

Justice Department has provided similar memos, written by Justice Department attorneys, including the writings of Supreme Court Justice William Rehnquist, the Ninth Circuit Nominee Stephen Trott, Supreme Court nominee Robert Bork, Assistant Attorney General nominee William Bradford Reynolds, and Attorney General nominee Benjamin Civiletti, among others.

This breaks with a longstanding practice of cooperation between the Justice Department and the Senate in providing access to necessary materials for nominations.

The administration also has provided such memos for another nominee. The Bush administration has provided the Senate with legal memos written by Jeffrey Holmstead, an attorney with the White House Counsel's Office, during the consideration of his nomination as Assistant Administrator at the EPA. This was for a term appointment, in contrast to a lifetime appointment, which is certainly much more significant.

I am also concerned that my colleagues on the other side of the aisle are applying a different standard for nominees who are nominated by a Republican President than by a Democratic President. During the Clinton administration, and under Chairman HATCH, nominees were required to produce volumes of information. For example, Judge Richard Paez was asked to provide documentation of every instance during his tenure as a judge where he deviated downward from a sentencing guideline—every instance.

Marsha Berzon, a Tenth Circuit nominee, was required to provide the minutes from every California ACLU meeting that occurred while she was a member of that organization, regardless of whether she even attended the meeting.

Why was the bar placed so high for these Clinton nominees but there is such a hard push by my colleagues to confirm a nominee from whom we have no information? Why is there such a strong resistance by the administration to allow the Senate the opportunity to learn more about this nominee's writings and opinions? That is what this debate is all about.

I might just say that when I am asked what is the philosophy, what is the judicial reasoning of this particular nominee, I would have to say this—these are the answers to the questions that Miguel Estrada gave to the Judiciary Committee: An absolute blank slate. Not one answer to one question. How can that give us the opportunity to determine whether or not this is a nominee we wish to support?

Finally, I am extremely disappointed by how some of my colleagues across the aisle have tried to make this an issue of race. I believe racial diversity in our judicial system is extremely important. I wish my Republican colleagues had made the same impassioned speeches during the Clinton ad-

ministration when 10 of more than 30 Hispanic nominees were delayed or blocked from receiving hearings or votes by members of their caucus. I wish my colleagues had been outraged when Ronnie White's nomination languished for 2½ years and then was rejected on the Senate floor on a party-line vote. I wish my colleagues had stood up for racial diversity when the President filed their brief opposing the University of Michigan's admissions policy to help create racial diversity in our law schools and our other colleges and schools at the university.

The Senate needs to apply the same level of scrutiny and the same standards regardless of a nominee's race or the politics of the administrations that nominated them.

Until we are given these memos that are a part of Mr. Estrada's record, we are not going to hold judicial nominees to the same standards and the same basic principles of fairness. It is time to do that—to give us a true opportunity.

I might also add that 100 percent of the Hispanic Caucus of the House of Representatives have joined with us asking that we oppose or withhold judgment—that we not proceed with this vote until we have the information. These are individuals who have expressed grave concerns. They do not support moving forward. One-hundred percent of the Hispanic Caucus of the House from all around the country joined with more than 30 different organizations expressing grave concern.

I think that says to us we need to take the time that is necessary and we need to receive information so that we can make an appropriate judgment.

I will take just a moment to change topics.

I ask while moving from one important topic to another to take just a moment to speak to a bill I have introduced today regarding the growing importation of waste problem.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I know the Senator would like to talk about another subject. But what is the pending business we are on now?

The PRESIDING OFFICER. The pending business is the Estrada nomination.

Mr. SESSIONS. I will, regretfully, have to object to proceeding to another subject. That is a subject we are here to talk about, and I have some remarks I want to make. So I would object.

Ms. STABENOW. Mr. President, I have been given the floor, as I understand it, for 30 minutes. And I appreciate the fact that we have a topic in front of us. At this point, it is my understanding that it is not the Senator's prerogative to object to my being on the floor and to be able to speak for a moment, along with this important topic, to a bill I introduced about waste coming into the United States and taking a moment to do that. It is my understanding that under the nor-

mal processes of the Senate, I would have the opportunity to take a moment to do that.

