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House of Representatives

The House was not in session today. Its next meeting will be held on Friday, February 7, 2003, at 10:00 a.m.

Senate

THURSDAY, FEBRUARY 6, 2003

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Almighty God, who never sends tragedies or trouble but is with us in the midst of nerve-stretching times to give us courage, we fall on the knees of our hearts seeking the peace and hope only You can provide. When there is nowhere else to turn it's time to return to You. With the untimely death of the heroic astronauts, we are reminded of the shortness of our lives and the length of eternity.

Yesterday we listened to Secretary of State Colin Powell and realized again that we face a treacherous enemy with formidable, destructive power. For the sake of the safety of humankind and the world, grant the President, his advisors, and this Senate Your strategy and strength for the crucial decisions confronting them.

And now for the work of this day, keep the Senators and all of us who work with and for them mindful that You are Sovereign of this land, and that we are accountable to You for all that is said and done. May the bond of patriotism that binds us together always be stronger than any issue that threatens to divide us. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TED STEVENS led the Pledge of Allegiance, as follows:

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

RESERVATION OF LEADERSHIP TIME

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. ALLARD. Mr. President, on behalf of the majority leader, I have some information for Senators. The Senate will resume debate on the nomination of Miguel Estrada this morning. We had a productive debate on the Estrada nomination on yesterday afternoon, and it is the majority leader's objective to arrive at an agreement with the other side of the aisle regarding the consideration and vote on the nomination in the near future.

As previously announced, there will be no rollcall votes today. It is anticipated that the Senate will adjourn around noon. Therefore, Senators who wish to speak on the Estrada nomination are encouraged to make arrangements to do so earlier in the day.

EXECUTIVE SESSION

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Under the previous order, the Senate will return to executive session to resume consideration of Executive Calendar No. 21, which the clerk will report.

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

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Madam President, it is ironic that one of the arguments against Miguel Estrada, the President's nominee for the D.C. Circuit Court, center around prior judicial experience. This argument is nothing but hollow political rhetoric aimed at obstructing the Senate's constitutional duty to confirm judges. It is also a double standard of the highest order. To illustrate this point, I bring a Colorado legend to the attention of my colleagues. Byron ''Whizzer'' White may have passed away almost a year ago, but the Centennial State will forever feel his commanding presence. Mr. White was born in Fort Collins, CO, not far from where I live and where my family lives, and was raised in nearby Wellington. He went on to become his high school's valedictorian, All-American football star, college valedictorian, Rhodes

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

scholar, professional football player, and a decorated World War II soldier. Noting his many significant achievements, President John F.Kennedy nominated him to the Supreme Court in 1962, saying, Byron White ''excelled at everything he has ever attempted.'' White, at only 44 years of age, ascended to the bench of our Nation's highest court and went on to serve for three decades.

Why is this significant? It is significant because had President Kennedy adhered to such a rigid litmus test, Byron White would never have been seated on the bench of the United States Supreme Court. Adherence to the experience litmus test would mean that five of the eight judges currently serving on the D.C. Circuit would not have been confirmed because they had no previous judicial experience—including two of President Clinton's nominees, Merrick Garland and David Tatel, and one appointed by President Carter, Judge Harry Edwards, who was younger than Mr. Estrada currently is.

It is obvious that the opposition to Miguel Estrada is not concerned with merit or intellect. They are more concerned with partisan politics. Their work is concentrated on holding our Nation hostage to their rigid ideology, unprecedented in the consideration of judges. While caseloads in the Federal courts continue to increase dramatically and filings reach all-time highs, the opposition pursues an agenda of obstruction, aimed at disrupting the justice that is guaranteed by our Constitution, and creating a vacancy crisis in the Federal courts. Chief Justice William Rehnquist recently warned that the current number of vacancies, combined with the rising caseloads, threatens the proper functioning of the Federal courts.

This is a time in our Nation's history when our courts ought to be fully up and functioning. It is a time when there are lots of national security concerns centered around terrorist threats. These extraordinary delays must end. Miguel Estrada is a highly qualified and respected individual who deserves the Senate's consideration.

Mr. Estrada is a man of legal experience, a man of keen intellect and strong character. He has argued 15 cases before the Supreme Court and has served both as a Federal prosecutor and Assistant United States Solicitor General. If confirmed, he will be the first Hispanic to serve on the DC Circuit. I think that is significant. And he will be a principal asset to our system of justice.

Miguel Estrada has received the highest rating from the American Bar Association. He has received strong support from those who know him the best—the Hispanic legal community, including the Hispanic National Bar Association. I believe he has earned a vote in the Senate. He has earned my respect and my support, and I plan to vote for Miguel Estrada.

I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Madam President, I ask unanimous consent that I be able to proceed for 20 minutes as in morning business.

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

(The remarks of Mr. DORGAN are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Madam President, I am happy to be able to take the floor this morning to argue in favor of Miguel Estrada. Miguel is one of the finest lawyers in the country. He has arrived at this position and status, where he is approved by the American Bar Association as ''unanimously well qualified,'' the highest rating that the American Bar Association can give. He has had his critics, but only in generalized terms. He has had his critics who I don't think have a leg to stand on in the criticism they are raising.

One of the more ridiculous assertions that I have heard about Miguel is that he was not especially or sufficiently responsive at his hearing and therefore we need to have a second hearing to evaluate him. Keep in mind, the Democrats were in control of the Judiciary Committee. They called the hearing, they controlled the hearing, they controlled the timing of the hearing, they controlled the time for questions by Senators. And at least one Democrat said the hearing was conducted in a fair and responsible manner, and I personally agree with that. Senator SCHUMER was the person who chaired that particular hearing. I give him a lot of credit because it was a fair hearing and they asked every question they wanted to ask.

Secondly, after the hearing, on the Judiciary Committee we have a right to ask questions in writing. Only two Democrats asked questions in writing. Miguel Estrada had waited 631 days before he was given the privilege of having a hearing. Then the hearing was held.

Now we are hearing the same old wornout complaints that he wasn't sufficiently responsive and that, therefore, we need a second hearing to evaluate him.

Since Mr. Estrada didn't say anything at the hearing that could be used to besmirch him—that is the real problem; they could not find anything wrong with him; there is not one thing that anybody has said, other than generalizations, that has any merit at all—since they could not find anything at his hearing that could be used to criticize him, his opponents resorted to the tactic of alleging that he did not say enough. That is ridiculous. They controlled everything. They could have asked him anything, and I think they did. Now, he didn't say enough.

The fact is that Mr. Estrada correctly refused to answer questions that called upon him to prejudge issues that may very well come before him as a judge. That is what every nominee with any brains has done from time immemorial. No nominee wants to have to recuse himself in a serious case later because of something he said before the Senate Judiciary Committee. Well, let me repeat that. The fact is that Mr. Estrada correctly refused to answer questions that called upon him to prejudge issues that may very well come before him as a judge. This includes his opinion on whether established precedent was correctly decided and how he would decide these cases if he were working from a clean slate.

Lloyd Cutler, who was the White House chief counsel in both the Carter and Clinton administrations, and one of the premier lawyers in the country—certainly in this town—and one of the great public servants of all time, in my opinion, put it best when he said:

> [I]t would be a tragic development if ideology became an increasingly important consideration in the future. To make ideology an issue in the confirmation process is to suggest that the legal process is and should be a political one. This is not only wrong as a matter of political science; it also serves to weaken public confidence in the courts. Just as candidates should put aside their partisan political views when appointed to the bench, so too should they put aside ideology.

This is Lloyd Cutler, who was chief White House counsel for Presidents Carter and Clinton. He goes on to say:

> To retain either is to betray dedication to the process of impartial judging. Men and women qualified by training to be judges generally do not wish to and do not indulge in partisan or ideological approaches to their work.

Mr. Cutler concluded:

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

I agree with him, and so did all the Democrats on the committee when President Clinton's nominees came before the committee. Now all of a sudden, they are applying a double standard or a different standard to Miguel Estrada and, I might add, other Republican nominees who are coming before the committee.

We should be commending Mr. Estrada for refusing to take the bait and answer these questions. Instead he is being criticized for it and, I think, in the view of any impartial observer, is being criticized unfairly for one reason: They just do not want a Republican conservative Hispanic to sit on the Circuit Court of Appeals in this country. That is wrong. We all know it is wrong, and yet that is what is behind much of the antagonism toward Mr. Estrada.

As a fundamental matter, I am perplexed by the charges that Mr. Estrada's record is blank. That is what

we call bullcorn out in Utah. The truth is, Mr. Estrada's record is replete with material we used to evaluate his qualifications for the bench and how he would go about deciding cases. He has written numerous complex and thorough briefs for the courts, and he has argued on a wide range of subjects.

His briefs, all of which are publicly available—and I know the Democrat staffers have pored over every one of them—provide tremendous insight into his legal reasoning and thinking on constitutional and statutory interpretation. His achievement of having argued 15 cases before the U.S. Supreme Court provides a record of how he has responded to focused interrogation on the most important matters to America's highest court. The transcripts from these oral arguments are also publicly available. Where is the legitimate complaint by the other side about this blank-slate business?

Still further, Mr. Estrada not only said at his hearing he would support established law, but he proved this when he wrote an amicus brief at the Solicitor General's office in support of the National Organization for Women. I do not hear any compliments from the other side on his work there. His support of a law that backed a reproductive choice side in that case indicates there is no reason to expect he would not follow Roe and Casey as a DC Circuit Court judge, and yet that has underlined many of the complaints by my friends on the other side. They are so afraid that somebody on these Circuit Courts of Appeals might possibly do something to overrule Roe v. Wade or Planned Parenthood v. Casey, two very important abortion cases.

I have not heard one President Bush nominee say he or she will not uphold the laws of this land, including Roe v. Wade and Planned Parenthood v. Casey. The truth is, many on the other side have not even liked Planned Parenthood v. Casey because it does take a more moderate position with regard to abortion. Now it is the law of the land and, of course, it is one of the cases they certainly do not want to have overruled.

Mr. Estrada's opponents are so eager to distort his record that they do not mention this case or any one of many other cases which reveal his legal reasoning and willingness to follow the law.

It needs to be explained to everybody that not only do they have access to all these briefs he has written, both in the Supreme Court and other courts of the land, but they could have asked any question they wanted of Mr. Estrada. Any member of the committee can do that. Some may be ill-advised and not very fair, but we allow them to ask any questions they want. Then they can ask any questions in writing. In almost every case, Mr. Estrada asked to meet with individual Senators beforehand so they could meet privately and ask any questions they had.

