of uniting the American people over the President's decisions for the Federal courts. Ultimately, the nomination was a casualty of that divisive policy. For more than a year, the White House has consistently spurned many private and public bipartisan appeals to resolve this matter by working with the Senate to provide access to requested information. Mr. Estrada's work at the Justice Department was at the core of the administration's claims for his qualification to serve on this court. Despite the questions raised about his work at the Justice Department and the ample precedents from similar document requests involving earlier nominations, this administration decided to stonewall the Senate. This stonewalling, combined with Mr. Estrada's reluctance to answer substantively Senators' questions,

prompted this impasse. The White House always had the key to unlock this stalemate.

In the absence of cooperation from the White House, and with the persistence of the White House's stonewalling, Mr. Estrada has concluded that this impasse will continue. He is probably right, and he and his family can now move on with their lives.

In the aftermath of the announcement on September 4, some Republican Members of the Senate have come to the Senate floor and sought out the airwaves to renew their offensive and untrue rhetoric about this nomination. I must take a few moments to set the historical record straight.

First, some Republicans have repeated their false assertion that Democrats opposed Mr. Estrada's nomination because of his ethnicity. That is absurd. In the last Congress, Senate Democrats swiftly acted to confirm six Latino judicial nominees—Christina Armijo, NM; Judge Phillip Martinez, TX; Randy Crane, TX; Judge Jose Martinez, FL; Magistrate Judge Alia Ludlum, TX; and Jose Linares, NJ. During this Congress, Democrats have unanimously supported the confirmation of six other Latino judicial nominees—Edward Prado, Fifth Circuit; Consuelo Callahan, Ninth Circuit; S. James Otero, CA; Cecilia Altonaga, FL; Xavier Rodriguez, TX; and Frank Rodriguez Montalvo, TX. All of these nominees received the unanimous support of the Senators in the Democratic caucus.

Moreover, it was Democrats who worked to clear the nominations of Judge Prado and Judge Callahan to the circuit courts over delays and initial objections from the Republican side of the aisle. Yet some Republican Senators assert that those who opposed Mr. Estrada's confirmation to the circuit court did so "because he's Hispanic." That is obviously false, demeaning and divisive.

These partisans may need to be reminded that, in addition to supporting the confirmation of two other Latinos nominated to the appellate courts by President Bush, Democrats supported the appointment of 11 Latinos nominated by President Clinton to the appellate courts. It was Republicans who blocked three of those Latino circuit court nominees of President Clinton. Those qualified and distinguished Latino nominees were never given hearings by the Republican majority and never allowed to come before the full Senate. They were not opposed through debate and votes in the light of day; instead, their nominations were filibustered and killed by delay, in the dark of night, without any meaningful explanation of any substantive concerns about their nominations. This all begs the rhetorical question: Do the current Republican charges mean that Republicans are anti-Hispanic for having blocked three Hispanic nominees to

the circuit courts and for having opposed, delayed and voted against numerous others nominated by President Clinton? The facts are clear and the facts are indisputable, and the facts belie the false charges that we have heard from some on the other side of the aisle.

Republicans blocked three Latino nominees of President Clinton to the appellate courts from ever receiving a vote: Enrique Moreno, who was nominated to the 5th Circuit; Jorge Rangel, who was nominated to the 5th Circuit; and Christine Arguello, who President Clinton nominated to the 10th Circuit. In addition, Republicans refused to allow votes on three of President Clinton's Hispanic district court nominees, Ricardo Morado, R. Samuel Paz, and Anabelle Rodriguez. Republicans did not allow a hearing or a vote in the Judiciary Committee or on the floor in a cloture vote or confirmation vote on any of these six Latino nominees. I will include for the RECORD a letter from Judge Rangel, a well-regarded nominee of President Clinton, who never received a confirmation vote from the Republican majority at that time.

Republicans did not just block those six Latino judicial nominees of President Clinton from receiving votes, they also dragged their feet on the confirmation of others who were left pending for a long time, often without any public statements identifying the concerns that were delaying those nominees, in contrast to Mr. Estrada's nomination which has been debated in the light of day. When they unsuccessfully filibustered Judge Rosemary Barkett and Judge Richard Paez, were they doing so because the nominees were Hispanic? When they delayed and opposed the confirmation of Judge Sonia Sotomayor, do recent Republican statements mean that they did so because she is Hispanic?

Overall, during President Clinton's tenure, 10 of his more than 30 Hispanic nominees were delayed or blocked from receiving hearings or votes by Republican leaders. The Hispanic judicial nominees denied a vote by Republicans are Moreno, Rangel, Arguello, Morado, Paz, and Rodriguez. The four Hispanic judicial nominees delayed but ultimately confirmed over Republican opposition are Judges Richard Paez, a Mexican-American nominated to the Ninth Circuit; Judge Hilda Tagle, a Mexican-American nominated to the Texas district court; Judge Rosemary Barkett, an immigrant from Mexico nominated to the Eleventh Circuit; and Judge Sonia Sotomayor, whose family hails from Puerto Rico. Of these 10, three waited more than 2 years to receive a vote or were never accorded one. Republicans delayed consideration of the nomination of Judge Richard Paez for more than 1,500 days yes, that is correct, more than 1,500 days and then when he finally did get a vote, 39 Republicans voted against his confirmation to the Ninth Circuit. He was unsuccessfully filibustered by Repub-

licans. Senator SESSIONS moved to indefinitely postpone the vote after we overcame the Republican filibuster, after Judge Paez had been waiting for more than 4 years, and 31 Republicans voted with Senator SESSIONS on that motion after their filibuster failed. Of course, now Republicans have the temerity to assert that it is unprecedented to filibuster a circuit court nomination. What short memories they must believe the American people have. I discussed this in more detail in the CONGRESSIONAL RECORD of February 10, 2003.