Mr. SESSIONS. If the Senator wouldn't take long, if she wants to ban importation of some of that Canadian lumber, I will join with her. I yield to the Senator, if she is not going to be too long then.

Ms. STABENOW. I thank the Senator.

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

Ms. STABENOW. I thank the Chair.

IMPORTATION OF CANADIAN WASTE

Mr. President, I wanted to have an opportunity this evening—realizing we have an important topic on the floor—to speak on the record about an important topic that affects many of our States, and Michigan is certainly one of them.

There is a growing problem of Canadian waste shipments to Michigan and other States. In 2001, Michigan imported almost 3.6 million tons of municipal solid waste—more than double the amount that was imported in 1999. This gives Michigan, unfortunately, the undue distinction of being the third largest dumping ground of waste in the United States.

My colleagues may be surprised to know that the biggest source of this waste is not another State but, in fact, Canada. And more than half the waste that was shipped to Michigan in 2001 was from Ontario, Canada, where these imports, unfortunately, are growing rapidly. In fact, on January 1, 2003, another Ontario landfill closed its doors, and the city of Toronto is shipping two-thirds to all of its trash—1.9 million tons—to a Michigan landfill. This deal could last up to 20 years. I think it is important for a statement to be made for the record as we move forward with this legislation that it is time to do something about it.

Not only does this waste dramatically decrease our own ability to have a landfill capacity, but it also has a negative effect on the environment and on public health. Frankly, right now, I am particularly concerned about the fact that this is a homeland security issue for us. We now have our citizens at high alert. We are telling them to prepare themselves with duct tape, with plastics, and with water for their homes. There is a high degree of concern about the possibility of a terrorist attack.

Yet on Monday, I was able to go to Port Huron, MI, and look at an international bridge where we have trucks coming over bumper to bumper—over 130 different semi-trailer trucks—from Ontario, Canada, to Michigan every day that have solid waste in them from Canada, waste that is not thoroughly inspected. I think this is a serious issue as it relates to homeland security. These trucks are going through the neighborhoods and on into Michigan. And the same is happening in a number of other States.

I have joined with colleagues—first with Senator LEVIN and Congressman

DINGELL—to introduce legislation to enforce an agreement that was made between Canada and the United States back in 1986 that would give notice to the EPA—30-day notice—and the ability to reject waste coming into this country. That is not being enforced now. I support their efforts to enforce this provision with the EPA. But I think we have to go a step further now and stop these shipments until we can get the agreement enforced and have the EPA step up and receive notice on these shipments coming into the States.

I believe the State of Michigan should be able to tell the EPA that they don't want this trash in Michigan and that the EPA should honor that and be able to reject those shipments coming in from Canada. We need to act now. This is a serious environmental issue and a public health and homeland security issue.

I urge my colleagues and invite my colleagues to join me in legislation that will stop the shipments and give us the opportunity to enforce this agreement that has been on the books long term so that we can send a very strong message that we are not interested in Canadian trash coming into Michigan or any other State that does not wish to have it.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, it is really frustrating. I know Senator HATCH last night expressed his frustration about arguments that are made that are just not factual.

I know the Senator, as she finished her remarks eloquently, as she does, was not at the Judiciary Committee hearing which I attended on Miguel Estrada. The hearings started at 9 in the morning and went until 5 in the afternoon. There are hundreds of pages of transcript of that testimony that he gave answering every question I think with the proper nuance each and every time on question after question after question.

Remember, the questions they were asking were during the time the Democrats controlled the majority in the Senate and Senator LEAHY was the chairman. He could have kept them there as long as he wanted. There is no record that indicates Miguel Estrada said: Stop the hearing; I don't want to answer any more questions. He was never asked to come back to answer any more questions. The record was kept open, and Senators were allowed to submit written questions in addition. Two Senators did that—Senator SCHUMER and Senator KENNEDY. Those were answered by Mr. Estrada.