Mr. Estrada today is known all over the country by those who really understand important lawyers and understand the success of lawyers—working with one of the most important law firms in the country as a full partner, and he has both Democrat and Republican partners. I might add, some of the leading people in support of Mr. Estrada today are Democratic attorneys—not just attorneys, but top attorneys—and we have mentioned them, from Ron Klain to Seth Waxman, Klain having been Vice President Gore's chief counsel, both as Vice President and in his campaigns. Ron Klain used to work on the Judiciary Committee as one of the top judiciary staff people. He is an excellent lawyer and a wonderful person. We all care for him. I personally care for him, and one reason I do is because he is honest, not just honest enough to say how good Miguel Estrada is and to back him, but honest in his dealings in legal matters as well. I have a lot of respect for him. Seth Waxman is one of the premier lawyers in the country, no question about it. He knows I have a lot of respect for him, and it is not just because of work on the Judiciary Committee. He is a fine lawyer, one of the best and former Solicitors General of the United States in the Clinton administration.

Some have advanced the preposterous argument that Miguel Estrada is not qualified to serve on the DC Circuit because he has no prior judicial experience. That is one of the most ridiculous arguments of all. Of all the ridiculous arguments his opponents have drummed up, to me this is the most ludicrous. There are literally hundreds of examples of judicial nominees who have gone on to serve as great Federal judges at both the Court of Appeals and Supreme Court levels despite having no prior judicial experience.

Chief Justice Rehnquist in his 2001 yearend report on the Federal judiciary noted:

> The Federal judiciary has traditionally drawn from a wide diversity of professional backgrounds with many of our well-respected judges coming from private practice.

Such Justices included Louis Brandeis, who spent his whole career in private practice before he was named to the U.S. Supreme Court in 1916 and came to be known as ''the people's attorney'' for his pro bono work.

Supreme Court Justice Byron White—I knew Byron White very well. He was very friendly to me throughout my career. He spent 14 years in private practice and 2 years at the Justice Department before his appointment to the Court by President Kennedy in 1962. He is a wonderful man. Byron White served this country well and his memory will always be a good memory. Byron White moved from the left to the center to even a little bit to the right on the Court, and that did not please a lot of our friends on the other side.

Supreme Court Justice Thurgood Marshall had no judicial experience when President Kennedy recess-appointed him to his first judgeship in the Second Circuit Court of Appeals in 1961. Justice Marshall had served in private practice and as special counsel and director of the NAACP prior to his appointment. I do not think anybody would doubt he made a very important contribution to the jurisprudence of this country.

Several well-respected members of the DC Circuit, including two of President Clinton's three appointments to that court, arrived with no prior judicial experience.

Merrick Garland: I have a lot of regard for Merrick Garland. I helped to see him get through when there was some opposition to him. He was a Clinton appointee. He served at the Department of Justice and was in private practice. He was never on the bench prior to his appointment.

David Tatel, also a Clinton appointee, had served in private practice for 15 years prior to his appointment. In fact, only three of 18 judges confirmed to the DC Circuit before President Carter's term began in 1977 previously served as judges.

For example, Abner Mikva, appointed by President Carter, was in private practice for 16 years in Chicago, served in the Illinois Legislature and in the U.S. Congress and had no judicial experience prior to his appointment in 1979 to the Circuit Court of Appeals for the District of Columbia.

Other Democrat-appointed DC Circuit judges with no prior judicial experience include Harry Edwards, Patricia Wald, and notably Ruth Bader Ginsburg, now sitting on the Supreme Court.

Several other Clinton appointees to the Courts of Appeals received their appointments despite having no prior judicial experience: Ninth Circuit appointees Richard Tallman, Marsha Berzon, Ronald Gould, Raymond Fisher, William Fletcher—who was a law professor at Boalt Hall at Berkeley—Margaret McKeown, Sidney Thomas, and Michael Hawkins all had no judicial experience prior to taking the bench.

Seven of these eight, all but Fletcher, were in private practice when they were nominated by President Clinton.

Second Circuit appointees Robert Katzmann, Robert David Sack, and Chester Straub had no judicial experience prior to their appointments. Third circuit nominee Thomas Ambro, Fourth Circuit nominees Robert King and Blane Michael, and Sixth Circuit nominee Eric Clay and Karen Moore also had no prior judicial experience.

What is the point? Is it that it is all right for Democrat Presidents to appoint people without prior judicial experience, who become very good judges on the bench, but it is not all right for Republican Presidents to do so? Is it all right to have more moderate-to-liberal appointees who have never had any judicial experience, but it is not all right to have moderate-to-conservative appointees appointed by a Republican President? It is all right to have liberal

Hispanics appointed to the courts—I agree with that—but it is not all right to have a Republican Hispanic who, perish the thought, Democrats think may be conservative?

Given this illustrious group of former practitioners like Mr. Estrada, who were not Federal judges, I find it hard to swallow that Mr. Estrada's lack of prior judicial service should somehow be counted as a strike against him.

I noticed this morning in the New York Times—now, I read the New York Times regularly. It is a very important paper in this country, and I have a great deal of respect for most of the people who work at the New York Times, but their editorial department has been almost amazingly inaccurate—not almost amazingly, it has been amazingly inaccurate.

Today, they have an editorial dated February 6, 2003, entitled ''Steamrolling Judicial Nominees.'' They say:

The new Senate Republican majority is ushering in an era of conveyer-belt confirmations of Bush administration judicial nominations. No matter which party holds the gavel, the Federal courts are too important for the Senate to give short shrift to its constitutional role of advice and consent.

I agree with that. I do not think we should give short shrift to any degree. These are important positions. They are lifetime appointments. We ought to do a thorough examination of them.

So everybody understands, and I want the New York Times editorial board to understand, before a person even comes up to the Senate, that person has been evaluated by the White House, by the White House Counsel's Office, by the Justice Department. There has been a complete FBI review of that person's life. The FBI interviews just about everybody who wants to be interviewed and some who do not want to be interviewed. The interviews range from people who love the candidate or the nominee to people who hate his or her guts.

There are people who make scurrilous comments, all kinds of anonymous things. These are raw reports that come into the FBI file. They report it all. Then it comes to the Judiciary Committee, and the chairman and ranking member and our staffs go through those FBI reports with a fine-tooth comb.

To the credit of both the Republicans and Democrats—or Democrats and Republicans, I should say—both sides have worked very well to get rid of the chaff and to do what is in the best interest of this country and to be fair to these nominees. That is a very arduous process. The minute they decide to pick one of these people, or even maybe before sometimes, they then tell the American Bar Association—not because they have a formal role in the process but because we want to have the leading bar association in the country involved. At least the Democrats have always wanted to have them involved. I have to admit I did not want to have them involved when they were not being very fair, when there was bias and bigotry, but there is none of that now. I think they are doing a terrific job now, and as long as they do it fairly and down the middle, without bias and without being political, they are going to have my support, and I support them right now. But we then have the American Bar Association look into these people and they go right into the person's hometown. They talk to the attorneys who know him. They talk to their top attorneys whom they know are people of integrity and ability and leaders in the bar in their community. They talk to just about everybody who has any interest in the nominee, and this has all been done for Mr. Estrada. Then they sit down and they have their standing committee make an evaluation of these nominees.

These evaluations are tough evaluations, especially on those who do not come out of them very well. In this case, Mr. Estrada has a ''unanimously well-qualified'' rating from the Standing Committee of the American Bar Association—I should say from the American Bar Association because they represent the whole bar. That is something that does not always happen. In fact, it does not happen very often, to have ''unanimously well-qualified.''

All of that is unbelievably difficult for the nominee. The nominee has to sign a disclosure form that just about lays bare everything in that nominee's life. One can see why some people do not even want to become judges anymore. Some of the greatest lawyers in the country, who would serve on the bench, do not want to go through this process. The investigation of the nominee includes Finances and everything, it is all laid out; cases are laid out. They are asked questions that are very intrusive into their lives. I think the questionnaire is too strong, but it has been very difficult to change over the years. That is what they go through. Then they are nominated. The Judiciary Committee then starts its work, and we go through every one of these documents.

We go through that FBI report with a fine-tooth comb. If there is anything left undone, we then ask the FBI to follow up. We do not leave anything undone to the extent that we can. If there are some particular problems, we bring both sides of the Judiciary Committee together and tell them these are problems. We disclose it to the members of the Judiciary Committee. The ranking member will disclose it to his side. The Chairman discloses it to his or her side.

Once that is done, then we set it for a hearing. The hearings usually do not last days at a time for circuit court nominees or district court nominees. They are generally a 1-day affair, as they should be, because we have all this information. Anybody can cull through all that information, and their staffs really do. Sometimes they are looking for dirt, looking for things they can raise that might make the process better in some cases or that might scuttle a President's nominee in other cases. There is a lot of partisanship sometimes. That is not all bad because we want the best people we can get to serve on the Federal bench in this country.

This editorial indicates this is just a steamrolling of nominees. Now, that is crazy. In the case of Estrada, his nomination has been pending for 631 days, having had every aspect of his life combed over and because they cannot find anything to smear him with or find fault with—it depends on who the person is—or to criticize, all of a sudden he is being steamrolled.

Well, 631 days is almost 2 years. It is way too long. I have to admit, there were some mistakes when I was chairman during the Clinton years, but nobody should doubt for a minute that President Clinton was treated fairly. President Reagan was the all-time confirmation champion with 382 judges confirmed in his 8 years, and he had a Republican Senate to help him do it. President Clinton had virtually the same number, 377, as the all-time champion, and he had 6 years of an opposition party to help him do it. I know. I was the chairman during that time, and I did everything I could personally to help the President because he was our President. There was only one person voted down in that whole time, and I have to admit I do not feel good about that. And there were less people left holding at the end than there were when Democrats had control of the committee.

Going back to this editorial, because I want to help my friends at the New York Times to be a little more accurate—frankly, I think they can use some help because their editorials, especially in this area, have been awful. And this is a perfect illustration.

Going to the second paragraph:

Republicans on the Judiciary Committee held a single hearing last week for three controversial appeals court nominees.

Just for information, that was Jeffrey Sutton. That was John Roberts, and a wonderful woman named Cook—Sutton and Cook and Bill Roberts from DC Court of Appeals.

By the way, all three are well known. Sutton is one of the top appellate lawyers in the country; Roberts, who was considered if not the top, one of the two top appellate lawyers before the Supreme Court of the United States; and Cook is a Supreme Court justice in Ohio.

Republicans on the Judiciary Committee held a single hearing last week for three controversial appeals court nominees. There was no way, given the format, for Senators to consider each nominee with care.

We held one of the longest hearings ever on record, from 9:30 in the morning until 9:30 that night. I was willing to stay longer. I told the Committee we would finish that hearing that day and I would stay as long as it took.

There was no way, given the format, for senators to consider each nominee with care.

A fourth nominee had a hearing yesterday, and a fifth is likely to have one next week.