The nomination of Judge Hilda Tagle to a District Court seat in Texas was pending before the Senate for 943 days, before Republicans finally allowed her a vote on the floor of the Senate. After failing to defeat her nomination through anonymous delay, not a single Republican explained the delay. Republican delays such as these on Clinton nominees are discussed in more detail in my statements published in the CONGRESSIONAL RECORD on May 1, 2003, as well as in statements about Mr. Estrada's nomination by Senator REID, Senator KENNEDY, Senator SCHUMER and others.

I hope these facts will finally put to rest the untruths that have been manufactured and perpetrated to attack those who opposed the confirmation of Miguel Estrada. For Republicans to claim that those who opposed the Estrada nomination were motivated by anti-Hispanic sentiment is wrong. It is offensive, base and baseless. Indeed, I have spoken about the extensive opposition to the Estrada nomination from Hispanic leaders and organizations. That opposition of Latino leaders from around the country who opposed the Estrada nomination included our colleagues in the Congressional Hispanic Caucus, CHC. According to the CHC scorecard, Mr. Estrada failed most of the factors for their evaluation of judicial nominees. Furthermore, Mr. Estrada told members of the Caucus:

[H]e 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 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. . . [and] he never appealed to his superiors about the importance of making such efforts on behalf of Latinos.

These are just a few of the concerns raised by the Members of the CHC, which are detailed in several statements I have made, including my statements in the CONGRESSIONAL RECORD on February 5, 2003; February 10, 2003; February 24, 2003; February 25, 2003; as well as on July 30, 2003.

Mr. Estrada was also opposed by the Puerto Rican Legal Defense and Education Fund, PRLDEF, a national civil rights organization concerned with advancing the civil and human rights of

the Latino community. After interviewing Mr. Estrada, like the CHC, and also reviewing his public record and his reputation, PRLDEF concluded that Mr. Estrada was not sufficiently qualified for a lifetime seat on the nation's second highest court and that, among other concerns about his poor temperament for the job, "he has not had a demonstrated interest in or any involvement with the organized Hispanic community or Hispanic activities of any kind." Their letter was included in the CONGRESSIONAL RECORD and discussed on the dates I just noted. I also included for the CONGRESSIONAL RECORD, the serious concerns raised by the Mexican American Legal Defense and Education Fund, MALDEF, and California La Raza Lawyers, CLRL, which also opposed Mr. Estrada's confirmation. They wrote:

[I]t is unclear whether he would be fair to Latino plaintiffs as well as others. . . we found evidence that suggests he may not serve as a fair and impartial jurist on allegations brought before him in the areas of racial profiling, immigration, and abusive or improper police practices where those practices are adopted under a 'broken window theory' of law enforcement. . . We have concerns about whether he would fairly review standing issues for organizations representing minority interests, affirmative action programs or claims by low-income consumers. We are also unsure, after a careful view of his record, whether he would fairly protect labor rights of immigrant workers or the rights of minority voters under the Voting Rights Act.

In the CONGRESSIONAL RECORD of February 24, 2003, I also included the announcements of the opposition to this nomination by most of the past Presidents of the Hispanic National Bar Association. In the face of the facts about our confirmation of a dozen Hispanic candidates nominated by President Bush to the circuit or district courts and the breadth and depth of the opposition of most of the Latino civil rights groups, it is astonishing that Republicans continue to assert that those who oppose Mr. Estrada's confirmation are anti-Hispanic. That is such an outright and obvious untruth. Yet we see some of these untruths recycled again and again in news reports and commentaries, despite the facts. These baseless allegations for purposes of wedge politics and partisan advantage are wrong and dangerous.

The facts are that of the 12 Latino appellate judges currently seated on the Federal courts, eight were appointed by President Clinton and two, Judges Prado and Callahan, were nominated by President Bush and confirmed with unanimous Democratic support. I discussed the problems with the Estrada nomination in contrast to the nominations of Judge Prado and Judge Callahan in the CONGRESSIONAL RECORD of April 28, 2003 and May 22, 2003, respectively, as well as in contrast to less controversial district court nominees on March 27, 2003, March 31, 2003, and May 6, 2003.

I have included in the record almost seven dozen editorials or commentaries

in opposition to the Estrada nomination or in support of the Democratic filibuster. Those editorials were mentioned in the CONGRESSIONAL RECORD on March 6, 2003, and April 2, 2003. At the end of my remarks today, I will include excerpts from additional editorials and op-ed columns in opposition to the Estrada nomination or in support of the Democratic filibuster of this nomination. In particular, I note the editorial of The New York Times this week entitled, "Straight Talk on Judicial Nominees."