He has answered question after question after question. It is not true that he did not answer one question. He answered hundreds of questions. He answered them accurately and with skill and with good judgment.

It was said earlier in the debate that he would not answer the question of

whether or not he was a strict constructionist. I thought that was interesting. Somebody said that was an example of a question he would not answer.

I remember the answer that he gave because I thought it was special, really indicative of his brilliance and insight into the law.

Senator EDWARDS. Are you a strict constructionist?

Mr. ESTRADA. I am a fair constructionist, I think.

Senator EDWARDS. Do you consider yourself a strict constructionist?

Mr. ESTRADA. I consider myself a fair constructionist. I mean, that is to say, I don't think that it should be the goal of courts to be strict or lax. The goal of courts is to get it right. And that may be in some cases to interpret the text as it is written because other consideration of every element of help that there is to give the text meaning tells us that that is what the lawmaker intended. But it may be inappropriate to give it a more general construction. I think we can have laws and constitutional text of both types. It is not necessarily the case in my mind that, for example, all parts of the Constitution are suitable for the same type of interpretive analysis.

A very insightful, thoughtful answer.

Senator EDWARDS. Excuse me. I am sorry. I didn't mean to interrupt you.

Mr. ESTRADA. No, no.

Senator EDWARDS. Were you finished?

Mr. ESTRADA. The example I was going to give is, you know, the Constitution says, for example, that you must be 35 years old in order to be our Chief Executive. There is not a lot of hard study that has to go into figuring out whether somebody is in compliance with the 35-year-old requirement. You can read it and say I am 40 and I can run.

There are areas of the Constitution that are more open-ended, and you averted to one, like the substantive component of the due process clauses, where there are other methods of interpretation that are not quite so obvious that the Court has brought to bear to try to bring forth what the appropriate answer should be.

I thought that was a very rich, very mature answer to that question and was a good example of the way he answered the questions.

He was asked about his position on *Roe v. Wade*. He made it absolutely clear that he considered it the law of the land and he would follow that law. And he cited *Casey* as being further explication of *Roe v. Wade*, and he would follow that. So I think that is important for us to think about.

People say he refused to allow himself to be questioned about a judicial philosophy. I do not understand it that way at all. He refused to allow himself to be pressured into considering questions that he might have to deal with on the bench or questions he had not fully researched. And that is what he should do.

If you are before a Senate committee, and you are asked what your opinion is on the right of privacy or some due process clause, and you express that, and then you get on the bench, are you obligated, since you were under oath when you were at that committee, to follow it? What if, once you get on the bench, and you receive highly sophisti-

cated and high-quality legal briefs that convince you you were wrong, what does the judge do then? Judges should not opine on matters that are going to come before them in the future. So he answered the questions consistently, and over and over and over again.

They say: "We have a right to advise and consent. The constitution allows that." And it does say that. This Senate—and every Senator—can vote for or against a nominee on any basis they choose—a proper or improper basis. It is their right. Nobody can control me on how I vote on this floor.

But what ought we do? How ought we handle matters of confirmation?

Let's be truthful. The reality is that, in the past, there has been a preference given, a presumption given to the President's nominees. They were able to come before the Senate or submit documents or just have their names submitted, and generally they have been confirmed. It is part of the cooperation, unwritten courtesies, collegiality and tradition of the Senate, that the President's nominees would be confirmed, where possible. And if there is a serious objection, that should be raised.

My concern in the matter of Miguel Estrada is, for the first time—maybe this century maybe ever—a court of appeals nominee is facing a confirmation process that would require not a majority of votes in the Senate but a supermajority—60 votes—to be confirmed. That is something we have not done before. It is not something we should proceed with.

The Constitution, in article II, section 2, says:

[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors . . . Judges of the supreme Court, and all other Officers. . . .

The Constitution does not say what the vote should be, but it has been fully understood it meant a majority because when a supermajority of two-thirds was required, the Constitution spelled it out explicitly.