What is wrong with that? They have been sitting there for months and months and they are high-quality people. They have gone through this horrendous process to get to where they have a hearing.

During the Clinton years, the committee took six months or more to consider the number of appeals court nominees this committee is hearing from in two weeks.

I would add that many nominees have been waiting longer, not 6 months or more, 2 years, in the ones we have called up.

By the way, Mr. ROBERTS had been sitting there since 1990 or 1991 or 1992. I know he has been sitting there for at least 11 years. He has been nominated three times. This is too much of a rush? Give me a break. They took a lot longer than 6 months to consider the Bush nominees.

The nominees being whisked through all have records that cry out for greater scrutiny.

I have covered how scrutinizing we are in the committee. We do not miss anything. My friends on the other side do not miss anything. We don't either.

One, Jeffrey Sutton, is a leading states' rights advocate who in 2001 persuaded the Supreme Court to rule against a nurse with breast cancer on the ground that the Americans With Disabilities Act does not apply to state employers.

I was one of the authors of the Americans with Disabilities Act. I was not enthused about that case. But the fact is, it was a legitimate legal matter and he had every right to represent the States in that matter. The attitude around here is, if he represented the States, it must have been wrong. Or, if he represents big corporations, he must be wrong.

Sometimes the States are right. Sometimes the corporations are right.

Mr. SESSIONS. Will the Senator yield?

There is some statement in there that sounds odd to me. They criticize Mr. Sutton for persuading the Supreme Court, like it is something bad. And I make a note that the Supreme Court ruled with him and agreed with his position.

I know the Senator is so knowledgeable about these issues. I just ask, Is there something wrong, is it disqualifying for an attorney to prevail on the Supreme Court?

Mr. HATCH. Apparently to the New York Times. The fact is, that case was written by the Supreme Court. He advocated, as any advocate, and he was representing, as I recall, one of the States.

Another, Deborah Cook, regularly sides, as a state judge, with corporations.

Oh, my goodness. You mean we have somebody who will be on the Federal bench who occasionally finds corporations might be right? What a terrible thing that must be, that corporations are right? Let's be honest about it. A lot of employment cases, almost every one that is good, is settled before it gets to court. It is only the hard cases that basically have to be tried. And in many instances, those cases are not good cases. Some on the other side seem to think, well, she sides with corporations. My gosh, she sides with who is right. And that is what we should do.

Admittedly, sometimes it was a dissent, and she was known for the dissent. That is not bad. Dissenting judges play a noble role. You can disagree with cases but you cannot disagree with her integrity. No one would attack her integrity.

In one case she maintained that a worker whose employer lied to him about his exposure to dangerous chemicals should not be able to sue for his injuries.

That is the most oversimplification I have ever seen. It is wrong.

Jay Bybee, who was heard from yesterday, has argued that United States senators should be elected by state legislators, not the voters.

That is purely wrong; it is bunk. The fact is, this system we have is a good system. But we know one time Senators were elected by State legislatures. He has expounded on that.

Questions have also been raised about whether, as a White House aide, Mr. Bybee attempted to suppress a criminal investigation of financing of Iraqi weapons purchases.

Come on. That is totally bunk. They have not talked to Mr. Bybee and given him any consideration. That, first, should never have been disclosed. But it was. And not one person asked a question about it. I am sure they will say they were watching Colin Powell's speech. I was not. I was sitting there in committee, making sure they had a chance to ask any questions they wanted. We delayed the committee until after Colin Powell finished to enable any Democrat to come, and at least two said they would come, to come back and question. They did not come back.

The committee's new leadership showed similar recklessness when it waved Miguel Estrada through on a straight party-line vote.

What are we suppose to do if the other side plays politics with the judges? They did not have one good argument through the whole process, and we have had a horrendous process to begin with that took 631 days before he came to the committee. The only reason he came then was because the Republicans took control of the Senate. Thank goodness for that or he would never have come up. He would never have had a chance. We all know it around here.

''Mr. Estrada, a conservative lawyer''—who knows if he is. I don't know his ideology. I know he is a great lawyer. And I presume, as I am sure the President does, that he is probably moderate to conservative.

''Mr. Estrada, a conservative lawyer with almost no paper trail,''—I just made the case there is a paper trail on him—''refused to answer senators' questions on crucial issues like abortion.'' Give me a break. He did answer. He said that he would apply the law regardless of his personal viewpoints.

This is a man who argued the case for NOW. Who knows where he stands—I don't know. All I can say is that is a ridiculous statement. I guess editorials can be ridiculous, but this one is particularly.

Meanwhile, the White House refused to hand over memos Mr. Estrada wrote as a government lawyer that could have shed light on his beliefs.

They wanted memos on that side because they could not find anything else to give him a rough time about. They wanted memos on that side from the Solicitor General's office and seven former Solicitors General, four of whom are Democrats, came in and said that would be a very inadvisable thing to do because it would chill the work of the Solicitor General's office. People would not give their honest opinions if they knew that later they would be pilloried with those in the Senate of the United States.

Meanwhile, the White House refused to hand over memos Mr. Estrada wrote as a government lawyer that could shed light on his beliefs.

Mr. Estrada said it would have been all right with him. He is proud of his work.

I have to say that the greater approach would be to recognize that there are some things that have to be privileged. As I say, all seven living former Solicitors General have said that.

''The Bush administration is naturally going to nominate candidates for the bench who are more conservative than some Democrats would like,''—that is fair—''and the Republican majority in the Senate is going to approve them.'' That is fair. ''That does not mean, however, that the administration should be allowed to act without scrutiny,''—that is not fair, because it is tremendously scrutinized—''and pack the courts with new judges who hold views that are out of whack with those of the vast majority of Americans.''

Now, come on.

We fear that that is what the hasty hearing process is trying to—

Come on. Hasty—631 days before he even gets a hearing with all of that scrutinization that has gone on? It is not fair. This editorial is not fair.

I call on my friends at the New York Times: be fair about the judges. I know the paper is more liberal than I, and I expect you to be more liberal. But I expect you to be fair. This business about three judges being called at one time—they have been sitting there for 631 days or more; actually more. They have been sitting there since May 9, 2001. They have been scrutinized to death. We gave every opportunity to question and every opportunity to file additional questions.

By the way, I remember during the Carter years, when Senator KENNEDY was chairman of the committee, if I recall correctly we had seven circuit

nominees on one hearing. Is it wrong for Republicans to try to move these judges after all of these delays when they have the opportunity to do so, but not wrong for the Democrats to move the judges they want moved when they have control of the White House and the Judiciary Committee? I don't think there should be a double standard. I wanted to move as many of those May 9 judges as we could. If you will take note, the next week we had only one and that was Jay Bybee. That was this week. And next week we will probably only have one more.

We are doing the best we can to try help solve judicial problems in this country. Just for the information of the New York Times, there are around 25 judicial emergencies in this country—emergencies. The Circuit Court of Appeals for the District of Columbia is one. The Sixth Circuit Court of Appeals in Ohio is another. We need to do something about that if we want justice in this country, if we want to have cases heard and tried and resolved—and that is what we want. That is what good lawyers want, fair judges who will fairly listen to their case and give them a fair trial. And these judges will. That is why they are so highly rated by the American Bar Association and that is why Miguel Estrada has the highest rating possible.

I think it is time for the New York Times to be more fair in its reporting on these judges. I noticed the day before they were reporting as though Paul Bender's opinion really amounted to something. It may in some areas, but certainly I think the opinions he gave at the Solicitor's office are more important than politically motivated opinions that he gives later as a liberal Democrat—and, I might add, a very liberal Democrat.

I have taken enough time. I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Madam President, I ask unanimous consent to speak as in morning business for 25 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. Madam President, reserving the right to object, I assume the Senator will be speaking on a subject other than the Estrada nomination?

Mrs. MURRAY. That is correct.

Mr. SESSIONS. I will say, I was down here to speak on the Estrada nomination. I think the individuals who oppose him say they want to talk about it. I would like to hear what they have to say. This morning there is nobody down from the other side, the opposition, to speak against him. I don't know what they could say if they came. So it is frustrating to me.

I know the Senator has some issues she cares about deeply and wants to talk. I suppose that is appropriate at this time, although in reality I think we ought to be engaged in a debate about this nomination and why it should be held up, why he does not qualify for the bench, and why there is something wrong with an individual who was given the highest possible rating, unanimously, by the American Bar Association.

Having said that, I withdraw my objection to the unanimous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Washington.

(The remarks of Mrs. MURRAY are printed in today's RECORD under ''Morning Business.'')

Mrs. MURRAY. I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I assume we are on the business of the Estrada nomination.

The PRESIDING OFFICER. The Senator is correct.

Mr. SESSIONS. Mr. President, that is the pending business before the Senate today. It is a matter of importance. The Court of Appeals of the United States are important judicial offices. We need good people for those offices.

There is no doubt in my mind that Miguel Estrada is one of the finest nominees we have seen in years. He has an impeccable record, with extreme capability, and wonderful integrity. He had a great demeanor in the committee when he testified. So I am very impressed with him.

It is very disturbing to me that we would have a blockage, an obstruction being carried on here by the members of the Democratic Party. They stalled him in committee. They failed to give him and several other superb President Bush nominees to the court of appeals a hearing at all—over 600 days. It would have been 2 years in May since they were nominated, and there was not a hearing even held.

So when the majority switched, Senator HATCH had hearings on Mr. Estrada. I thought he testified just superbly, with such a winning manner. He is a low-key person, but he has a brilliant mind. He analyzed the questions carefully, and gave responsible answers time and again in a way that few could disagree with, in my view.

If we are going to slow down the work of the Senate, if we are going to stop what we are doing to talk about a nominee for the court of appeals, I would like to hear people step up to the plate and talk about that nominee. Let's see what the problems are. I haven't seen them. We have had two speakers today from the other side who talked about asbestos and hydrogen automobiles, not the subject at hand. We have agreed to that. I don't know how long we ought to agree to that. Maybe we should just say, if you want to slow down the Senate, then so be it. We will just talk about that day after day. I am concerned about that.

I did misspeak in saying that Estrada didn't have a nomination hearing under the Democratic majority. He did get a hearing late in the process. Three of the nominees we had last week who were nominated with him in May 2 years ago got their first hearing just last week. He was not part of that group.

Mr. Estrada came to this country at 17. He went to Columbia College where he graduated with honors magna cum laude. Then he went on to Harvard Law School. He grew up in Honduras. His mother came here. She could not speak English. He has done exceedingly well. He is a tremendous American success story. He is a great American, the kind of person we all respect because of his merit, his humility, his strength of character, his hard work, and his intellect.