On the issue of the history of the use of filibusters in connection with nominations, some Republicans would now have the public believe that a filibuster of a nominee is, in their words, "unprecedented." This is another deception. As some of these same Republicans well know, they filibustered the nominations of Judge Paez and Judge Berzon on the floor of the Senate in 1999 and 2000, as they conceded at that time. By way of example, I note that several Republicans currently serving voted against cloture, the motion to close debate, after the Paez nomination had been pending before the Senate for more than four years. I have already noted that even after losing the cloture vote, Republicans led by Senator SESSIONS moved to indefinitely postpone a vote on Judge Paez's nomination, and a number of Republican Senators currently serving voted to continue to block action on the Paez nomination in 2000. Yet some Republican Senators now claim that it is unprecedented to filibuster or deny a circuit court nominee an up or down confirmation vote on the Senate floor.

Their filibuster of Judge Paez's nomination is just one example of Republican filibusters of Democratic nominees. Others include Dr. David Satcher to be Surgeon General in 1998; Dr. Henry Foster to be Surgeon General in 1995; Judge H. Lee Sarokin to the Third Circuit in 1994; Ricki Tigert to the Federal Deposit Insurance Corporation in 1994; Derek Shearer to be an Ambassador in 1994; Sam Brown to an ambassador-level position in 1994; Rosemary Barkett, born in Mexico, nominated to the Eleventh Circuit, 1994; Larry Lawrence, to be ambassador in 1994; Janet Napolitano at the Justice Department in 1993; and Walter Dellinger to be Assistant Attorney General for the Office of Legal Counsel at the Justice Department in 1993.

The nominations of Dr. Foster and Mr. Brown were successfully filibustered on the Senate floor by Republicans. Similarly, the nomination of Abe Fortas by President Lyndon B. Johnson to the Supreme Court of the United States was successfully filibustered by Republicans with help from some southern Democrats.

In addition, to the short-term and life-time appointees of Democrats whose nominations were subject to sometimes fatal delay on the floor, Republicans made an art form of killing nominations in Committee so that

they would never have a vote on the floor. According to the public record, more than 60 of President Clinton's judicial nominees were defeated by willful refusal to allow them a vote and more than 200 executive branch nominees of President Clinton met the same fate, including several Latinos, with their nominations nixed in the dark of night without any accountability. They were filibustered and never allowed a vote on the Senate floor. I discussed this history in more detail on February 26, 2003, in the CONGRESSIONAL RECORD.

In addition, in the CONGRESSIONAL RECORD on March 5, 2003, March 11, 2003, and March 13, 2003, I summarized the history of filibusters of nominees. I also spoke on May 19, 2003, about the history of Senate debate and the constitutionality of Rule XXII of the Senate rules. The fact of the matter is that many nominees have been blocked from receiving votes throughout the Senate's history. For example, 25 Supreme Court nominees were not confirmed in the history of our Nation. Eleven of those nominations were defeated by delay, not by confirmation votes on the Senate floor, including the nomination of Justice Fortas. Since the early 19th Century, nominees for the highest court and to the lowest short-term post have been defeated by delay, while others were voted down. Not even all of President Washington's nominees were confirmed or those of other presidents, often for political or ideological reasons. Filibusters and other parliamentary tactics to delay matters were known to the Framers. There was even a filibuster in the first Congress over locating the capital.

The plain truth is that Democrats opposed the nomination of Mr. Estrada to the DC Circuit based on serious and legitimate concerns regarding the stonewalling of the Senate by this White House and this nominee. The DC Circuit is the nation's second most important court, because it has exclusive or special jurisdiction over a broad array of far-reaching federal regulations, such as the rights to safe workplaces, fair employment practices, clean air and water, and other important laws—areas with which Mr. Estrada had very little experience.

Republicans lean heavily on the rating of the ABA, a group that Republicans helped oust from the pre-nomination process and a group which ever since then has sometimes seemed overly eager to get back into their good graces. Yet, as Senator REID noted in the CONGRESSIONAL RECORD in February and March of this year, there were certainly irregularities in the rating given to this nominee by the American Bar Association, with the person who recommended a well qualified rating working closely with the Bush administration on high-level appointments and co-founding the Committee for Justice to run attack ads against Democrats, while still serving on the ABA rating committee. Other nomi-

nees with similar records did not receive the high rating Mr. Estrada did, in this or past administrations. In fact, people with similar records received partial not qualified ratings, when the process was conducted more fairly and with more candor, and when the candidate did not already have the imprimatur of the President through his nomination.

I would also note that before the hearing on the Estrada nomination, Federalist Society insiders gave a special seminar on how to get through the confirmation process and urged President Bush's judicial nominees to say as little as possible. Mr. Estrada appears to have followed those marching orders to a "T" and to his own detriment. During the hearing on his nomination he often refused to answer questions or provided evasive answers. He declined to share his views on important Supreme Court cases and his judicial philosophy. For example, Senator SCHUMER asked Mr. Estrada to name a single case from the entire history of Supreme Court law that he disagreed with. Mr. Estrada refused. He claimed he could not comment on any case if he had not read the briefs, listened to oral argument, done independent research and conferred with colleagues.