So the reason many of us on this side, who have been involved and have studied the confirmation process, are deeply concerned by what is happening here is because we are changing the ground rules in an extraordinary way. We are saying now—without any real basis, without any statement of wrongdoing by this nominee, any proof whatsoever that he is extreme or will not follow the law—they are now asserting this young Hispanic, outstanding lawyer has to have 60 votes to be confirmed, not 51. That is not right. I urge the Members of this body, I plead with the Members of this body: Do not do this. This knife cuts both ways.

Are we setting a precedent we are going to follow as long as this Senate exists? If you do not like a nominee, and 40 people get together, they can block that nominee? That was not done

when President Clinton was President. There was not a filibuster of a President Clinton nominee. There was not a blocking of any of the nominees in committee.

Last year, when the Democrats had the majority in the Judiciary Committee, they blocked two nominees in committee on a straight party-line vote, both of whom would have been confirmed, it was clear, from news reports, had they reached the floor. They killed them in committee. I thought they had, but that may not be the case today. That was a ratcheting up of the process. They said: Well, you held up President Clinton's nominees.

Let me tell you what the facts are there. In the 8 years that President Clinton was President, he had confirmed 377 Federal judges. One of his nominees was voted down. That nominee was opposed by the National Sheriffs Association, law enforcement groups, and both Home State Senators. It is the only one that was voted down. Not one was killed in committee on a party-line vote. Not one was filibustered.

So I just say, that it is not true that President Clinton's nominees received unfair scrutiny. Yes, they were asked questions, but they were asked responsible questions. And they were consistently confirmed in large numbers.

They said: Well, some of them did not get through. The fact is, when President Clinton left office, he had nominated 41 judges who had not been cleared. He confirmed 377, but 41 had not cleared.

When former President Bush left office in 1992, there were 54 judges which the Democratic majority Senate had not confirmed.

So it is a total falsehood to suggest the Clinton nominees were mistreated when they came through here. They got a higher percentage of them confirmed than did former President Bush's nominees. They were not filibustered, and they were not blocked in committee. I feel very strongly about that.

It has been said that you Republicans said advise and consent is not a rubberstamp and you had a right to raise questions and vote against nominees.

I agree with that. We all have that right. We can vote against them. We have a right to debate them. We have a right to ask questions. If we are not satisfied with those answers, we have an obligation to vote no. We should vote no. But wait a minute. What if we don't allow them to have a vote? Is that what we are saying? We are going to vote to not allow a vote? I am not at all pleased with that.

One person suggested we are dealing with judges from the lunatic fringes. That was a quote made earlier. This nominee cannot possibly be considered a lunatic fringe nominee. This nominee unanimously was rated well qualified by the American Bar Association. The ABA goes out and investigates these

nominees. They ask what cases they have handled. They then make a list of the lawyers on the other side of the cases, and they go out and interview the lawyers. They interview the judges who tried the cases. They don't give out well-qualified ratings that often. It is rare to get a unanimously well-qualified rating.

How can we say Miguel Estrada is somehow out of the mainstream or a lunatic fringe nominee when the gold standard, as one of my Democratic colleagues said, the ABA, rated him well qualified with their highest possible rating? It can't be done.

He went to Harvard. He was editor of the Law Review and spent 5 years in the Department of Justice Office of Solicitor General under the Clinton administration. Under the Clinton administration he was evaluated repeatedly by his supervisors, and he was given the highest possible evaluation you could give an attorney in the Department of Justice every year, the top rating.

Is this some sort of incapable stealth candidate we don't know anything about? No, sir. Not so.

One of our Senators talked about the Constitution as a changing document and that from time to time we just change it. I think that is dangerous. Our liberties are bound up in that document. If we say we have a right to change its meaning from time to time, according to the length of the chancellor's foot, according to how a judge may feel on a given day, our liberties have been eroded.

I remember Professor Van Alstyne at Duke, a constitutional scholar, said: If you love this Constitution and you really respect the Constitution, you will interpret it as it is written. You don't interpret it as you wish it were. If you do that, you don't respect the document. You undermine the document and the power that it has had for generation after generation to protect our liberties and order.