After going to the Harvard Law School, which many consider the most prestigious law school in the world, he not only finished at the top of his class, he was chosen to be editor of the Harvard Law Review. The editor of the Harvard Law Review or any law review at a good law school is considered to be one of the most outstanding honors a graduate can have. It is probably more significant in the minds of many people than who had the highest grade point average, who finished No. 1 in the class. Being editor of the law review is something you are chosen for by your classmates and the faculty. It is a great honor. It requires exceptional academic excellence. He finished magna cum laude at Harvard. It also requires leadership skills and analysis, the kind of skills that most people think make a good lawyer. He was successful in that.

After doing that, he was an assistant U.S. attorney in the Southern District of New York. I was an assistant U.S. attorney in my prior life, and a U.S. attorney. But those in the Southern District of New York, rightly or wrongly, considers themselves to be the premier U.S. attorney's office in the country. They hire only the highest achieving assistant U.S. attorneys. They are very proud of that. Just being chosen at that office is a great honor. I would suspect there are more than 100 applicants for every vacancy they have. It is an office that handles complex matters. Some of the biggest financial and international matters often get handled in the Southern District of New York.

While he was there, he became active in and chairman of the appellate litigation section. That means he wrote briefs that would be presented to the Second Circuit Court of Appeals in New York. The Second Circuit is considered one of the great circuits in America. So he was chosen to represent the United States in the attorney's office, to write their appellate briefs before one of the great circuit courts.

One reason he was chosen for that is that Miguel Estrada, after graduating from Harvard, clerked for a U.S. Court of Appeals judge for the Second Circuit there in New York and had a good record. After having clerked for the Second Circuit, he was chosen to be a

clerk for the U.S. Supreme Court, Justice Anthony Kennedy.

For lawyers graduating from Harvard, or from any law school in America, being chosen to be a law clerk for a Justice on the Supreme Court is an exceedingly great honor. It is sought by thousands and thousands, and very few are selected. He was selected because of his excellent record, his background, and expertise. It is a great compliment to him that he was chosen to clerk for Justice Anthony Kennedy, who is considered to be a swing Justice on the Court.

After that, he went to the U.S. attorney's office, where they prosecute criminal cases and work on the appeals that arise from those kind of cases and other matters relating to U.S. litigation in court. That is what they do there. He did a good job there.

Then he was chosen to come to the Solicitor General's Office of the U.S. Department of Justice. Inside the Department of Justice, one of the oldest Cabinet positions in our Government, one of the founding Cabinet positions, there is the Litigation Division. Inside the appellate litigation section is the Solicitor General's Office. The Solicitor General has often been referred to as the Government's lawyer. The position of Solicitor General has been called one of the finest lawyer jobs in the world, because the Solicitor General and his team get to appear before the Supreme Court and represent the United States.

I used to be thrilled when I could stand in a courtroom in the Southern District of Alabama and say: I represent the United States of America. The United States is ready, Your Honor.

That was a great honor for me. To be able to do that in the highest court in the land and represent the United States before the Supreme Court is a premier honor for any lawyer.

Miguel Estrada was chosen for that. He served over 5 years in that capacity. During that time, overwhelmingly, he served in the Clinton Department of Justice. During that time, every single year while he served in the Department of Justice, he got the highest possible evaluation that the Department of Justice evaluators give—year after year. They said he was cooperative, a leader; he inspired other lawyers to do their best. They said he followed the policies of the Department of Justice, not someone running off doing independent things and nutty things.

He was a solid, committed attorney to the Solicitor General's Office, to the ideals of the Solicitor General's Office. He was commended in his evaluations for following the policies of that office.

That is quite an achievement. He left there and joined the prestigious law firm of Gibson, Dunn & Crutcher, one of the great law firms in the world, no doubt. He has been highly successful there, and the President has now nominated him for the court of appeals.

He has, in the course of his career, argued 15 cases before the U.S. Supreme Court. You could count on both hands probably the number of practicing lawyers today who have ever argued 15 cases before the Supreme Court.

That is a reflection of the confidence that clients and his law firm had in him. This isn't politics. When you have a big case before the Supreme Court of the United States and you have to have somebody there arguing that case, you don't want second rate, you want the best person you can get. The Supreme Court hears less than 100 cases per year. They select only a very few. Whenever your case is chosen for the Supreme Court, there is no doubt about it, the clients start looking around for superior appellate lawyers to represent their interests in a case that may set national policy for generations to come. We still cite many of those Supreme Court cases time and again to indicate the importance of them and how much they impact our daily lives. So he was chosen 15 times to appear before the Supreme Court. I think that is a tremendous testament to his merit, his capability.

I will tell you something else. You don't hotdog before the Supreme Court of the United States. You have to know what you are talking about. You have to be disciplined and you must understand the rulings of the Supreme Court, how they impact the case at hand, and you have to argue to the Justices within the realm of their existing philosophy and the existing status of the case law as to why you think your client should prevail or why the opponent should not prevail. That is a great compliment to him.

Now, for some time, our Democratic colleagues have complained we did not give enough prominence to the opinions of the American Bar Association. They evaluate judges. They are not any official body. The American Bar Association is just an institution out there that does legal matters and represents lawyers as a group. They evaluate these judges. So they want to do it and they do it. They have every right to do it. I, frankly, value their opinions. I have always thought they were good. Some have felt they were biased a bit to the left. The positions the ABA takes at conferences consistently are liberal positions, which irritates a lot of lawyers and conservatives in the country. They have felt the ABA could not be trusted to evaluate judges objectively. In fact, I have noted some tendency to be less favorable to conservative judges than to liberal judges, but I feel their contributions are valuable—I always have—and I continue to believe they are valuable. So that was a complaint from our friends on the other side of the aisle, that we ought to listen to them more.

The ABA has reviewed Miguel Estrada's nomination. They have conducted a thorough review of it. They give several different kinds of ratings. They give ratings of nonqualified, unqualified, qualified, and a well-qualified rating. Very few people get the well-qualified rating. This is what it requires to get it, according to the ABA manual:

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

That is what is required for a person to get the well-qualified rating. They have 15 of so lawyers study and talk to judges and to the lawyers in the firm with the person, and they talk to lawyers on the other side of cases from the nominee; they make the nominee list the top 10 or so cases they have handled, and they talk to the lawyers and judges to see how well they performed in handling those cases, and so forth. When all of that was done, Miguel Estrada was unanimously voted well qualified, which is the highest possible rating for the court of appeals. In fact, he is one of the finest young lawyers in America today, a man of extraordinary capabilities, and I think a man who would be perfect for the court of appeals. He will be handling cases in a number of different aspects. These will be the kinds of matters he has spent his life handling, because the kinds of cases they have here in DC are cases he has worked with both as an Assistant U.S. Attorney when he represented the United States of America, and at the Solicitor General's office, and also the kind of appellate cases he has had in private practice before the Supreme Court. I am proud of him. I have observed no complaint that in any way damages his qualities and capabilities.

Miguel Estrada has support across the aisle from Democrats and Republicans. He is the kind of person who ought to move forward. I remain utterly baffled about why such a fine nominee would be given the kind of grief he has gotten so far, and to be held up the way he has been held up, and how people say they are going to fight it for weeks, perhaps. I hope that is not so. I hope we don't have a filibuster. At the time the Republicans had the majority in the Senate, and when President Clinton was nominating judges, we never had a filibuster. During that time, we confirmed 377 of President Clinton's nominees and voted only one down. Not one nominee was ever blocked in committee, and in less than 2 years we have had two nominees blocked in the committee already, when the Democrats had the majority.

Regardless of that, this nominee ought to move forward. He is the kind of person we need on the bench. We should celebrate the fact that an individual of his quality, with his potential to create high income in one of the finest law firms in the country, right here in one of the most prestigious practices in the country, is willing to give that

up for public service because he loves his country and the principles of our country.

I think he is the kind of person we need on the bench, and I think it is time for us to give him a vote. I am sure we will and, when we do, I believe he will be confirmed.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I have been an observer of all of these debates about judges because I am not a lawyer and I don't sit on the Judiciary Committee, but I have been interested to note that when President Bush became the President, he announced he would not allow the American Bar Association to, in effect, veto Presidential nominees. He said the Constitution doesn't give the American Bar Association any right to determine who should be on the Federal bench and who should not, and that he would not bow to the American Bar Association for their recommendations.

Our friends on the Democratic side of the aisle, in the popular phrase of the teenagers, went ballistic. They said the American Bar Association was the gold standard by which everybody should be judged. And Senator LEAHY, when he was chairman of the Judiciary Committee, made it very clear that even though a recommendation from the American Bar Association is extraconstitutional, he would apply that extraconstitutional test to everyone who came up; and if they did not pass that test—extraconstitutional though it is—they could not be confirmed. He made that very clear. I am grateful to him for his candor. I appreciate the fact he was open with this body and the American public that that particular test was being added to the constitutional test that a nominee should pass.

Now we have someone before us who passes not only the constitutional test but the extraconstitutional test laid down by the Democrats. He is not only qualified—according to the American Bar Association, ''well qualified''—he was found unanimously well qualified by the American Bar Association. Yet Senator LEAHY is leading a form of filibuster against this nominee that gives rise to this question, which I have asked on the floor before and, undoubtedly, in this extended debate I will ask again. I would ask Senator LEAHY, Senator KENNEDY, and the others: What additional, extraconstitutional test have you devised that you are applying to nominees for the judiciary? You have told us the first one. You have been very up front about it and tell us what additional, extraconstitutional test you have determined must be passed by a nominee because there is no obvious reason this nominee should be objected to; there is no obvious reason every single Democrat on the Judiciary Committee should have voted against him and we should see the coming of a filibuster against his nomination.

The Senators are exercising their rights. I do not object to them exercising their rights, but I do ask them very respectfully to tell us the nature of the test they are applying to these nominees so that we can know in advance in future circumstances which nominees will not pass their test, which nominees will fail that test. In order to do that, we need to know what that test is.

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. BUNNING. Mr. President, I ask unanimous consent that further materials be printed in the RECORD following my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BUNNING. I thank the Chair.

Mr. President, today I rise in support of the nomination of Miguel Estrada to sit on the DC Circuit Court of Appeals. As has been said many times in this Chamber, Mr. Estrada is highly qualified to sit on this court and deserves a fair hearing and a vote in the Senate.

There are four vacancies on the DC Circuit's 12 seats. Most lawyers consider the DC Circuit to be the second most important court in the United States. That means the court is missing one-third of its judges.

That is alarming. The seat for which Mr. Estrada has been nominated has been designated as a judicial emergency by the Judicial Conference of the United States. To leave the seat empty for any longer is unacceptable and dangerous.

