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Senate

EXECUTIVE SESSION

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

(Continued)

The PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, here we are in the middle of an unprecedented filibuster against the first Hispanic nominee to the Circuit Court of Appeals for the District of Columbia—against a man who has a unanimously well-qualified rating by the ABA, which was the gold standard of the Democrats and something that a lot of confirmed judges did not have; a man who has all the credentials in the world—magna cum laude from Columbia, magna cum laude from the Harvard School of Law, editor in chief of the Law Review, clerked for two Federal judges, one on the Second Circuit Court of Appeals put on the bench by President Carter, a Democrat, and, the other, Supreme Court Justice Anthony Kennedy—lots of experience, worked in the Solicitor General's Office.

We have heard a lot of arguments, and many respected arguments. We have heard that Mr. Estrada has not answered the questions of Senators on that side. Well, he has. He spent a full day when they conducted the hearings. They set the agenda. They asked any questions they wanted to ask. They were in control. They have even said on the floor during this debate that the hearings were conducted fairly by them.

Then, when the election was lost, all of a sudden they now want to ask more questions. And, by the way, they had an opportunity to ask any written questions after the full hearing. Only two Senators asked written questions—Senator DURBIN from Illinois and Senator KENNEDY from Massachusetts. He answered those questions.

The problem here is that he didn't answer the questions the way they wanted him to. He answered them the way he should have. We put those questions and those answers into the RECORD today.

It is unfair, after what this man has gone through—after all the hearings, all the questions, all the time that has elapsed—almost 2 years—that this highly qualified individual is now being filibustered on the floor of the Senate.

If the Democrat Members of the Senate do not like his answers, then they have a remedy; that is, vote against Miguel Estrada. I can live with that. That is their right. If that is what they want to do, that is a proper exercise of their constitutional duty.

But really understand that to constitutionally modify the advice and consent process of the Constitution and now require 60 votes in order to have a Presidential nominee confirmed by the Senate is unprecedented, except in one case, and that was Judge Fortas. President Nixon himself fought against that and argued against that. But it was a bipartisan filibuster, if you have to characterize it.

To simply deny the Senate a vote is unfair. It is unfair to the Senate, it is unfair to the President, it is unfair to the process, and it certainly is unfair to this Hispanic American, who, by the way, has risen to be one of the best appellate lawyers in the country even though he has the speech impediment disability. Think of it. He has a speech impediment, and yet he has argued 15 cases before the U.S. Supreme Court, winning 10 of them. I can't name many candidates for judicial office in my 27 years in the Senate who had even come close to that record.

I think this is an abuse of the process. It is an abuse of what has really been precedent through all of these years. It is an abuse by the minority. It is nothing more than what some would call the tyranny of the minority against the first Hispanic nominee in the history of this country to the Circuit Court of Appeals for the District of Columbia.

Mr. SANTORUM. Mr. President, will the Senator yield for a question?

Mr. HATCH. I am happy to yield for a question without losing my right to the floor.

Mr. SANTORUM. Mr. President, one of the issues I have heard raised by the other side is that the nominee has not had judicial experience. In fact, the chairman of the House Democratic Hispanic Caucus wrote a letter to the Judiciary Committee, I understand.

I want to quote from Congressman BOB MENENDEZ, who says:

> If the Senator—
>
> Referring to Senator HATCH—
>
> chooses to ignore one of the many reasons we oppose the Estrada nomination, simply put, he has no judicial expedience.

Now, I find this to be a particularly amazing argument coming from someone who is Hispanic, given the paucity of Hispanics on the bench right now, that we are setting this bar before a group that only has about 3-percent representation on the bench right now but comprises 14 percent of the population of this country, that someone who heads the Democratic Hispanic Caucus will put this bar to Hispanic nominees, that they do not have judicial experience.

Has such a bar ever been placed before that you are aware of for nominees?