They say: You are just pounding on the table over there, Republicans. You have no argument whatsoever.

That is not true. Mr. Estrada has one of the highest recommendations, with one of the greatest backgrounds of any nominee I have ever seen come before this Senate. I was in the committee and I heard his testimony. It was absolutely superb, one of the finest testimonies I have seen. He was responsive, intelligent, quiet, thoughtful, courteous to the questioners, at times when he should not have been. I was very impressed with him.

Some think maybe the opposition to this young conservative Hispanic is because, who knows, President Bush might want to put him on the Supreme Court. I will just say this: I saw him testify. I read his record and background. He would make an outstanding Supreme Court Justice, a great Supreme Court Justice. He has integrity and legal thought processes that are superb. I am very pleased with him.

They throw out these charges. I just happen to know some of them because I have been involved in the hearings. They said one judge was asked to give all his downward departures in criminal cases. What a judge sentences in a criminal case is a public document. It is part of the public record. A downward departure means the judge has violated the sentencing guidelines. But when he does that, he has to write a special opinion to justify why he downward-departed and gave the criminal defendant less than the statutory minimum and sentencing guidelines would require him to get as a sentence. I don't think that was an extreme thing to ask.

What they are asking this nominee to do is reveal internal memoranda he wrote while he was a member of the Clinton administration to his fellow colleagues as they discussed how to handle complex legal matters. Every single living Solicitor General has said that this should not be done. There are seven of those, and four of them are Democrats. They have said: No, we do not want our attorneys' work product, our internal memoranda popped up every time somebody wants to do it. If members of our staff think they can't express an honest opinion in my law office as Solicitor General, then they are being chilled, if they are going to bring it out some day and say, you can't be a Federal judge because as a young lawyer you wrote a memorandum that didn't make sense.

Also they want the free and open discussion they get from the members of their staff. That would be reduced if these memoranda should be put forward.

I ask my colleagues: Should those documents be produced? Is that something we have to do here? Is that a good policy for America to say that from henceforth, now and forever, every member of the Department of Justice, every member of a law firm who wrote internal memoranda, they have to produce all of those before they can be confirmed? That is a dangerous precedent we ought not to follow.

They say: Well, there are some examples in which that happened. The Senator from Connecticut had some documents and had a letter from the Department of Justice asking for them back. He said: That proves they had to exist because they asked for them back.

I asked him about it. He introduced them into evidence. I read them. Well, it was the Bork confirmation. There were allegations about Watergate and those kind of things, and they were asking questions before they wanted to put him on the court about specific concerns that Bork may have acted improperly in a series of positions and events. So they asked for those documents, and at some point they turned them over.

That is not the routine thing. There has not been a single suggestion Miguel Estrada has done anything to implicate

himself in a Watergate type matter. He was a lower echelon attorney in the Solicitor General's office of President Bill Clinton. They have not suggested he would do anything corrupt. They have not suggested any particular issue he took some extreme view on that somehow we have to have this document.

They want a fishing expedition. Not so. We ought not do that. I urge my colleagues, I plead with my colleagues, do not do this. We ought not to do it. It is not right we would do that.

Well, the junior Senator from New York said that power corrupts, and somehow that moving this nominee, who almost sat here for 2 years—moving forward and having a hearing and all, is somehow corrupt or some sort of corrupt thing—to ask for a vote and insist we have a vote, that is corrupt.

Well, I say this: All of us have responsibilities to use our power responsibly. We ought not abuse that power. Abuse of power is a form of corruption. But, may not the minority be corrupt if they use the rules and procedures of this Senate to work a transformation of the traditions of this Senate, to block a nominee by requiring that they now have to have 60 votes instead of a majority? Could that be a form of corruption? I suggest it may be. Why? Because hard left attack groups insist and jerk their chain and demand that they vote no, so they just fall in line with that kind of thinking. I am not happy with that.