Most who knew Mr. Estrada personally seemed to agree that he was actually a very opinionated person. He admitted in his testimony that he could be "ruthless" in his criticism of legal and political opinions. Yet, before the Senate Judiciary Committee, he would not describe those views and claimed to have no views he could or would share with the only people entrusted with reviewing his record and recommending his nomination for a lifetime job on the Federal bench.

Then Republicans even tried to assert that it would be unethical for Mr. Estrada to answer questions by Senators. However, the Supreme Court held in 2001 that it does not violate judicial ethics for judicial candidates to comment on legal issues, as long as they do not promise how they will rule. Ironically it was the Republican Party that had sued the State of Minnesota to ensure that their candidates for judicial office could give their views on legal issues without violating judicial ethics, the State counterpart to the ABA model rule. Republicans took the case all the way to the Supreme Court and won. In an opinion by Justice Scalia, the Supreme Court ruled that the ethics code did not prevent candidates for judicial office from expressing their views on cases or legal issues. Justice Scalia said that anyone coming to a judgeship is bound to have opinions about legal issues and the law, and there is nothing improper about expressing them. Specifically, in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002), the Supreme Court overruled ABA modeled restrictions against candidates for judicial office from expressing their views on legal issues while seeking judicial office. Justice

Scalia explained in that majority opinion:

Even if it were possible to select judges who do not have preconceived views on legal issues, it would hardly be desirable to do so. "Proof that a Justice's mind at the time he joined the Court was complete *tabula rasa* in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias." . . . And since avoiding judicial preconceptions on legal issues is neither possible nor desirable, pretending otherwise by attempting to preserve the "appearance" of that type of impartiality can hardly be a compelling state interest either.

Id. at 2536 (quoting Justice Rehnquist's opinion in *Laird v. Tatum*, 409 U.S. 824 (1972)).

Judicial ethical rules do not prevent Senators from learning about a judicial candidate's views. Senators are trying to evaluate whether a nominee should be given a lifetime position, and the Senate hearing room should not be the only place where a judicial candidate cannot or will not discuss his views of the law and his opinions.

Especially problematic was the stand taken by the administration on the Senate's request to examine the memoranda written by Mr. Estrada at the Justice Department. Because Mr. Estrada has no record and because his impartiality was called into question by one of his direct supervisors at the Justice Department, these memoranda would have provided important insights into Mr. Estrada's approach to issues involving individual rights and the weight of precedent. I discussed the precedent for this request in my remarks reprinted in the CONGRESSIONAL RECORD of February 5, 2003; February 12, 2003; February 13, 2003; March 5, 2003; March 18, 2003; and May 8, 2003. Senator DURBIN and Senator KENNEDY also addressed this issue at length in their remarks. History makes clear that internal legal memos were requested and provided to the Senate in connection with, among others, the nominations of Robert Bork to the Supreme Court, Brad Reynolds to be Associate Attorney General, William Rehnquist to the Supreme Court, Stephen Trott to the Ninth Circuit, and Ben Civiletti to be Attorney General. In each of these appointments, internal legal memos to or from the nominees were requested and provided to the Senate.

Basically, the Bush administration's response to our request has been contemptuous from the beginning. The initial response of the Justice Department was that the request was unprecedented. That is abundantly inaccurate. This administration has itself shared White House Counsel records in connection with a nomination. There is simply no legal or historical basis for denying the Senate access to the memoranda requested here. The historical precedent for the Senate's request actually supports it. Scores of legal memos to and from Robert Bork when he was Solicitor General were provided to the Senate during his judicial nomination. Walter Dellinger himself ad-

vised the Senate during Justice Rehnquist's judicial nomination when he reviewed memos provided to the Senate by the Justice Department which were written by and to Rehnquist when he was the head of the Office of Legal Counsel. Indeed, the long-standing policy of the Justice Department, prior to this administration, regarding Congressional requests for memos and other non-public information was a "policy of accommodation." Former administrations cooperated with countless requests for internal documents sought by Members of Congress as well as more recently by Kenneth Starr, who sought and obtained documents containing the advice of the President's attorneys and closest advisors.

The administration also objected that some other Justice Department attorneys who have been nominated to other positions were not the subject of memo requests. However, they fail to acknowledge that those nominees were not the subject of allegations by their supervisor of many years that they could not keep their ideological views out of their memos and their work for the Department, unlike Miguel Estrada. The fact that the Senate does not always request such memos does not diminish its power to do so and the precedent to request such documents when Senators believe it is important to examine them. Indeed, the Senate would be abdicating its responsibilities to serve as a check on nominations if it had ignored the serious concerns raised about Mr. Estrada's writings before giving him a lifetime appointment as a judge with immense power over the lives of all Americans. Mr. Estrada told the Senate that he was proud of his writings and that he did not object to their being shared with the Senate but the administration refused every attempt at compromise. Additionally, as Republicans readily admitted when a Democrat was in the White House, it has been the long-standing practice of the Senate not to recognize attorney-client, work-product, or deliberative process privilege claims.