Mr. HATCH. First, let's understand the Democratic Hispanic Caucus. They did not allow the Republican Hispanics, the three of them in the House of Representatives, to become part of that. So it is clearly a very partisan group. We have a couple of our colleagues in the Chamber from the House of Representatives watching this very carefully, people who have spoken out for the Hispanic community.

Secondly, by saying that he does not have any judicial experience, therefore, he doesn't qualify to be on the Federal

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

bench, what does that say to every member of the Hispanic Bar Association, none of whom, really, except current judges, have any judicial experience in the sense of having been judges. It means he is saying they cannot be judges either.

What kind of a representative of the Hispanic community would make that kind of a statement, if he really wants to help the Hispanic community? Or is that representative just making partisan remarks, which is what I believe he was doing?

The fact is, we have confirmed 26 Clinton judges who have not had judicial experience—26. That is the phoniest argument I have heard yet, and it is a disgrace to argue it in the sense that Hispanics cannot serve on the judiciary if they have not had judicial experience.

Now, let's think of one other thing. Miguel Estrada was a law clerk to Amalya Kearse, a Carter appointee, on the Second Circuit Court of Appeals. That is judicial experience. He helped write some of the opinions that she made. He was a law clerk to Anthony Kennedy on the Supreme Court of the United States of America. That is a lot more than a lot of others, than any of the 26 Clinton appointees had.

So to say that he has not had judicial expedience—but even if you do not count that as judicial experience, this is a man with every qualification, and they have not laid a glove on him. It is really very unfair, and I think we ought to all stop and think about that.

But I would also like to point out—I do not mean to take too long on this question, but I also would like to point out 108 men and women have served on the Supreme Court, and of the 108, 43 had no judicial experience at all. In the Court's history, 8 of the 16 Chief Justices—most recently, Chief Justice Earl Warren—had no prior judicial experience when appointed to the Supreme Court. Of those Justices appointed in the last 50 years, Justices William Rehnquist, Lewis Powell, Jr., Abe Fortas, Arthur Goldberg, and Bryon White had no prior judicial experience when they were appointed to the U.S. Supreme Court.

I know that is the phoniest argument I have heard yet.

Mr. NICKLES. Will the Senator yield?

Mr. HATCH. If I could first yield to the Senator from Kansas.

Mr. BROWNBACK. If you would yield for a question, I had the pleasure of serving on the Judiciary Committee last session of Congress, although we didn't get a lot of judges on through and cleared, and we are trying to clear those now.

But Miguel Estrada was up last session of Congress. One of the charges against him, by a number of people, was that he is an ideologue, he is a right-wing ideologue.

I would ask the question: It is my understanding Mr. Estrada worked with the Clinton administration for the Janet Reno Justice Department. And it would seem highly unlikely to me that a right-wing ideologue would be hired to work for the Clinton Justice Department. But that is the charge that is being brought against him; is that correct?

Mr. HATCH. The nominee, Miguel Estrada, worked for the Clinton administration. He worked in the Solicitor General's Office of the Justice Department in the Clinton administration. And it is highly unlikely that he would have received the support of Seth Waxman and other prominent Democrats if he were a right-wing ideologue. In fact, Seth Waxman says he is not.

Now, Seth Waxman was a Democrat Solicitor General under Clinton. By the way, the seven living former Solicitors General are backing Miguel Estrada, four of whom are Democrats: Seth Waxman, Drew Days, Walter Dellinger, and Archibald Cox.

Mr. BROWNBACK. I thank my colleague for responding to the question. I find it so odd that would be a charge brought against him. He worked for the Clinton administration, the Janet Reno Justice Department.

Mr. REID. Mr. President, I object. I object to the statement. I object. I object.

Mr. HATCH. I ask for the regular order.

The PRESIDENT pro tempore. Regular order. Regular order. The Senator from Utah has the floor. Members asking questions will address the Chair.

Mr. NICKLES. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. I will, without losing my right to the floor.