I don't believe this nominee deserves this kind of delay. I believe he deserves a vote. I believe there is not one bit of evidence that has come into this record that indicates he has any failings that would disqualify him from the federal judiciary. I think we ought to give him a vote. They asked a nominee how he voted on some issue. I remember that. Somebody asked that question. The nominee didn't answer it, and I think it was said that he should not answer it. He never answered it, and he was confirmed. They are saying if you don't produce confidential, internal Department of Justice memoranda, we are not going to confirm you.

Well, what is this all about? I remember quite a number of years ago, there was a "Meet the Press" program and Hodding Carter, who used to be assistant to President Carter, was asked about judges and nominations when President Reagan was in office. He made this comment. He said: The truth is, we liberals have been asking the Federal courts to do for us that which we can no longer win at the ballot box.

If you cannot win the issue at the ballot box and you can get an activist judge on the bench, maybe you can just file a lawsuit and they will rule your way. Maybe they will just reinterpret the meaning of the Constitution or statute and give it some new meaning and just use the law to effect a political agenda.

That is not right. When judges are given lifetime appointments, you need judges who are faithful to the Constitu-

tion and the statutes. That is what Miguel Estrada's judicial philosophy is. That is what it is. It is a hostility to use the law for other matters. He believes in giving the law a fair construction, as he said to Senator EDWARDS. He asked a little bit about it, and Senator EDWARDS pursued the matter a little later. He said: Well, President Bush said that he believes in strict construction. You say you believe in fair construction, and Mr. Estrada replied that he had not talked to President Bush about it. He said: You asked me my opinion. My opinion is fair construction. Mr. President, that is an independent and wise answer.

So we have seen courts do things that are really bizarre in America today. We have seen the courts be utilized as a tool to further agendas. Many decisions that we have seen rendered fly in the face of logic. We had judges on the Ninth Circuit Court of Appeals rule that "under God" should be taken out of the Pledge of Allegiance. We have had one judge in Vermont—he had a good name, Sessions—whom we confirmed. He is Senator LEAHY's friend and was his campaign manager. It wasn't long after Judge Sessions got on the bench that he declared the Federal death penalty unconstitutional. We have heard Senators talk about Berzon and Paez having some difficulties. But I would say that perhaps they should have had some difficulties. Since they have been affirmed just a few years ago, after taking their positions on the Federal bench in California, they both have participated in separate opinions declaring the California "three strikes and you are out" law unconstitutional. This law has been the basis of tens of thousands of convictions of defendants and has helped drive the crime rate down. Yet they said they thought it was cruel and unusual punishment to have a mandatory penalty—really an odd and extreme view.

I felt very strongly that both of those nominees were going to be activist judges, were not going to be bound by the law, and I voted against them; but they both were confirmed. We didn't filibuster them. They got their up-or-down vote, and they were confirmed with a majority of the vote in this Senate. So I just make that point.

As one of our witnesses said in committee, all in all, a judge who believes in strict construction of the law, or a fair construction of the law, and who is not an activist poses less threat to our liberties than one who is an activist judge. That is what Miguel Estrada believes in. That is what President Bush believes in. He wants to bring some sanity back to our legal system. He wants judges who have the classical view of the law. He wants judges who do not feel it is incumbent upon them to tell a city they cannot have Christmas decorations. He does not believe they should be striking down the Pledge of Allegiance, or striking down the Federal death penalty, or striking down the California "three strikes and

you are out" law. Those are activist decisions and they threaten our judicial process and deny the people the right to control their destiny.

Federal judges, being lifetime appointed, are not subject to control by the democratic process. So when they are given the power to carry on political agendas, then they are acting in an antidemocratic way. It is an anti-, undemocratic act when a lifetime appointed judge, with no accountability to the public, starts issuing opinions that affect public policy.

Well, I will just say that it wasn't long ago when the leadership on the other side, without any hesitation, opposed the filibustering of Federal judges. Senator LEAHY, past chairman of the Judiciary Committee, and currently the ranking Democrat on the committee, said this:

If we want to vote against somebody, vote against them. I respect that. State your reasons. I respect that. But don't hold up a qualified judicial nominee. . . . I have stated over and over again on this floor that I would . . . object and fight against any filibuster on a judge, whether it is somebody I opposed or supported, that I felt the Senate should do its duty.