As for the generic claim that people working for the federal government in the Solicitor General's office would be chilled from candidly expressing their views, it seems unlikely that Mr. Estrada was chilled by the revelation of legal memoranda during the Bork, Rehnquist, Trott and Reynolds nominations in the few years before he joined the Solicitor General's office. Indeed, as the Supreme Court noted in the Nixon tapes case, it is quite unlikely "that advisors will be moved to temper the candor of their remarks by the infrequent occasions of disclosure." *U.S. v. Nixon*, 418 U.S. 683 at 712, 1974. Thus, while the desire for candor in the Executive Branch may be strong, it is not an absolute right against disclosure in response to requests from a co-equal branch pursuant to its express powers under the Constitution.

In my previous statements on the floor of the Senate about the document

request, I have put into the record numerous examples of legal memos provided to the Senate by other administrations, so I will not list them again. I will only say that it is clear to me and other Senators who have examined the record or remember the history that past requests of the Senate for legal memos from the Justice Department were honored, that many of these memos involved decisions about appealing cases or other significant legal or policy issues, that these memos were written by line attorneys to the Solicitor General as well as by the Solicitor General or Assistant Attorney General, that some memos were provided on a confidential basis while others were made public and placed in hearing records and other congressional documents, and that all these claims about this request being unprecedented are just so much false rhetoric. Congress was not required to stumble in the dark in connection with other nominations where memos were sought, and I am glad that the Senate did not cave in here, despite all of the attacks, intimidation and false claims the Bush administration and its allies have made.

In sum, this administration treated the concerns of members of this co-equal branch with contempt at nearly every turn. As I stated at the outset of this debate, I would have welcomed a record on which I could have had strong confidence about the type of judge Mr. Estrada would be. Senators were denied adequate information to make an informed judgment about whether to entrust this nominee with the powerful position to which he was nominated. As I mentioned in the CONGRESSIONAL RECORD of July 30, 2003, it is regrettable that this Administration did not choose to cooperate and act in good faith in this nomination and instead sought to use this nominee as a pawn in its high stakes game of wedge politics. I am certain that this process must have been a difficult one for Mr. Estrada and his family. It is too bad that White House and Justice Department advisors did not follow the approach they took with another Bush nominee, Jeffrey Holmstead who was nominated to the EPA, and whose White House Counsel's Office memos this very administration shared with the Senate in order to accommodate the concerns of Senators. Instead, the Administration ignored precedent and common sense in stonewalling the Senate, ignored the suggestions of compromise by Republican and Democratic Senators, and chose the path and the tactics of unilateralism.

As I mentioned, earlier this year, on March 6, and April 2, 2003, I placed into the record excerpts from 45 editorials and 34 op-eds in support of the position of Democratic Senators on the nomination of Mr. Miguel Estrada's nomination to the Court of the Appeals for D.C. Circuit, because Republicans had been asserting that there were only a few editorials or op-eds in support of our concerns. Here are some excerpts

from 14 additional editorials or op-eds expressing concerns about Mr. Estrada's nomination, bringing the total to nearly 100. This controversial nomination clearly divided, rather than united, the American people. I ask unanimous consent to print in the RECORD excerpts of 11 recent editorials and 3 op-eds, as well as the New York Times piece entitled "Straight Talk on Judicial Nominees."

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

Straight Talk on Judicial Nominees. The New York Times, September 10, 2003: "When Miguel Estrada withdrew his nomination for a federal judgeship last week, his backers blamed anti-Hispanic bias. Republicans are regularly tossing around such charges over judicial nomination setbacks, calling them anti-Hispanic, anti-Catholic, anti-woman. But these battles have been over ideology, and the scope of the Senate's questioning of nominees. The name-calling is puerile and divisive. . . . [S]ome of the stiffest opposition to Mr. Estrada. . . . came from Hispanic leaders, including the Congressional Hispanic Caucus. And while many Democratic senators opposed Mr. Estrada, they have voted to confirm 12 of President Bush's other Hispanic judicial nominees. The Republicans' record is worse. In the Clinton era, they denied confirmation votes to six Hispanic judicial nominees, and delayed others for years. Jorge Rangel, who went 15 months without a hearing on his federal appeals court nomination, wrote to Senate Democrats last week to ask where Republican senators' "cry for diversity on the bench" was when he was forced to withdraw in 1998. . . . Diversity is not the only issue on which Republicans are not talking straight. During the Clinton administration, prominent Republicans argued that there were too many judges on the District of Columbia Circuit, and opposed Clinton nominees on the grounds that confirming them would be a waste of tax dollars. But now that a Republican president is nominating people like Mr. Estrada to the court, these objections to its size have withered."

No Tears Needed Over Estrada's Withdrawal. The Post-Standard (Syracuse, NY), September 7, 2003: "Conservatives engaged in over-the-top condemnation of Estrada's opposition after he resigned. Bush called Estrada's treatment disgraceful. Senate Majority Leader Bill Frist, R-Tenn., called it a shameful moment in the history of this great institution. Hardly. Never mind that conservatives have done the same thing to liberal nominees. Estrada, however, was secretive about his views, refusing to answer many questions the Senate needed to evaluate him. The Senate wisely declined to rubber-stamp him for such a key post. Also troubling was the GOP claim that Democrats were anti-Hispanic for rejecting Estrada. Fact is that most Hispanic leaders also rejected Estrada, believing his views were too conservative and detrimental to Hispanics, as well."