In Kentucky, we know a little bit about vacancies. We are part of the Sixth Circuit Court of Appeals, and that panel has 6 vacancies right now out of 16 total seats. That is a little better from not too long ago when we had 8 openings, but it is not much better. In all, the U.S. Courts of Appeals have 25 vacancies, totaling 15 percent of the entire system.

The situation is so bad the American Bar Association has described it as an emergency. Fortunately, the Judiciary Committee held hearings on four appellate court nominees recently, and one of those nominees is now before the Senate. At least we are starting to see some progress.

Recently, Chief Justice Rehnquist delivered his annual report on the state of the Federal judiciary. One of the key points he emphasized was promptly filling vacancies. With this nomination, we have the opportunity to begin filling empty seats on the bench.

Case filings in the Federal court system hit a new record high last year, and I believe that trend will continue this year also. The record number of cases in the court system, combined with judicial vacancies, led the Chief Justice to warn Congress that proper functioning of the court system is in jeopardy. The Senate cannot and must not allow that to happen.

In concluding his remarks on judicial vacancies, the Chief Justice said:

> We simply ask that the President nominate qualified candidates with reasonable promptness and that the Senate act within a reasonable time to confirm or reject them.

I cannot imagine a clearer signal to the Senate to fulfill its responsibility to confirm judges.

President Bush has done his part in nominating candidates of the highest moral integrity and legal expertise. Each of his nominees has been carefully selected, and each deserves a hearing and a vote, which leads us to the nomination before us today.

Mr. Estrada was nominated by President Bush in early 2001. Although he did get a hearing in the Judiciary Committee after well over a year, he was not granted a vote. It took almost 2 years for him just to get his day in court. In fact, when the 107th Congress ended last year, 31 nominees were still waiting in committee for a vote. We had not even had hearings in the Judiciary Committee.

Twelve of the 14 pending nominees for the court of appeals were nominated in 2001, and six of them, including Miguel Estrada, were among the first group of nominees submitted to the Senate nearly 2 years ago.

The judicial nomination situation in the Senate is totally unacceptable. Fifteen of President Bush's appellate nominees have had to wait more than a year for a hearing—not even a vote, just a hearing. According to the Justice Department, 15 of President Bush's appellate court nominees have had to wait over a year for a hearing. This is a higher total than the combined total that had to wait over a year for the past 50 years.

Almost 90 percent of the appellate court nominees made in the first 2 years of the Reagan, George H. W. Bush, and Clinton administrations were confirmed by the Senate. But in the first 2 years of this administration, only 54 percent were confirmed.

Chief Justice Rehnquist is not exaggerating when he says the status of judicial nominations threatens the very function of our court system and justice itself.

As for Mr. Estrada, he is a fitting nominee to break this logjam. Mr. Estrada is an inspiration. He has lived the American dream. He will become the first Hispanic to serve on that prestigious court. He is a fine example of the quality nominees President Bush has sent to the Senate.

Mr. Estrada came to the United States when he was 17 years old, growing up in Honduras. He spoke little English when he arrived in America, but that did not keep him from graduating magna cum laude from Columbia College and Harvard Law School. He is no stranger to the appellate court system.

After law school, he clerked for a judge at the Second Circuit Court of Appeals. After that, he was a clerk for Justice Kennedy at the Supreme Court. Mr. Estrada then served as an assistant U.S. attorney in New York and a deputy chief of the appellate section of the

U.S. Attorney's Office. Those jobs required him to try cases in the district courts and argue before the Second Circuit Court of Appeals.

Next, he served in the Office of the Solicitor General during William Jefferson Clinton's administration. Now he is a partner in the Washington, DC, law firm of Gibson, Dunn, & Crutcher.

It has been said many times, but I think it is worth repeating, Mr. Estrada earned the American Bar Association's highest rating for a nominee, a ''unanimously well-qualified'' rating.

He has been endorsed by a long list of political, business, and civil rights organizations. I have yet to hear any detractors make credible arguments that he is not qualified. I can see no obstacle to his being confirmed. He is supported by Seth Waxman, a Solicitor General under former President Clinton, as well as the former chief legal counsel to Vice President Gore. There is no question in my mind that Mr. Estrada will make a fine judge once confirmed. His life story is an inspiration for minorities, and all of us, throughout America. His hard work and dedication is obvious. His academic and legal achievements cannot be denied.

I urge the Senate to quickly hold a vote on this nomination, and I urge my colleagues to support Miguel Estrada.

I yield the floor.

EXHIBIT 1

U.S. SENATE,
Washington, DC, February 4, 2003.

DEAR COLLEAGUE: I write to urge you to support the confirmation of Miguel A. Estrada, who has been nominated for a seat on the United States Court of Appeals for the District of Columbia Circuit. If he is confirmed, he will be the first Hispanic to sit on this court, which is widely considered to be the second most important court in the country.

Mr. Estrada represents an immigrant success story. Born in Tegucigalpa, Honduras, his parents divorced when he was only four years old. Mr. Estrada remained in Honduras with his father while his sister immigrated to the United States with his mother. Years later, as a teenager, Mr. Estrada joined his mother in the United States. Although he had taken English classes during school in Honduras, he actually spoke very little English when he immigrated. He nevertheless taught himself the language well enough to earn a B− in his first college English course. In a matter of years, he not only perfected his English skills, but he exceeded the achievements of many persons for whom English is their native tongue. He graduated with a bachelor's degree magna cum laude and Phi Beta Kappa in 1983 from Columbia College, then received a J.D. degree magna cum laude in 1986 from Harvard Law School, where he was editor of the Harvard Law Review.

Mr. Estrada's professional career has been marked by one success after another. He clerked for Second Circuit Judge Amalya Kearse—a Carter appointee—then Supreme Court Justice Anthony Kennedy. He worked as an associate at Wachtell Lipton in New York—as high powered a law firm as they come. 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 Department of Justice Solicitor General's Office in 1992. He stayed with that office for most of the Clinton Administration. When he left that office in 1997, he joined the Washington, D.C., office of Gibson, Dunn & Crutcher, where he has continued to excel as a partner. He has argued an impressive 15 cases before the United States Supreme Court, and the non-partisan American Bar Association has bestowed upon him its highest rating of Unanimously Well Qualified.

I take the time to offer up this brief recitation of Mr. Estrada's personal and professional history because I think it illustrates that he is, in fact, far from the right-wing ideologue that some have portrayed him to be. He clerked for Judge Kearse, a Carter appointee, then Justice Kennedy, a moderate by any standard. He joined the Solicitor General's Office during the first Bush Administration, but stayed on through much of the Clinton Administration. His supporters include a host of well-respected Clinton Administration lawyers, including Ron Klain, former Vice President Gore's Chief of Staff; Robert Litt, head of the Criminal Division in the Reno Justice Department; Randolph Moss, former Assistant Attorney General; and Seth Waxman, former Solicitor General for President Clinton. He has defended pro bono convicted criminals, including a death row inmate whom he represented before the Supreme Court in an effort to overturn his death sentence. He has broad support from the Hispanic community, including the endorsement of the League of United Latin American Citizens (which is the country's oldest Hispanic civil rights organization), the Hispanic National Bar Association, the U.S. Hispanic Chamber of Commerce, the Hispanic Business Roundtable, the Latino Coalition, and many others.

Mr. Estrada has been unfairly criticized by some for declining to answer questions at his hearing about whether particular Supreme Court cases were correctly decided. Lloyd Cutler, who was White House counsel to both President Carter and President Clinton, put it best when he testified before a Judiciary Committee subcommittee in 2001. He said, ''Candidates should decline to reply when efforts are made to find out how they would decide a particular case.'' He further explained, ''What is most important is the appointment of judges who are learned in the law, who are conscientious in their work ethic, and who possess what lawyers describe as 'judicial temperament.'' Mr. Estrada's academic achievement, his professional accomplishments, and the letters of bipartisan support we have received from his colleagues all indicate that Mr. Estrada fits this description.

Several opponents of Mr. Estrada have attempted to block his confirmation by boldly demanding that the Department of Justice release internal memoranda he authored while he was an Assistant to the Solicitor General. All seven living former Solicitors General—four Democrats and three Republicans—oppose this request. Their letter to the Committee explains that the open exchange of ideas upon which they relied as Solicitors General ''simply cannot take place if attorneys have reasons to fear that their private recommendations are not private at all, but vulnerable to public disclosure.'' They concluded that ''any attempt to intrude into the Office's highly privileged deliberations would come at a cost of the Solicitor General's ability to defend vigorously the United states' litigation interests cost that also would be borne by Congress itself.'' The Wall Street Journal and the Washington Post have also criticized the attempts to obtain these memoranda.

These misguided efforts should not prevent our confirmation of a well-qualified nominee who has pledged to be fair and impartial, and to uphold the law regardless of his personal convictions. I have no doubt that Mr. Estrada will be one of the most brilliant federal appellate judges of our time, and I urge you to join me in voting to confirm him.

Sincerely,

ORRIN G. HATCH,
Chairman.

LATINO COALITION
FOR MIGUEL ESTRADA,
Washington, DC, February 5, 2003.

Hon. JIM BUNNING,
Member, U.S. Senate,
Washington, DC.

DEAR SENATOR BUNNING: At a time of a serious judicial vacancy crisis in our country, it is simply disingenuous that the Senate Democratic leadership is threatening to filibuster a nominee to the U.S. Court of Appeals, with impeccable credentials and a unanimous ''well qualified'' rating from the American Bar Association.

On May 9, 2001, President Bush nominated Miguel A. Estrada to fill a vacancy on the United States Court of Appeals for the District of Columbia Circuit. Mr. Estrada would be the first Hispanic in history to sit on that court, which is widely viewed as the most important and prestigious Court of Appeals in the nation. No wonder George Herrera, President and Chief Executive Officer of the United States Hispanic Chamber of Commerce, concludes that ''Estrada's nomination can be a historic event for the Hispanic community. Latinos in this country have worked hard to break the barriers and obstacles that have stood in our way for too long and we now have the opportunity to do so. Estrada's appointment will also be a role model for Latino youth by demonstrating that a Latino can be appointed to one of the highest courts in the nation.'' He is just one of the overwhelming majority of national Hispanic grassroots organizations that are enthusiastically supporting his nomination, not just because he is Hispanic, but because he is superbly qualified.

Mr. Estrada is unique in another respect, too. As his colleagues can attest, both conservatives and liberals alike, Mr. Estrada is one of the most brilliant and effective appellate lawyers in the country. Having worked at the Justice Department under Republican and Democratic Administrations, he has demonstrated a commitment to upholding the integrity of the law and a dedication to public service. During his career, he has argued fifteen cases before the Supreme Court—all before reaching the age of 40. He richly deserves the unanimous ''well qualified'' rating the American Bar Association bestowed on him—the organization's highest possible evaluation.