That is a clear and unequivocal statement in opposition to a filibuster. He said that in 1998.

In 2000, Senator LEAHY said:

I have said on the floor, although we are different parties, I have agreed with Governor George Bush, who has said that in the Senate a nominee ought to get a [floor] vote, up or down, within 60 days.

Senator BIDEN, the past Judiciary chairman:

But I also respectfully suggest that everyone who is nominated ought to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor. . . . It is totally appropriate for Republicans to reject every single nominee if they want to. That is within their right. But it is not, I will respectfully request, Madam President, appropriate not to have hearings on them, not to bring them to the floor, and not to allow them to have a vote. . . .

Senator FEINSTEIN:

A nominee is entitled to a vote. Vote them up; vote them down.

On and on that is mentioned. That has been our policy. Sure, some nominees have been held, but they usually have been forced up for votes, and they have gotten their vote.

When President Clinton left office, there were only 41 judges who did not get a vote. Only 41. There were 54 when President Bush left office, and it has been historic in this body at the end of a session when nominees come in and people are thinking there might be a new President, the process slows down. That has happened for good or ill probably for the last century. That is within the realm of responsibility. To openly filibuster a qualified nominee (early in a term) is contrary to the traditions of this body and would set a precedent that would be quite dangerous.

Once again, I urge my colleagues not to go down this road. I urge my colleagues to think seriously before they

consider a routine filibuster. Maybe if this nominee had ethical problems or serious personal problems, that would justify a filibuster, but not a nominee who is rated well-qualified by the bar, who has the support of virtually everyone with whom he has worked, who demonstrated by his testimony extraordinary skill and intelligence. I respect him. I believe he should be given a vote. I hope and believe that somehow we will avoid this and we will get an up-or-down vote on him.

That is my request to my friends across the aisle, and it would be a mistake if that does not occur.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

UNIVERSITY OF MICHIGAN

Mr. LEVIN. Mr. President, George Washington was nearing the end of his Presidency. He dreamed of a national university for the United States to be located in Washington. This university was going to bring together all the different people of this great country into one educational setting to learn together, to learn from each other, to get to know each other, to overcome prejudices and intolerance.

President Washington actually planned to include his vision of such a university in his now famous and historic Farewell Address. It was not included in that Farewell Address. Apparently, one of the people who was working with him on that Farewell Address was Alexander Hamilton who urged, as he was writing the address, drafting it:

The idea of the university is one of those which I think will be most properly reserved for your speech at the opening of the session. A general suggestion respecting education will very fitly come into the address.

In other words, what Hamilton was saying is this vision of yours, Mr. President, about a national university, where people can come to shed their prejudices from various parts of the country, to live and work with each other should be saved for a different address. Leave it out of the Farewell Address.

In fact, President Washington ended up leaving it out of his Farewell Address, but he included it in a letter. It is a letter which has come down through the generations, and that vision of a national university was outwardly reflected in this letter.

He stated his belief that this country would be stronger if the children from different parts of the country could come together in an educational setting to learn from each other and about each other.

I want to read a few parts of this letter of George Washington because I think it has an application to the University of Michigan case which is currently pending in the Supreme Court.

I come from the State of Michigan. I am proud of it, and I am proud of our university and its effort to promote diversity, and not just racial diversity, but geographic diversity, economic di-

versity, gender diversity—diversity in general which has been promoted by not just the University of Michigan but by most universities in this country, and it seems to me is to be encouraged.

What George Washington sensed 205 years ago was that a university had a special ability to bring together different people to help them learn about each other, drop their fears of each other and make us one Nation.