Estrada Was a Bad Pick. Capital Times (Madison, WI), September 5, 2003: "When the president nominates responsible conservatives to fill judicial vacancies, they are approved with little trouble. When he nominates judicial activists who put their politics above the law, however, they run into trouble. That's what happened with Estrada. America has been well served by the senators who blocked this bad nomination."

Estrada is Out: Perhaps Future Federal Judicial Nominees Will Be More Cooperative. Omaha World Herald (Nebraska), September

5, 2003: "His refusal to discuss such basics as his views of federalism vs. states, prerogatives, for instance, was disturbing because it was virtually impossible to assess his fitness for the job. It's unfortunate that his legal practice and his family life were disrupted in such a manner. . . . But senators concerned about the federal judiciary could hardly do less when they knew so little about him."

Miguel Estrada Bows Out. The New York Times, (September 5, 2003: "The Constitution requires not only the Senate's consent but also its advice, and it is on this score that the Bush administration has been most recalcitrant. The White House has resisted Senate Democrats' requests to be brought into the process earlier. If the administration insists on having conservative ideologues choose its judicial nominees in secret, it should not be surprised when Mr. Estrada, and others like him, fail to be confirmed."

Estrada Case Shows How Not to Nominate a Judge. Newsday (New York), September 11, 2003: "Bush should have advised Estrada not to stonewall legitimate Senate inquiries. And he should have allowed senators a look at Estrada's legal writings from his time in the solicitor general's office. Lacking any real sense of what Estrada thinks about the legal issues of the day, senators were right to block his appointment to the powerful U.S. Circuit Court of Appeals for the District of Columbia. Stealth nominees shouldn't be rewarded with lifetime jobs on the federal bench. Neither should nominees with ideologies outside the broad mainstream of political thought, like the handful currently being blocked, as Estrada was, by Democratic filibusters."

A Shame, But Nothing New. Columbus Ledger-Enquirer, September 9, 2003: "In fact, Congress has both the right and the duty to advise and consent—not merely to obstruct, and not merely to rubber-stamp. And maybe it shouldn't be enough that a nominee is 'qualified' in a nominal sense, if his or her ideology or interpretation of the Constitution should strike a lawmaker as outrageous or unconscionable."

Bush Team Should Look In The Mirror. The Berkshire Eagle, September 8, 2003: "The White House can fume all it wants at the Democrats whose Senate filibuster blocked the nomination of Miguel Estrada to the powerful U.S. Court of Appeals for Washington, D.C. but if it truly wants to find the source of the blame for the failed nomination it should look in the mirror. The Bush administration's penchant for secrecy, contempt for the legislative branch of government and determination to force radical justices onto the courts, doomed the nomination from the start."

Some Judicial Picks Aren't Lightning Rods. San Antonio Express-News, September 6, 2003: "When presidents insist on nominating strongly ideological candidates to the judiciary, they provoke this kind of frustrating action. Republicans bottled up a full 60 percent of President Clinton's nominees. The Senate Judiciary Committee never voted on two of his choices for the D.C. appeals court."

Democrats Mustn't Allow Bush to Pack Courts With Extremists. Charleston Gazette (West Virginia), August 10, 2003: "As for the others, Democrats would be remiss in exercising their "advice and consent" responsibility if they did not block Pryor, Owen and Kuhl. All have records of ideological extremism inconsistent with respect for tolerance and diversity. . . . Republicans and Democrats share blame for the rancorous standoff—one that the president has shown no inclination to ameliorate despite suggestions that he confer with the minority party, as other presidents have done, to seek their ad-

vice on his candidates. The Democrats' filibuster is our only hope that this administration won't pack the courts with judges eager to reverse precedents that reflect the American mainstream."

When All Else Fails, Throw Mud, It Might Stick. Roanoke Times & World News, August 6, 2003: "When far-right appellate candidate Miguel Estrada failed to get through, it was a case of anti-Hispanic bias, they claimed. . . . The charges might be humorous if not for their potential harm to the public sphere. Most immediately, the threat is that they would actually succeed in their purpose, mislead Americans into an uproar and pressure Democrats to abandon opposition for which they had valid reason: Each of the candidates had either an extremist record or, in Estrada's case, little record at all and no inclination to enlighten the Senate on his views. Over the longer term, the danger is that repeated false accusations such as these, however ludicrous, will provoke ethnic and sectarian divisions as well as increase cynicism among the many Americans already estranged from the political process."

Estrada's Dream Lost Out to King's. Mary Sanchez, Kansas City Star, September 9, 2003: "The cries from Senate Republicans came quickly and were not so thinly veiled. Appalled, several accused their filibustering colleagues of bias against Hispanics. It is not that some members of the Senate don't want Hispanic nominees. They just didn't want this Hispanic nominee. The facts do not support the accusation of bias."