Miguel Estrada is more than just a talented lawyer. He represents the potential of a growing population and what is possible in the United States. A native of Honduras, Mr. Estrada arrived in the United States at age 17, unable to speak much English. Yet he graduated magna cum laude from Columbia University and magna cum laude from Harvard Law School, where he was an editor of the Harvard Law Review. He clerked for Supreme Court Justice Anthony Kennedy—one of the more moderate Republican appointees who continues to be Estrada's mentor. Mr. Estrada's own journey from immigrant to successful attorney has inspired him to devote much of his career to serving his fellow Americans. Both in government service and in private practice, he has sought to ensure that all citizens receive the law's fullest protections and benefits, whether they are death-row inmates or abortion clinics targeted by violent protestors.

Never has a judicial nominee that has been voted out of the Judiciary Committee been

successfully filibustered in the Senate. Estrada's opponents argue that he is a Hispanic in name only and is an ideologue. This is absolute non-sense.

Miguel Estrada is considered by all who have worked with him to be a brilliant attorney who has demonstrated the ability to set aside any personal beliefs he may have and effectively argue cases based on the US constitution and the law. Perhaps the most compelling praise in support of Mr. Estrada's nomination has come from Democratic political appointees who worked with him in the Clinton Administration.

Prominent Democrats including Ron Klain, the former Chief of Staff of Vice President Gore; Seth Waxman, Clinton's Solicitor General; Robert Litt, Associate Deputy Attorney General in the Criminal Division; Drew Days III, Solicitor General; and Randolph Moss, Assistant Attorney General in the Office of Legal Counsel have all praised Miguel Estrada for his brilliance, compassion, fairness and respect for precedent (quotes attached).

It would be an ironic travesty of justice for any member of the US Senate—a body without a single Hispanic member—to vote against Mr. Estrada with the excuse that he is a Hispanic in name only or that he does not understand or represent the values of our community? Under normal circumstances, this argument would be so absurd that we would have ignored it. But under the current partisan environment, we cannot stand by and allow Mr. Estrada's ethnic background to be used against him.

Miguel Estrada was nominated on May 9, 2001. He did not receive his first hearing until September 26, 2002, 16 months after his nomination. Now his opponents complain that they have not enough time to evaluate his record and that his nomination should not be rushed to a vote. We believe that a nominee should not have to wait for 21 months for a vote and that the Senate has had plenty of opportunity to consider Miguel Estrada's qualifications. This same tactic was used to delay Richard Paez's nomination for more than 4 years. It was unfair then and it is unfair now.

Any attorney who has argued 15 cases before the US Supreme Court has an extensive legal track record that can be analyzed for accuracy, quality, effectiveness and bias. Yet, incredibly, Mr. Estrada's detractors claim that his legal record is too skimpy for them to make an informed decision on his nomination. This ridiculous claim underscores the opposition's real problem . . . that there is nothing in Miguel Estrada's record that would lead a reasonable person to conclude anything other than this nominee is an exceptionally well qualified, highly principled attorney, who will make a fine judge on the DC Circuit.

The Hispanic National Bar Association, the League of United Latin American Citizens (LULAC), The Latino Coalition, the United States Hispanic Chamber of Commerce, the American Association for the Advancement of Mexican Americans, MANA—a national Latina organization, and the Mexican American Grocers Association are among the many Hispanic organizations supporting the nomination of Miguel Estrada.

Miguel Estrada is a perfect example of an American success story, who deserves an up or down vote on the Senate floor. He brings to the court a distinguished and extensive legal record based on his many years of work in the public and private sector. Mr. Estrada also brings unique perspective and human experience understood only by those who have migrated to a foreign land.

It is for this cultural depth and his unique legal qualifications that on behalf of an overwhelming majority of Hispanics in this country, we urge the leadership of both parties in the U.S. Senate to put partisan politics aside so that Hispanics are no longer denied representation in one of the most prestigious courts in the land.

Sincerely,

League of United Latin Americans Citizens, the Hispanic National Bar Association, the U.S. Hispanic Chamber of Commerce, the Association for the Advancement of Mexican Americans, The Latino Coalition, Mexican American Grocers Association, the Hispanic Contractors Association, the Interamerican College of Physicians & Surgeons, the American G.I. Forum, the Federation of Mayors of Puerto Rico, the Casa De Sinaloense, the Cuban American National Foundation, the Hispanic Business Roundtable, the Cuban Liberty Council, the Congregacion Cristiana y Misionera ''Fe y Alabanza'', the MANA, a National Latina Organization, theNueva Esperanza Inc. Cuban American Voters National Community, the Puerto Rican American Foundations

The PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I compliment the Senator from Kentucky for his excellent remarks. He said much of what I wanted to say, outlining the extraordinary qualifications of Miguel Estrada. He very clearly laid out the case that there is no legitimate reason to filibuster his nomination, but that appears to be the tactic that is being contemplated and maybe even being engaged in by many on the other side of the aisle, certainly not all on the other side of the aisle. We are certainly grateful for Members who are discerning enough to understand, as has been quoted many times—the Washington Post has suggested that filibustering this nomination would be unjustifiable, I think is their term, and certainly beneath the standards in the Senate. The standard is that we do not filibuster judges for the circuit courts, that it would be an unprecedented move to filibuster a judge.

In the 220-odd-year history of the Senate, what makes this judge so unique? And that is what it would be, it would be unique because it is the first time in the history of this country a filibuster would be conducted on a circuit court nominee.

What makes this nominee so unique to warrant—and I am not using this term in a pejorative sense but in a factual context—an extreme reaction, extreme by the definition that it is the first time in almost 230 years of American history that this would occur, that this would be an extreme reaction because it has never been done before.

What has this nominee done, or what about this nominee causes such an overreaction, or extreme reaction, that raises the bar to this high level?

Let's look at this nominee. The Senator from Kentucky noted he is intellectually clearly qualified. He got into colleges I was not able to get into, I can say that. As the Senator from Kentucky said, he is a man who was raised in Honduras. English was not his first language. He was able to perform at the highest levels at some of the most rigorous universities in the country, Columbia and then Harvard Law School. He was on Law Review, it is my understanding, at Harvard Law School. These are truly lofty attainments and a demonstration of not only a powerful intellect but a rigorous attitude toward his studies and a commitment to excellence.

He clerked for the appellate court, which is a high honor very rarely bestowed upon graduates of law school, and even a more rare honor is to clerk for a Supreme Court Justice. He obviously has the intellectual capability, even at a young age; that was established. He has gone on with a distinguished career in law, public service, and in the private sector. He has argued numerous cases before the Supreme Court, which, frankly, standing up before a panel of Supreme Court Justices is hard enough but, in all candor, standing up when you have a speech impediment has to be a thoroughly paralyzing experience. To have the courage to persuasively make arguments, nonetheless, and deal with the bench under this context is a testament not only to his intellectual capability and to the hard work he puts into his job but to the personal courage and determination this man has.

So we have in this nominee someone who has overcome adversity in language, adversity in disability, and performed at the highest levels of the legal profession in this country.

As the Senator from Kentucky mentioned, he has a unanimous well-qualified rating. I am sure this has been repeated many times, but the other side has said this is the gold standard, this is the stamp of approval, getting a qualified rating from the American Bar Association.

This was not a qualified rating. This was not a well-qualified rating. This was a unanimously well-qualified rating.

So what is it? What could it possibly be that this nominee has done in his life to potentially warrant the first ever filibuster of a circuit court judge in the history of the Senate? What has he done? What are the arguments on the other side?

One of the arguments on the other side is he does not have sufficient experience. Well, I am a lawyer, and I can say I do not have near the experience Miguel Estrada has. I have not performed nearly in the arena of the law he has. His experience is abundant.

He has never been a judge. He is being nominated for a position on a court where there are eight judges right now. Five of the eight confirmed by this Senate had no prior judicial experience. So if judicial experience was so important for this court, then why do over half the members on this court have no prior judicial experience? One could make that argument, but the cup the water is being held in is as empty as the top. It flows straight through. It does not hold any water.

He has refused to disclose his judicial philosophy. Since when do we expect

people who are applying for judicial nominations to tell us how they would rule on future cases? That would truly be an extreme view, an unprecedented view, for the consideration of judges in the Senate. We do not require people to prejudge cases. In fact, part of the canons is one does not prejudge cases. So to ask a judge-nominee how he would rule or what his feeling is on these matters is inappropriate and that is why most judges, if not—well, maybe some give opinions, but most nominees who come before the Senate for confirmation do not answer that question. They can talk general judicial philosophy, but to go through and talk about how they would rule on certain cases is something that is an inappropriate question, in my mind, and should not be answered.

The other side is saying he did not turn over his work papers. Now, I did practice a little bit of law, and there is a privileged work product of lawyers that is not available to the other side in a case. Generally speaking, it is not available for discovery. Why? Because when you are working on a case—having worked in my capacity for a senior partner in most cases, as is the case here, because Miguel Estrada was an Assistant Solicitor; he was not the Solicitor General; he was working for someone in the capacity of the Solicitor's office—you are preparing the case and trying to share his opinions, his candid opinions about what his boss should do.

His boss may make a different decision, but his boss needs, as my senior partner needed, my candid opinion about what I thought of the merits of our argument or the facts in the case or whatever the case may be. He needed my candid assessment. Why? Because I understood the issue better than he or she did. That work product was essential for coming to the decisionmaking with all the best information that decisionmaker needed to make the property assessment of the case and to move forward.

Mr. BENNETT. Will the Senator yield?

Mr. SANTORUM. I am happy to yield.

Mr. BENNETT. It is my understanding that Mr. Estrada was employed during the Reno Justice Department; is that the Senator's understanding?

Mr. SANTORUM. That is correct.

Mr. BENNETT. Is it not then the case that some of these papers the committee is demanding are papers that were submitted to a Clinton Presidential appointee who acted as Solicitor General; is that not the case?

Mr. SANTORUM. That is correct.

Mr. BENNETT. So is it not true that it is a Clinton appointee, former Solicitor General, who is now saying it would be inappropriate for Mr. Estrada's material to be made public?

Mr. SANTORUM. That is correct, including, I believe, six other Solicitor Generals who have said it would threaten the viability of the Solicitor General's office if this information were discoverable through this nomination process.

Mr. BENNETT. If I could comment on the question, I find it interesting for those who supported Janet Reno for Attorney General and supported President Clinton's Presidential nominees in that office, which nominees, after confirmed, are saying Estrada's notes should not be made public, are saying those nominees are wrong.

Mr. SANTORUM. I find that incongruous. I find, frankly, all of the arguments to be specious, at best.

What is confounding is that such an extreme measure appears to be in the offing, which is a filibuster, on such a pathetically weak case against this nominee.