Mr. NICKLES. When the Senator was talking about judicial experience or legal experience, correct me if I am wrong, but didn't Miguel Estrada argue 15 cases before the Supreme Court? And doesn't that mean he has a lot of experience, legal experience, and that he must be held in highest esteem to be able to argue 15 cases before the Supreme Court?

Mr. HATCH. It is a good question. Miguel Estrada is a full partner in one of the great law firms of the country, Gibson, Dunn & Crutcher, at his young age. He has argued 15 cases before the Supreme Court, winning 10 of them. That is a pretty good record. By the way, I mentioned he did that suffering a disability.

This man has arisen above language barriers, immigration barriers, educational barriers, legal barriers, to attain to the position he has. He has lived a Hispanic dream life. And here he is being held up on the floor of the Senate—without one good reason.

Mr. GREGG. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. I will, without losing my right to the floor.

Mr. GREGG. Mr. President, I ask the Senator from Utah, didn't Mr. Estrada come to the United States without speaking any English when he was a teenager?

Mr. HATCH. He came to the United States at age 17, if I recall it correctly. He had a very limited knowledge of English, taught himself English, went on to Columbia University, graduating magna cum laude, and from there went on to Harvard University, where he also graduated magna cum laude and also was editor in chief of the Harvard Law Review.

Yes, he overcame a lot of problems. As I say, that is in addition to his disability that has not stopped him from reaching the heights of the legal profession.

Mr. GREGG. Will the Senator yield for a further question?

Mr. HATCH. I yield further to the distinguished Senator from New Hampshire.

Mr. GREGG. That is one incredible record. Is not Columbia University a university in New York City? I believe the Senator from New York was on the floor. In fact, it is one of the finest universities in the United States. And an extremely competitive person came over when he was 17. He must have been admitted when he was 19 or 20. He matriculated there, and graduated magna cum laude; is that correct? He must be an extremely bright individual. And then he went on and graduated from Harvard. And he was editor of the Harvard Law Review, one of the finest law reviews in the country.

He must be an incredibly bright individual; is he not?

Mr. HATCH. The Senator is absolutely correct. Miguel Estrada is a brilliant individual.

Mr. GREGG. If the Senator will yield for a further question, are either of those universities considered conservative schools?

Mr. HATCH. I would never want to characterize either as being liberal or conservative. But I think people who know can very easily characterize them.

Mr. CHAMBLISS. Mr. President, will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. CHAMBLISS. As a new member of your committee, I do not have the pleasure of knowing Mr. Estrada as you do, but expanding on what the Senator from New Hampshire just said, I believe that Mr. Estrada has established himself in the legal profession in a very unqualified manner, that he is just extremely qualified, is an excellent lawyer. And I wish you would give us the benefit of some of his legal work and his legal background.

Mr. HATCH. Well, keep in mind, Miguel Estrada is a partner in the very prestigious law firm of Gibson, Dunn & Crutcher. But he got there by clerking—to get a clerk's position in a Federal court is a very high honor. To be editor of the Law Review at Harvard is one of the highest honors any law school can offer. But then he becomes a clerk to Amalya Kearse on the Second

Circuit Court of Appeals, which is one of the great circuits in this country. She is a great judge. And then he later became a clerk to Justice Anthony Kennedy on the Supreme Court, and is still one of his best friends and advisers, and vice versa. And, of course, he has become a partner in one of the great law firms in this society.

He has tried all kinds of cases, 15 before the Supreme Court, winning 10.

When the ABA, which my friends on the other side have called the gold standard, did their thorough investigation of Miguel Estrada, they came to the conclusion he is unanimously well qualified, the highest rating the American Bar Association can give. That is in spite of all of the impediments this young man has had coming up through the ranks from Honduras to this country to college to law school to these various positions. By the way, I didn't mention he worked in the Solicitor General's Office giving very effective opinions for both the first Bush administration and the Clinton administration.

Mr. CHAMBLISS. If the Senator will continue to yield, is it not true he did serve as a Solicitor General in the Clinton administration for several years, advising that administration the same as Republican administrations?