Bush's 'Good Hispanic' Has Telling Record. Cindy Rodriguez, Denver Post, September 5, 2003: "Bush hoped the 38 million Latinos across the country would cheer his pick. Bush's people depicted Estrada as a humble immigrant from Honduras who struggled, learned English, then made his way into Columbia University, then Harvard Law School. That's what we call una gran mentira. A big lie."

Dem's Judicial Objections Valid. Richard J. Condon, Seattle Post-Intelligencer, August 7, 2003: "Miguel Estrada refused to answer pertinent questions about his judicial philosophy and the Bush administration refused to provide significant background on Estrada's judicial work; Estrada has never served as an appellate judge. Democrats rightly view that the Senate cannot "advise and consent" to a nomination without substantive information to support the nominees' qualifications for the bench. Although Bush seems willing to wait until after Estrada is confirmed to a lifetime appointment to the federal appellate bench to measure his qualifications, I agree with Senate Democrats that it is prudent to get that issue resolved beforehand."

In addition, there have been many dozen letters to the editor submitted and published in opposition to editorials or reports supporting the Republican position on this nomination. Here is just a few recent examples of many letters from across the country:

Scrutiny In Order. Amanda S. Mattingly, Argus Leader (Sioux Falls, SD), May 29, 2003: "In South Dakota, we would never hire anyone for a job without an interview or an application. That simply makes no sense. Yet, that is exactly what people want done with Miguel Estrada. Estrada has failed to provide the Senate with even the most basic information. A federal judgeship is a lifetime appointment. That means they can't ever be fired. It seems incredibly irresponsible to hire someone for a lifetime job without knowing everything about them."

A Perfectly Appropriate Filibuster. George Immerwahr, Christian Science Monitor (Boston, MA), September 9, 2003: "What was so bad about the Senate Democrats' filibuster to deny Estrada's confirmation? Over the

course of a four-year term, a president will submit a great number of nominees to the Senate. Most of them are readily confirmed by large majorities, some even with the unanimous vote of each party. So when a nominee refuses, as this one did, to answer key questions, the opposition party's use of legitimate ways to reject him is far from improper."

A Judicial Nominee, Derailed, Shirley Zempel, *The New York Times*, September 6, 2003: "Should our senators blindly vote to approve a nomination without knowing all that they need to know about him? I hope not. All information should be available for scrutiny."

A Judicial Nominee, Derailed, Harold House, *The New York Times*, September 6, 2003: "A more cynical view may be that the Bush administration simply put Miguel Estrada forth knowing that the combination of his views and the stonewalling for information would cause the delay and resultant fight. Could this have been nothing more than a talking point in a Republican effort to fractionalize Hispanic voters?"

Checks, Balances Fulfilled Objective, D.B. Decot, *The Arizona Republic*, September 7, 2003: "Our system was deliberately designed to enable the minority to thwart the tyranny of the majority as it deemed necessary. The Senate gave its 'advice' on Estrada; a sufficient number did not 'consent' to his lifetime appointment to the federal bench. So the Bush administration has to go back to the drawing board and nominate someone who is able to gain the 'consent' of at least 60 senators. Big deal. There are plenty of qualified prospects who are not extremists, as Estrada is."

Schumer Made His Case, Carol Jigarjian, *The Journal News* (Westchester County, NY), July 31, 2003: "The Bush people are still whining about delayed approval for federal judges and promoting the canard that Estrada is being opposed because he is Hispanic. Estrada is being opposed because, during his hearings, he refused to answer questions about whether his ideology would get in the way of the objectivity required of a federal judge. Bush compounded the problem by refusing to release information he has regarding Miguel Estrada's judicial positions. Estrada's silence and Bush's refusal to release pertinent and critical information on Estrada's views raise justifiable suspicion that this is just one more attempt by Bush to get a committed radical appointed to a powerful lifetime position, under the radar."

Uncover His Record, Evelyn J. Griesse, *Argus Leader* (Sioux Falls, SD), June 11, 2003: "Our justice system needs to be filled with qualified judges who are at least comfortable with having the public informed of their philosophy and interpretation of the Constitution. To Estrada, I say, let the light shine on his record."

Supreme Struggle: Advise and Consent Require Elucidation, Josh Hayes, *The Seattle Times*, September 4, 2003: "And sure, the Republican-controlled Senate did not use the filibuster to block Bill Clinton's nominees, because they were in the majority and could deep-six them without resort to a filibuster and of course, they did. . . . [Estrada] declines to answer any questions about his legal philosophy. How can a senator claim, in good conscience, to 'advise and consent' on an appointment when the candidate is a complete blank? His ethnic background is, of course, irrelevant, or is Korrell suggesting we need a quota system on the federal bench? (And if you want to make it an issue, it's worth pointing out that the Mexican-American Legal Defense Fund (MALDEF) opposes Estrada's appointment.)"

A Judicial Nominee, Derailed, Richard Cho, *The New York Times*, September 6, 2003:

"It seems clear that survival for the Democrats will have to come from outside the game of party politics. They must hope that Hispanic-Americans can see through the Republicans' shallow use of racial politics to overshadow their utter lack of commitment to real issues, like job creation, health care and immigration issues."