So one has to step back and ask, Why? What is going on here? Why is this nominee being singled out? What is it about this nominee that is unusual, that has raised the fear or the ire of so many in this Chamber?

Mr. BENNETT. Will the Senator yield?

Mr. SANTORUM. I am happy to yield.

Mr. BENNETT. I recall in the last Congress where the Democratic members of the Judiciary Committee, and particularly the Democratic leader, then majority leader, along with the then-chairman of that committee, Senator LEAHY, attacked Republicans for being insufficiently supportive of nominees who were women or members of minorities. We were given quotas, if you will, at least the language of quotas, that we should have so many women and so many minorities, and we were attacked in the strongest possible language. Indeed, it came close to violating Senate rules, of implying that everyone on this side of the aisle was either sexist or racist because we did not support a sufficient number of minority nominees or female nominees.

Mr. SANTORUM. I suggest it went further. We were accused, if we voted against any minority—they would single out any negative vote against any minority member—it was the equivalent of having some sort of antiracial agenda; that somehow we harbored ill feelings toward whatever particular race or gender happened to be the subject of that nominee.

Mr. BENNETT. The Senator's memory is correct. We were told if we voted against any nominee who happens to be either a woman or a minority, we were, indeed, guilty.

Now we have one who happens to be a minority. I do not believe nominations should be made on the basis of gender or minority status. But when we have a nominee based on quality, who happens to be in a minority status, I find it disingenuous of those who made the point of the minority status. We didn't; they did. Those who made the point of the minority status now are insisting that the minority status should not be considered. I wish they would be consistent. Either minority status does not matter or it does, and if it does, as they insist, it should be a reason for them to vote for this nominee.

Mr. SANTORUM. I stand here, as the Senator from Kentucky and the Senator from Utah, and ask the question, Why this nominee? The Senator may have—I hope he has not—may have uncovered what may be the underlying cause of this obstruction. We have passed and considered judges who, through their nominating process, have disclosed their conservative ideology equal to Miguel Estrada. It is accepted that Miguel Estrada is conservative in answering his questions and how he interprets the law. It seems to be consistent with, frankly, most if not all of President Bush's nominees. President Bush believes in commonsense judges who take the Constitution for what it says and who follow the law.

As Miguel Estrada has said in his testimony, he would follow the law. The Supreme Court says this is the law; he will follow the law. That is all this President wants. That is all most Members, certainly on our side, would like to see—which is, judges who are not Supreme Court Judges now, because they are making more law than following law—judges on the district court and appellate courts and their responsibility to follow the higher court. Miguel Estrada said, without question, he will do so.

It is not that he will not follow precedent. The objection must be philosophy. If it is philosophy, look at all the nominees of this President. They are overwhelmingly almost universally more conservative than they are liberal. I don't know how you measure conservatism, but certainly they are almost all generally right around where Miguel Estrada is as far as his philosophy is concerned of government and of jurisprudence. Yet none of them have been filibustered on the floor of the Senate.

So, again, you come back: What is different about Miguel Estrada than all the other conservative district court judges, appellate court judges, who have been confirmed by the Senate? They have been given a vote. I won't even go to confirmed. They have just been given the opportunity for a vote.

I can speak from personal experience, one I know very well. We had probably the most contentious nominee to hit the floor the last session of Congress, a judge from Pennsylvania, Judge Brooks Smith. He was from the western district of Pennsylvania. Judge Brooks Smith is a conservative judge, very much in the mainstream of ideology on the court and America. But he tracks more conservatively in his opinions than those more activist in nature, or more liberal.

Did they oppose him on that? No, they found a few issues having to do with him being involved with a club, years ago, that excluded women. So they began to make this case that he

was antiwoman. So that was the reason for this whole thing, even though we had the local chapter of NOW in his own county come out and suggest this is a good guy. It didn't matter. They had a hook. So they stuck the hook in. But they gave him a vote. They reported him out of committee and we gave him a vote on the Senate floor and he passed with 60-plus votes here on the floor of the Senate.

I know Judge Smith well and have tremendous respect for him. But I suggest Judge Smith and Miguel Estrada, when it comes to judicial philosophy, are pretty much two peas in a pod. It's pretty hard to tell the difference between how they would approach the issues. Judge Smith got a vote, even though, arguably—even though I think it was a red herring—he had some other issue out there that could have been used to discolor or discredit him.

What issue does Miguel Estrada have that could potentially disqualify him? What has he done in his legal career that could be used against him? I have not heard anything that, through his experience or education or actions, has disqualified him from this position. I haven't heard of any clubs he belonged to. He is a minority, so it's hard to belong to a club that excluded minorities, if he was one, so we can't run into that problem.

Maybe that is the problem. Maybe that is the problem, that we have someone who is a conservative and a minority. Is that the combination that is lethal?

Mr. BENNETT. Will the Senator yield?

Mr. SANTORUM. I am happy to yield.

Mr. BENNETT. As the Senator from Pennsylvania seeks to find a reason for opposing Mr. Miguel Estrada, I suggest to him one that comes out of yesterday's editorial in the Washington Post, as the Washington Post points out that Mr. Estrada did not cooperate with the Democrats in producing a case against him. Then it says,

> Because it stems from his own and the administration's discourteous refusal to arm Democrats with examples of the extremism that would justify their opposition, they are opposed to him.

The editorial concludes:

> Such circular logic should not stall Mr. Estrada's confirmation any longer.

I agree with the Washington Post in this circumstance. It may be they were hoping he would be cooperative enough to give them something to use against him and when he refused to do that, and indeed his background says there is nothing in there he could have given them, in anger they decided to turn against him.

As the Senator looks for some reason why they are opposed to him, maybe they are just disappointed over the fact he passed?

Mr. SANTORUM. I know when you try to bully someone into doing something and they don't do it, it can be pretty frustrating. But that is no reason to go to such an extreme unprecedented measure of filibustering an obviously competent, well-qualified—unanimously supported by the American Bar Association—nominee for the circuit court.

I would just say this in closing. It is my intention as a Senator to see this nominee through to a vote. I think this nominee deserves a vote. There has been no reason, no legitimate judicial reason why this nominee should not be given an opportunity to be voted on. So I will make this statement. It is this Senator's intention to do everything I can do to keep the Senate on this issue for as long as it takes for a vote to occur.

When I say ''as long as it takes,'' let me underscore what I mean: As long as it takes.

If the other side likes to stand up and criticize Miguel Estrada and wants to filibuster his nomination, let me assure you, we will provide you plenty of opportunity and time to do that if that is what you want to do. If you want to make the next days, weeks, months, years an opportunity to talk about Judge Estrada's qualifications for this job, it is this Senator's intention to give you the opportunity to do that. He deserves, through his outstanding record of accomplishment, overcoming language, disability, and prejudice heretofore and potentially now, to get this vote.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Nevada.

Mr. REID. Mr. President, because of the statements made by my friends on the other side of the aisle relative to Mr. Estrada, I would like to take a few minutes and rebut some of what they have stated during today's session of the Senate.

It is true there is a conflict in our country as to whether or not he should be approved by the Senate. We have newspapers saying yes, newspapers saying no. My friend from Pennsylvania, the junior Senator from Pennsylvania, who stated he could not understand why there was a filibuster, first has to understand there has never been a statement on the floor to the effect there is a filibuster. A decision has not been made by the leadership on this side as to whether or not there will be a filibuster. But let me just say I think something as controversial as this nomination should have some consideration.

We just started this process at 2:45 p.m. yesterday. There was good debate on Wednesday. We had a memorial service for the *Columbia* this week in Houston. We had another one this morning. Many Senators attended the two services. There is no session this afternoon or Friday because of the majority being engaged in a retreat. There is nothing wrong with having a retreat. We are going to have one in May. We will have to take some time off.

But we should not rush to judgment. There will be a decision made as to whether or not there will be a filibuster, but that decision has not been made, to my knowledge.

Let me say there are people who care a great deal about our country who oppose this nomination. There are people who care a great deal about our country who favor this nomination. That is the reason our Founding Fathers established the Senate of the United States.

We do not live in a dictatorship. President Bush is President Bush, not King George. He knows that, I hope, and I am confident he does.

Take, for example, the New York Times which said, among other things:

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

Mr. President, this is the New York Times. It is a newspaper that has circulation not in the tens of thousands or hundreds of thousands but in the millions.

Among other things, this editorial states:

> Mr. Estrada has put few of his views in the public record. One way to begin to fill this gap, and give the Senate something to work with, would be to make available the numerous memorandums of law that Mr. Estrada wrote when he worked for the solicitor general's office, as other nominees have done. But the White House has refused senators' reasonable requests to review these documents.
>
> Mr. Estrada, now a lawyer in Washington, also had an opportunity to elaborate on his views, and assuage senators' concerns, at his confirmation hearing, but he failed to do so. When asked his opinion about important legal questions, he dodged. Asked his views of Roe v. Wade, the landmark abortion case, Mr. Estrada responded implausibly that he had not given enough thought to the question. Mr. Estrada's case is particularly troubling because the administration has more information about his views, in the form of his solicitor general memos, but is refusing to share it with the Senate.

Finally, the article says:

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

It is not as if the objection to this man is out of nowhere. We have editorials and newspapers that are transmitted to millions of people every day that take the position this man shouldn't be confirmed as a circuit court judge. We can't discount those opinions, or think there are some left-wing kooks who have decided for reasons which are not substantive not to go with this man.

I would also say that there have been a number of Senators talking about how unusual it is—how unusual it is—that we are talking about a judge's qualifications. I think if there is anything in the extreme, all we need to do

is look at the newspaper of today—the Roll Call: ''GOP Calls on K Street to Boost Estrada.''

What this is all about is getting the lobbyists involved—to put pressure on Senators to move forward on this nomination and approve him. This Roll Call story documents special interests being told by members of the Republican leadership that they have a stake in this nomination process.

I think if there is anything untoward, it is the pressure being put on these people.

I also note that one of the Senators in the majority complained today about vacancies in the Federal court system. We are talking about the D.C. Court of Appeals. We Democrats tried to fill those. We were not allowed to do so. Why? Among other reasons, we were told by the majority that the D.C. Court of Appeals was too big and the people we wanted to put on would be just unnecessary baggage; that it wasn't necessary to fill those vacancies.

What our friend on the other side of the aisle complained about was OK, but he failed to explain that the vacancies on the two courts he mentioned—the D.C. Court of Appeals and the Sixth Circuit—were caused by the Republicans' failure to act, or their success in blocking nominees to the DC court.

Allen Snyder, who was a nominee voted qualified by the ABA, was never given a hearing, and never had a committee vote for a seat on the District of Columbia Circuit.