Mr. HATCH. He did. He served as an assistant to the Solicitor General and came away with virtual raves for his work. Only one person has criticized him, and we have more than made it clear that that criticism is blown away by that person's, Professor Paul Bender from Arizona State University, raving reviews of his work when he was actually there. I think we would rely on those raving reviews rather than the political statement that was made later.

Mr. CHAMBLISS. I thank the Senator.

Mr. ALLARD. Mr. President, will the Senator yield?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. ALLARD. I have heard some on the floor try and imply that somehow Mr. Estrada has a hot temper, a short fuse. First, I would have to say that seems inconsistent with the many letters from those who know him. That includes such people as his former colleagues in the Solicitor General's Office, Ron Klain and Seth Waxman, who all praised his personal demeanor. But beyond that, is the Senator as troubled as I am by the use of these code words that perpetuate stereotypes about Hispanics and makes you wonder if we are debating Ricky Ricardo or Miguel Estrada? I see high praise in a New York Post article that describes him as a great American success story.

I wonder if the Senator from Utah would respond to that question.

Mr. HATCH. If there is a greater success story, I would like to meet the person. If you were to meet Miguel Estrada, you would say this is truly a wonderful man and a great lawyer. Fourteen of his colleagues, I believe, at the Solicitor General's Office and throughout the Government, including Seth Waxman, who was Solicitor General in the Clinton administration, and I might add Ron Klain, who worked on the Judiciary Committee, was Al Gore's most faithful legal advisor, went everywhere with Al Gore, totally devoted to him, have said he would make a wonderful judge. He has the temperament and ability to do so.

Only one person has issued a negative opinion, and that was Professor Paul Bender. If you read the record—I don't want to go through it again—I think that opinion should be totally discarded when you look at the facts.

Mr. SMITH. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. I am happy to, without losing my right to the floor.

Mr. SMITH. I wonder if the Senator from Utah could tell us about the internal memoranda our colleagues on the other side are seeking. It is my understanding Mr. Estrada wrote these memoranda when he served as Assistant Attorney General. It is also my understanding he has said he has no problem with their release. But it is my further understanding that every living Solicitor General, Republican and Democrat, has advised against their release; is that correct?

Mr. HATCH. That is true. All seven living Solicitor Generals—four Democrats, three Republicans—oppose this request. The Democrats are Archibald Cox, Seth Waxman, Drew Days, and Walter Dellinger. The Republicans are Charles Fried, Robert Bork, and Ken Starr. I might add that both the Washington Post and the Wall Street Journal oppose the demand for these memos.

There is good reason for that. When the Democrats requested the memos, they requested his recommendations on appeals, his recommendations on certiorari petitions, his recommendations on amicus curiae briefs. Never in the history of the Justice Department have those type of materials that are privileged, confidential work product materials been given to this branch of Government or any other branch.

The Democrats have said there are four or five cases where the Department of Justice materials have been given. They have scoured the Justice Department; the administration and the current Justice Department have scoured those records, and they have found in all but Bob Bork there was no evidence anybody had given up those records to anybody here. If they have records, they must have been leaked by friends of the Democrats in the administration. They were not provided by the Justice Department.

In the case of Bob Bork, they did give some special request memoranda, because it was up to the Supreme Court, affecting the area involving his decisions with regard to Archibald Cox. Certainly not the recommendations in writing, the confidential recommendations in writing of appeals, amicus curiae and certiorari petitions.

Mr. SMITH. A further question, Mr. President, isn't it true, though, he has said he has no problem with their release?

Mr. HATCH. He has said that. But the Justice Department has tremendous problems. They not only consider it a matter of principle, they consider it a matter of absolute principle.

Mr. SMITH. And they are not his to release?

Mr. HATCH. That is right. They are not his to release even if he wanted to.

Mr. SMITH. I believe the Washington Post and others have described this.