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

[From the *New York Times*, Sept. 10, 2003]

STRAIGHT TALK ON JUDICIAL NOMINEES

When Miguel Estrada withdrew his nomination for a federal judgeship last week, his backers blamed anti-Hispanic bias. Republicans are regularly tossing around such charges over judicial nomination setbacks, calling them anti-Hispanic, anti-Catholic, anti-woman. But these battles have been over ideology, and the scope of the Senate's questioning of nominees. The name-calling is puerile and divisive. The administration and its supporters should argue for their nominees on the merits.

The House majority leader, Tom DeLay, called the effort to defeat Mr. Estrada a "political hate crime." Yet some of the stiffest opposition to Mr. Estrada, who was nominated to the United States Court of Appeals for the District of Columbia Circuit, came from Hispanic leaders, including the Congressional Hispanic Caucus. And while many Democratic senators opposed Mr. Estrada, they have voted to confirm 12 of President Bush's other Hispanic judicial nominees.

The Republicans' record is worse. In the Clinton era, they denied confirmation votes to six Hispanic judicial nominees, and delayed others for years. Jorge Rangel, who went 15 months without a hearing on his federal appeals court nomination, wrote to Senate Democrats last week to ask where Republican Senators' "cry for diversity on the bench" was when he was forced to withdraw in 1998.

Hispanic leaders did not oppose Mr. Estrada because he is Hispanic. Catholic senators like Richard Durbin and Patrick Leahy do not oppose William Pryor, a nominee to the United States Court of Appeals for the 11th Circuit, because he is Catholic. Senators Dianne Feinstein and Barbara Boxer do not oppose Priscilla Owen, a nominee to the United States Court of Appeals for the 5th Circuit, because she is a woman. Mr. Estrada would not answer Senators' questions. Mr. Pryor and Ms. Owens have met resistance for their archconservative views.

Diversity is not the only issue on which Republicans are not talking straight. During the Clinton administration, prominent Republicans argued that there were too many judges on the District of Columbia Circuit, and opposed Clinton nominees on the grounds that confirming them would be a waste of tax dollars. But now that a Republican president is nominating people like Mr. Estrada to the court, these objections to its size have withered.

Charging discrimination may score political points, but the confirmation of federal judges is too important to be treated so cynically. Republican and Democratic senators know what they are fighting over: legitimate disagreements over how to interpret the Constitution and define the role of a federal judge. They owe it to the American people to be honest about their differences.

Mr. LEAHY. I ask unanimous consent to print the following correspondence from Jorge C. Rangel which I earlier referenced.

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

THE RANGEL LAW FIRM, P.C.,
Corpus Christi, TX, September 5, 2003.

Hon. PATRICK LEAHY,
Russell Senate Office Building,
Washington, DC.

Hon. CHARLES SCHUMER,
Hart Senate Office Building,
Washington, DC.

DEAR CHAIRMAN LEAHY AND SENATOR SCHUMER: Where was the outrage from your Republican colleagues when Enrique Moreno and I were denied the courtesy of a hearing on our nominations? Where was their disappointment and cry for diversity on the bench when I was compelled to submit the enclosed letter withdrawing my nomination to the Fifth Circuit? The American people deserve better.

Your truly,

JORGE C. RANGEL.

JORGE C. RANGEL,
October 22, 1998.

THE PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Fifteen months ago, you nominated me to the United States Court of Appeals for the Fifth Circuit. I enthusiastically welcomed the nomination and eagerly awaited a hearing before the Judiciary Committee of the United States Senate to have my qualifications reviewed. I patiently waited for months, but I never received a hearing. My nomination died when the Senate adjourned yesterday.

Our judicial system depends on men and women of good will who agree to serve when asked to do so. But, public service asks too much when those of us who answer the call to service are subjected to a confirmation process dominated by interminable delays and inaction. Patience has its virtues, but it also has its limits.

Many friends and colleagues have urged me to stay in the process by requesting that my name be resubmitted to the Senate next year. Even if you were to decide to renominate me, I have no reason to believe that the Senate would act promptly on the nomination. I am not willing to prolong the continued uncertainty and state of limbo in which I find myself. As a professional, I can no longer postpone important decisions attendant to my law practice.

Therefore, I would ask that you *not* resubmit my nomination next year. There is a season for everything, and the time has come for my family to get on with our lives and for me to get on with my work.

Thank you for your trust and confidence in nominating me to the Fifth Circuit. I pray that you will continue to recognize and honor the diversity that is America, so that, one day, our great country can realize its full potential.

Yours truly,

JORGE C. RANGEL.

THE ASSAULT WEAPONS BAN

Mr. LEVIN. Mr. President, in 1994, I supported legislation that President Clinton signed into law banning the production of certain semiautomatic assault weapons and high-capacity ammunition magazines. The 1994 law banned a list of 19 specific weapons as well as a number of other weapons incorporating certain design characteristics such as pistol grips, folding stocks, bayonet mounts, and flash suppressors. The 1994 assault weapons ban prohibited the manufacture of semiautomatic weapons that incorporate at least two