Elena Kagan, a well-respected law professor, was never given a hearing and was never given a committee vote for her nomination to the District of Columbia Circuit Court.

On the Sixth Circuit, Kathleen McCree Lewis—I am only giving you examples—waited for more than a year, was never given a hearing, and was never given a committee vote on the Sixth Circuit.

Kent Markus—no hearing and no vote; Helene White waited 4 years—no hearing and no vote.

We have said here—Senator DASCHLE when he was majority leader and I have said—that this isn't get even time for when we were in the majority. We tried to treat the minority then as we wanted to be treated when we were in the minority. We expect to be treated as we treated the minority when we were in the majority for approximately 18 months. That is what we are asking.

Mr. President, the majority leader is on the floor. I would be happy to yield to the majority leader and then would retain the floor when the majority leader completes his statement.

The PRESIDING OFFICER. Without objection, the majority leader is recognized.

Mr. FRIST. Mr. President, I ask unanimous consent that on Monday there be an additional 6 hours for debate on the Estrada nomination; provided further that the time be equally divided between the chairman and ranking member or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

Mr. DASCHLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Given the objection, Mr. President, I ask my colleagues on the other side of the aisle if they need additional time, which I assume they do? And if so, would they be willing for me to modify the request to 8 hours or 10 hours or 12 hours?

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I would be happy to respond to the distinguished Republican leader, the majority leader. As he knows, we began this debate yesterday afternoon. We had a good debate yesterday, I think, for 3 or 4 hours. I thought it was a constructive debate.

There are strong feelings on both sides of the aisle with regard to this nomination. I think our colleagues, of course, would have been prepared to continue the debate this week, and, for good reason, we are unable to do that because of the Republican conference. Our conference is later on this spring. Theirs is now. That precludes our opportunity to continue the debate. But clearly, very few Senators have had a chance to be heard. Few Senators have had the occasion to look more carefully at these facts.

We cannot prescribe a particular time, at least at this point. We will continue to discuss this matter with our colleagues, and I will be in touch with the distinguished Republican leader at a later date. But clearly this nomination deserves careful consideration, with ample time for debate.

I would hope colleagues on both sides of the aisle could be afforded their chance to speak to this nomination. It is a controversial nomination and, therefore, requires perhaps more time than others. So for that reason, I object.

I, of course, would not be able to say how much additional time we would require, but certainly some time next week will be required.

Mr. REID. Will the majority leader yield so I can ask a question of the Democratic leader?

Mr. FRIST. I am happy to yield, Mr. President.

Mr. REID. I say to the distinguished Senator from South Dakota, there has been talk here by the majority that there is a filibuster taking place. I said, just a few minutes ago, unless I missed something you said, there has been no decision made from you as to whether or not there is going to be a filibuster. Is that a fair statement?

Mr. DASCHLE. I say to the Senator from Nevada, that is correct. As I said, I think I recall there were only three or four Senators who were able to speak yesterday. There are many others who wish to have the opportunity to speak. And certainly to cut off debate prior to the time they have had that occasion, especially with a nomination of this import, would be unwise. But there is no filibuster as we speak.

Mr. FRIST. Mr. President, I very much appreciate the comments made by the assistant Democratic leader and the Democratic leader on the importance of this nomination and the importance of having adequate time for debate and discussion, in part because this is the first judge to come through in this Congress, and it is important that it be handled well and it be handled fairly and it be handled in a cooperative spirit, which has been demonstrated over the last 2 days.

The reason for extending the unanimous consent request for Monday, which was objected to—I do want to state very clearly we need to have people on the floor talking and debating and discussing as much as possible for the times that are made available. I will shortly announce we will come back Monday. I would hope we could go through Monday and Monday evening, if necessary, and use that time effectively so we do have adequate discussion and debate.

This is an important nomination. There has been good debate to date. I encourage all of our colleagues to take advantage of the opportunity we are making available. We will extend the hours, starting earlier and going later, in order to make sure people do have that ample opportunity.

In terms of the allegations of a filibuster—and certainly even the use of the term yet—individual Senators can express themselves, but I think it does show the desire to have good debate, useful debate, to have the points made on both sides of the aisle, and then to allow an up-or-down vote on this nominee. I think we are on course for that. I would appreciate, in the early part of next week—after checking with your side of the aisle; and I will do likewise—for us to try to get some sort of time certain so we can further plan the business of the Senate.

Mr. REID. Mr. President, can I ask the distinguished majority leader a couple questions?

Mr. FRIST. Yes.

Mr. REID. First question. I believe you will announce it later. Do you expect any votes on Monday?

Mr. FRIST. Yes. We will have votes on Monday.

Mr. REID. Second question: Let's say there is something worked out and we have a vote on this on Tuesday. What are we going to take up after that?

Mr. FRIST. We will have other judges we will go to, and there are a number of bills that are being considered. There is a children's bill that is related to pornography we will be taking up at some point. There are other bills that have come through. There is an antitheft bill that is being considered right now we might be able to take up on Monday.

Mr. REID. Those bills have been reported out of committee?

Mr. FRIST. The military tax bill has been reported out. We have the Moscow treaty, which is very important, that we passed through the Foreign Relations Committee. We would like to address that as soon as possible. There are other pieces of legislation that are being looked at now. So we do have a number of items we can go to.

Mr. REID. One final question, Mr. President: What time do you expect the vote to be on Monday? We have people on our side, and I am sure on your side, who are interested in that.

Mr. FRIST. Approximately 5 o'clock.

Mr. REID. I would just say, if we could make that 5:15, it helps one of our Senators.

Mr. DASCHLE. Mr. President, I thank the distinguished assistant Democratic leader. I know that our Republican colleagues are hoping to adjourn shortly so they can accommodate their schedule. I want to respect that, but I know Senator BIDEN also wanted to come to the floor for some brief remarks with regard to North Korea, which is why I originally came to the floor.

I wish to comment for a moment and thank the distinguished Senator from Nevada for his comments on the Estrada nomination. I think it may arguably be the most serious of all nominations which has been presented to the Senate by this administration—the seriousness of knowing so little with so little information having been provided, and with so significant a level of intransigency with regard to a willingness to provide the information we seek. We have a constitutional obligation to advise and consent.

For the life of me, I don't understand how anybody could be called upon to vote on the qualifications of this or any other individual with so little information provided, and with the arrogance demonstrated by this nominee and in this case by the administration with regard to our right to that information.

I am very troubled. I know when you look at the array of Hispanic organizations that have now publicly declared their opposition to a Hispanic nominee, you get some appreciation of the depth of feeling about this issue, about this candidate, about his qualifications, and about the stakes as we consider filling a position in the second highest court in the land.

I will have a lot more to say about this next week.

LEGISLATIVE SESSION

MORNING BUSINESS

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

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Reserving the right to object, I know Senator BIDEN had hoped to be heard.

Mr. FRIST. Mr. President, if the Democratic leader will hold it for just one second, we will allow plenty of opportunity. Be thinking of the time that you need.

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

THE ONGOING CRISIS IN NORTH KOREA

Mr. DASCHLE. Mr. President, I commend the Secretary of State for the strong presentation to the United Nations Security Council that he made yesterday. He confirmed what many of us already knew—that Saddam Hussein is a threat who has, once again, failed to live up to his commitments to the international community.

And he did it at a place many of us had been pressing him and the administration to do it—at the United Nations.

I hope that President Bush will use Secretary Powell's presentation to build a broad international coalition to confront Iraq. Our national security is better served if he does.

But, as the world's attention was focused on Secretary Powell and his presentation, an even more ominous development regarding weapons of mass destruction was taking place in North Korea.

Yesterday, North Korea announced that it had flipped the switch and restarted a power plant that can be used to produce plutonium for nuclear weapons.

This is but the latest in a series of aggressive steps North Korea has taken to kick into gear its programs to develop weapons of mass destruction and the means to deliver them—steps that our intelligence community believes indicate that Iraq is months, if not years, away from being able to take.

At the U.N., Colin Powell talked about the potential that Iraq may build a missile that could travel 1,200 kilometers. In 1998, North Korea fired a multi-stage rocket over Japan, proving they are capable of hitting one of America's closest allies—and soon, America itself.

In November 2001, intelligence analysts presented a report to senior administration officials that concluded North Korea had begun construction of a plant to enrich uranium for use in nuclear weapons.

In October 2002, North Korea informed visiting U.S. officials that it had a covert nuclear weapons program.

In December 2002, North Korea turned off cameras that were being used to ensure that 8,000 spent nuclear fuel rods were not being converted into weapons-grade material.

Days later, North Korea kicked out an international team of weapons inspectors.

And, within the past week, the administration confirmed that North Korea has begun moving these fuel rods to an undisclosed location.

On Tuesday, former Assistant Secretary of Defense and Korea expert Ashton Carter called these events ''a huge foreign policy defeat for the United States and a setback for decades of U.S. non-proliferation policy.''

He is right. But it is potentially even worse. North Korea could have six to eight additional nuclear weapons before autumn.

And we know, when it comes to nuclear weapons—it only takes one. Remember, everything North Korea makes, North Korea sells.

Those scuds we intercepted on a ship to Yemen—and then inexplicably returned—weren't a gift. They were an example of business as usual from what even this administration has acknowledged is the world's worst proliferator.

As alarming as this information is, the administration's reaction is even more troubling. The President said in the State of the Union:

> the gravest danger in the war on terror . . . is outlaw regimes that seek and possess nuclear, chemical, and biological weapons.

As the chronology of events I detailed above indicates, the administration knew about North Korea's plans on enriching uranium as early as November 2001, and yet it has said little, and done less, to stop these plans.

We have heard the administration—through leaks in the press from unnamed sources—suggest that we cannot focus on North Korea because it will distract attention from Iraq.

And we have even heard—and this is on the record—that some in the administration believe that North Korea's expansion of its nuclear arsenal is not even necessarily a problem.

Proliferators with nuclear weapons are a problem—a serious one. And our attention should be focused on all the threats we face. It is well past time that the administration develop a clear policy on North Korea.

Earlier this week, an administration official testified before the Senate that we will have to talk directly to the North Koreans. But he went on to say that the administration had not reached out to the North Koreans to schedule talks and did not know when that might happen.

In the State of the Union, the President stated that the United States is ''working with the countries of the region . . . to find a peaceful solution.'' All indications, however, suggest that the countries in the region appear to be taking a course directly at odds with the administration's latest pronouncements.

North Korea is a grave threat that seems to grow with each day that passes without high-level U.S. engagement. It is one the President must redouble his efforts to confront.

The President should stop downplaying this threat, start paying more attention to it, and immediately engage the North Koreans in direct talks.

Secretary Powell was very effective in outlining the threats Iraq poses. But