Mr. REID. Mr. President, I object. This is not a time for making statements.

The PRESIDENT pro tempore. The Senator from Utah has the floor.

Mr. HATCH. Let him ask the question.

The PRESIDENT pro tempore. Senators will address the Chair and try to ask a question of the Senator from Utah. The Senator from Oregon had his question answered. He did not ask for a chance to have another question. The Senator from Utah may respond.

Mr. SMITH. If I could rephrase my question, hasn't the Washington Post opined this is out of bounds, not fair game, a fishing expedition?

Mr. HATCH. No question about it. It is a fishing expedition. And why is it? We received the last letter to produce these materials after they had been refused, in eloquent, very deliberate and straightforward letters from the White House; we received the last request, I think, the day before the hearing on Miguel Estrada. Frankly, it is clearly a fishing expedition, trying to find something because they don't have anything on this man. They just don't like the fact he is a conservative Republican Hispanic.

Mr. SMITH. I thank the Senator from Utah.

The PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Mr. President, I ask the distinguished Senator from Utah if he will yield for a question.

Mr. HATCH. Without yielding my right to the floor.

Mr. WARNER. Mr. President, colleagues, this nomination for this Senator is a personal matter, for the reason that I was privileged to——

Mr. REID. Mr. President, I have the utmost respect for my friend from Virginia. He is making a statement, not asking questions.

Mr. HATCH. Mr. President, I think we ought to give the——

The PRESIDENT pro tempore. The Senator from Utah has the floor. The Chair was trying to obtain a ruling from the Parliamentarian and did not hear the question. Will the Senator from Virginia restate his question? The Senator from Utah, let the Senator from Virginia restate his question.

Mr. HATCH. I think he should be allowed to ask his question.

Mr. WARNER. I will phrase it as a question. I just wanted to lay a predicate, a foundation for the purpose of the question. I said this was a personal matter. I assert that because I had the privilege of introducing this distinguished nominee——

Mr. REID. Mr. President, I object to the form of the statement by my friend from Virginia. He has the right to ask a question. He has no right to make a statement.

The PRESIDENT pro tempore. The Senator has a right to have a preamble to a question before he asks it. He has not asked a question. The Senator from Virginia will continue.

Mr. WARNER. I was about to say, I had the privilege of introducing him and I did so for several reasons. One, I carefully examined the distinguished dossier of this lawyer. But am I not correct this is a nomination to the Federal Circuit Court of Appeals for the District of Columbia?

Mr. HATCH. You are correct.

Mr. WARNER. Mr. President, I was privileged to be a law clerk.

The PRESIDENT pro tempore. The Senator will ask another question, please.

Mr. WARNER. Yes, Mr. President. I shall pose it in the form of a question. I had the privilege of being a law clerk on the same circuit court of appeals many years ago. I ask my distinguished colleague, when a United States Senator goes before the Judiciary Committee for the purpose of introducing a nominee, does not that Senator place his or her credibility before that committee in making those statements?

Mr. HATCH. As you know, Senator, you did that. We respect your credibility. I think both sides respect your credibility, as we should. You did make a very formal and important statement on behalf of Miguel Estrada.

The PRESIDENT pro tempore. The Senators cannot have a dialog on the floor under the guise of asking questions.

Mr. WARNER. I thank the Chair.

Mr. BOND. Will the Senator yield?

Mr. HATCH. Mr. President, I am happy to yield for a question without losing my right to the floor.

Mr. BOND. Mr. President, I ask the Senator from Utah, who has experience with the entire judicial process. As one who has served as a law clerk, I ask is it not commonplace for law clerks, for assistants, to write memoranda that do not necessarily reflect their views, but are designed to explain the rulings made by the judge or other lawyer or solicitor who may serve?

Mr. HATCH. Without question, that is so.

Mr. BOND. Is it the experience and knowledge of the distinguished chairman of the committee that the legal scholarship may be shown by these rulings, by these drafts, but they do not in any way reflect, necessarily, the views of the clerk or the assistant?