This is what he wrote:

I have regretted that another subject (which in my estimation is of interesting concern to the well-being of this country) was not touched upon also: I mean Education generally as one of the surest means of enlightening and giving just ways of thinking to our Citizens, but particularly the establishment of a University; where the Youth from all parts of the United States might receive the polish of Erudition in the Arts, Sciences and Belle Letters; and where those who were disposed to run a political course, might not only be instructed in the theory and the principles, but (this Seminary—

Referring to the university—

being at the Seat of the General Government) where the Legislature wd. be in Session half the year, and the Interests and politics of the Nation of course would be discussed, they would lay the surest foundation for the practical part also.

But that which would render it of the highest importance, in my opinion, is, that the Juvenile period of life, when friendships are formed, and habits established that will stick by one; the youth . . . from different parts of the United States would be assembled together, and would by degrees discover there was not that cause for those jealousies and prejudices which one part of the Union had imbibed against another part; of course, sentiments of more liberality in the general policy of the Country would result from it. What, but the mixing of people from different parts of the United States during the War rubbed off these impressions? A century in the ordinary discourse, would not have accomplished what the Seven years association in Arms did; but that ceasing, prejudices are beginning to revive again, and never will be eradicated so effectually by any other means as the intimate intercourse of characters in early life, who, in all probability, will be at the head of the councils of this country in a more advanced stage of it.

He went on:

To shew that this is no new idea of mine, I may appeal to my early communications to Congress; and to prove how seriously I have reflected on it since, and how well disposed I have been, and still am, to contribute my aid towards carrying the measure into effect, I enclose you the extract of a letter from me to the Governor of Virginia on this Subject, and a copy of the resolves of the Legislature of that State in consequence thereof.

I have not the smallest doubt that this donation (when the Navigation is in complete operation, which it certainly will be in less than two years), will amount to twelve or 1500 pounds Sterling a year, and become a rapidly increasing fund. The Proprietors of the Federal City have talked of doing something handsome towards it likewise; and if Congress would appropriate some of the Western lands to the same uses, funds sufficient, and of the most permanent and increasing sort might be so established as to invite the ablest Professors . . . to conduct. . . .

President Washington saw that the two strongest ways to unite a country are when people go to war together

against the common enemy and when they go to school together with a common goal, to learn. While we would all like to avoid the need to fight together, we all know we can strengthen our ties to democracy and to our country when we learn together about the world and each other.

Learning together allows us to strip away the prejudices that would otherwise keep us apart. The hope of George Washington was later joined by the dream of Martin Luther King and by the promise and the potential of *Brown v. Board of Education* a half century ago, and they are now hanging in the balance because of the issues that are raised in the University of Michigan affirmative action cases before the Supreme Court.

In April, the U.S. Supreme Court is going to hear two oral arguments in two separate lawsuits challenging the University of Michigan's diversity admissions policy. The Court's decision in these cases will result in the most far-reaching affirmative action ruling since the *Bakke* decision in 1978. The Court will decide the critical issue of whether *Bakke* still remains the law of the land and whether racial or ethnic diversity has a value at a university which can be considered in admissions of higher education.

In the *Bakke* decision, the Court ruled against rigid quotas or set-asides based on race but found that higher education could consider race or ethnicity as a factor in a properly considered competitive admissions process to achieve the educational benefits of diversity.

If the Court overturns *Bakke*, it could outlaw any consideration of race or ethnicity in admissions to colleges and universities.

There is a national security factor to this issue as well. There are going to be a number of military officers and people connected with national security and defense who will be filing an amicus brief in support of the University of Michigan because universities run ROTC programs. Those programs, where there is diversity at the universities that have them, produce officers for the military, who in turn are diverse and reflect our population. The failure to have officers who reflect our population in terms of race and ethnicity and gender, the failure to have diversity in our officer corps, led to huge problems of morale in the military for decades, until just about 20 years ago when we reached out and made great efforts to have diversity in our officer corps. That is going to be a part of the issue in an amicus brief filed in the University of Michigan case.

I am not going to spend a lot of time on that aspect, but I do want to at least comment on the fact that a significant number of very significant military officers, retired officers, who have been connected at the highest levels with our Nation's military and its schools, are going to be filing a brief