Mr. HATCH. The Senator is correct once again.

Mr. BOND. Is it not true, then, that perhaps the best judge of the legal capabilities of a law clerk, Assistant Solicitor General, or assistant attorney would be those for whom that clerk or assistant worked?

Mr. HATCH. That is correct. And three Democrat Solicitors General reviewed these materials and had access to them, and they have nothing but praise for the work of Mr. Estrada.

Mr. BOND. Mr. President, there is something very troubling that I wish to pursue and that is whether a nominee——

Mr. REID. Mr. President, I object.

The PRESIDENT pro tempore. The Senator may not address a question to the Chair.

Mr. BOND. Mr. President, I will ask the question of the Senator from Utah, who happens to be in the line of sight of the Chair, both of whom I respect. I will focus the question to the Senator from Utah. Do you share the concern that should a clerk, assistant counsel to a U.S. Senator, or perhaps a Member of the other body, be nominated for a judicial position, under this principle enunciated by our friends on the other side of the aisle the nominee would have to turn over all of the papers prepared for that Senator, or that House Member, or the committee for which that nominee may have worked?

Mr. HATCH. Well, I have to say that the Solicitor General's Office is one of the most important offices in the country. This is the advocate for our country. These opinions are extremely important. They want the best opinion they can get from the people who serve there and write the opinions, as Miguel Estrada did. By necessity, they have to be confidential and privileged because, otherwise, the Solicitor General's Office would not function as well on behalf of the American citizens.

So in all honesty, if our friends on the other side were to prevail in forcing any administration, or if we would do so later because they do so now, then that means no privileges will be respected in the executive branch of the Government. Now, if we start doing that, I have to ask you, where does it end? Does it end where the opinions our staffs give us at our request have to be given up if they are nominated?

Mr. BOND. That is the question I am asking, the same principle. Would the same principle apply, that someone who had served you or me as a counsel, if nominated, would have to provide all of the memoranda, drafts, and opinions prepared, or memoranda prepared for you or me, were they to be nominated?

Mr. HATCH. Well, let's just be honest about it. Considering a nomination for a judgeship like it is being done here would become just a methodology for anybody. If you didn't get the papers you wanted from some source or other in the Federal Government—and it might even include the Senate—then you can hold up judges just as they are doing here. Look, that would——

Mr. BOND. Mr. Chairman, would you ever——

The PRESIDENT pro tempore. Does the Senator from Missouri seek to have the question answered?

Mr. BOND. I simply ask the question, as a Senator, would you ever consent to have confidential memoranda prepared for you by a lawyer who happened to be in your employ, who is subsequently nominated for a judicial position—would you ever consent to a wholesale turnover of all that work product prepared for you as a U.S. Senator?

Mr. HATCH. Put it this way. If one of my excellent staff people was nominated to a Federal judgeship and somebody tried to pull that one over on me, I would raise such cane that it would blow the lid off this building, and I think anybody else would, too. You can imagine how the Solicitor General's Office must feel for this type of an inappropriate request for a confidential, privileged matter that they have to keep that way if they want to not chill honest discourse within the Solicitor General's Office. This is absurd. That is what they are pinning their hat on here.

Let me tell you, if that is what it comes down to, it is going to be hard to get any judge through that one or the other side has a difference with in the slightest degree. There is no reason to disagree with Mr. Estrada. I have not heard one legitimate, good reason—not one yet.

Mr. ENSIGN. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. ENSIGN. Mr. President, I have a preamble to my question. I heard my colleague refer to the opposition to Miguel Estrada as imposing an intellectual glass ceiling for Hispanics who are not liberals. We hear a lot about diversity on the courts. Yet some people seem intent on blocking this nominee for having a diversity of opinion as compared to what those on the left want. Don't you agree that an important kind of diversity is the diversity of ideas, and isn't that exactly what the opponents of Mr. Estrada and his confirmation are trying to prevent—diverse ideas from a Hispanic nominee?

Mr. HATCH. It certainly looks that way to me. One argument is that he is not Hispanic enough. That is ridiculous. Others have said he hasn't had any judicial experience. I think we have more than blown that away. I don't think any reasonable person would make that argument. Yet I have heard argument after argument that he doesn't have any judicial experience.

I agree that some special interest groups, and others that have been criticizing Mr. Estrada, think all minorities have to think alike. If you are a minority, if you don't toe the liberal line, they don't want anything to do with you. That is the problem here.

I don't think my colleagues are against Mr. Estrada because he is Hispanic. No, it is because he is a Hispanic

Republican, and they think conservative, who may not agree with some of their more liberal ideas.

It seems to me that this is fundamentally un-American. I don't think there is anyplace in our system for this type of thinking. Miguel Estrada reached his views by examining all the facts and coming to his conclusions, and to suggest that he or anyone else has to arrive at a certain political bent—and one only—is simply not fair. He is not being treated fairly here. I don't think anybody who watches this or looks at it, or understands it would think he is being treated fairly. He is just not.

The PRESIDENT pro tempore. Does the Senator from Utah yield the floor?

Mr. HATCH. Yes.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. FRIST. Mr. President, we opened the Senate a little over 12 hours ago. At the outset, I mentioned that I hoped we would have the opportunity to have a good, robust discussion over the day, and that after that discussion we would have an opportunity to vote up or down on this outstanding, well-qualified nominee.

I am delighted, as I look around the Chamber, to see at practically every Republican desk someone behind it ready to vote. The discussion has been good today. It has been complete today. And as my colleagues on the other side of the aisle mentioned this morning, everything, in essence, has been said about this well-qualified nominee. If that is the case and we, indeed, have given sufficient time: It has been 5 days, since last Wednesday; we have spent 5 days on this nominee talking about his qualifications, which has been fascinating over the course of today. Each time I listened to one of our Senators, I learned something. Every time, I got more and more excited about this particular nominee.

We have attempted to have the up-or-down vote, in fact, on three previous occasions. We have had a unanimous consent request, and at this juncture I will again try to reach an agreement with my Democratic colleagues.

I therefore ask unanimous consent that there be an additional—an additional—6 hours for debate on the Estrada nomination; provided, further, that the time be equally divided between the chairman and the 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.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, for the reasons outlined since last Wednesday by the minority, an objection is raised.

The PRESIDENT pro tempore. Objection is heard.

The majority leader.

Mr. FRIST. Mr. President, I therefore modify my request to ask that the vote occur no later than Friday of this week.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Objection.

The PRESIDENT pro tempore. Objection is heard.

The majority leader.

Mr. FRIST. Mr. President, as you can see, the Chamber, at least on this side of the aisle, is full and ready to vote. Therefore, I modify the request to ask that the vote occur no later than 1 week from this Friday, 7 days from now.

Mr. REID. Reserving the right to object.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, as has been outlined in detail on many occasions here, if the nominee is willing to submit his——

Mr. GREGG. Regular order, Mr. President.

Mr. REID. Objection.

The PRESIDENT pro tempore. Objection is heard.

The majority leader.

Mr. FRIST. Mr. President, because I think we have had adequate debate, and discussion—Miguel Estrada is a well-qualified nominee, and there is a shortage of judges in the United States of America, a critical shortage—I modify my request to ask that the vote occur no later than 2 weeks from this Friday.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Mr. President, we have approved 103 judges——

Mr. BROWNBACK. Regular order.

Mr. REID. Up to this point. I object.

The PRESIDENT pro tempore. Objection is heard.

Mr. FRIST. I yield the floor.

The PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, as you can see, there is no fairness in this process. This is the first filibuster for a circuit court of appeals nominee in the history of this country. The majority leader has been very fair in granting extra time. The other side said they have debated it long enough. We have always voted up or down at this juncture, and the minority is unfairly filibustering this nominee for the first time in history, this Hispanic-American nominee who has climbed every step of the way into the American dream. They are taking an attitude and a position that takes away from that American dream.

Mr. DURBIN. Will the Senator yield for a question?

Mr. ALLEN. Mr. President, will the Senator——

The PRESIDENT pro tempore. The Senator from Utah has the floor. Who seeks recognition?

The Senator from Virginia.

Mr. ALLEN. Mr. President, I ask if the Senator from Utah will yield for a question.

Mr. HATCH. Without losing my right to the floor.

Mr. ALLEN. I ask the Senator from Utah if it is true that right now there is nothing to prevent us from taking a stand and voting up or down on Miguel Estrada other than the obstructionist delays being perpetuated by the other side.

Mr. HATCH. Mr. President, I say to the Senator, that is absolutely true.

Mr. ALLEN. I ask, Mr. President, a further question. Is it not true that on the DC Court of Appeals there are 12 judges allocated to that court?

Mr. HATCH. That is correct.

Mr. ALLEN. Is it not true that there are four vacancies on that court, which, calculating, means a third are unfilled?

Mr. HATCH. This is correct.

Mr. ALLEN. Does the Senator believe justice is being delayed and, thus, denied on the DC Court of Appeals due to a third of this court being vacant?

Mr. HATCH. I agree, justice delayed is justice denied, and this is a very important court. The problem is our friends on the other side just do not want a conservative Hispanic appointed by a Republican President on that court.

Mr. ALLEN. I ask, Mr. President, a further question, if the Senator will yield.

Mr. HATCH. For a question.

Mr. ALLEN. Does the Senator from Utah recognize the people of America believe there are many important issues facing this country—terrorism, war possibly in Iraq, moving forward with creating more jobs and improving health care, education—and by the Democratic Party's obstruction here of actually voting one way or the other on Miguel Estrada, they are delaying this body from acting on these very important matters for security and job opportunities for Americans?

Mr. HATCH. I agree 100 percent with the distinguished Senator from Virginia.

Mr. ALLEN. I thank the Senator.

Several Senators addressed the Chair.

Mr. DURBIN. Will the Senator yield for a question?

The PRESIDENT pro tempore. Who seeks recognition?

Mrs. HUTCHISON. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. I will be happy to, without losing my right to the floor.

The PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor, I will be happy to yield.

Mrs. HUTCHISON. Mr. President, I ask the Senator from Utah, how many votes does it say in the Constitution are required to confirm a judge in the Senate?

Mr. HATCH. A simple majority. It says we have the power of advising and consenting. It does not say we have the power to advise and filibuster or obstruct, which is what is going on here.

Mrs. HUTCHISON. That is my question. If the Constitution says 51 votes,

or a simple majority, I am asking if it would be an effort to go around the Constitution to filibuster a Federal judge. Is it even really seemly to filibuster a Federal judge nominee when the Constitution is very clear on this issue? Is it setting a new standard with Miguel Estrada that we are going to all of a sudden have the Constitution averted to start requiring 60 votes out of 100 to confirm a Federal judge, a nominee, which is the President's absolute right to make, his right and responsibility, and he has nominated these qualified judges?

Mr. HATCH. There is no question. I agree with the distinguished Senator from Texas. That is what is going on here, and they are depriving this qualified Hispanic of his right to sit on this bench without any real justification. That is what bothers me. It is a double standard. It is clearly a double standard, and it is a double standard that is unseemly. I think the Senator put it exactly right.

Two of our Hispanic Republican colleagues in the House have come over here to show their support for Mr. Estrada, Mr. MARIO DIAZ-BALART and Mr. DEVIN NUNES.

Mrs. HUTCHISON. I thank the Chair. I yield the floor.

Several Senators addressed the Chair.

Mr. LEAHY. Will the Senator yield for a question?

The PRESIDENT pro tempore. Who seeks recognition?

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Will the Senator from Utah yield for a question?

Mr. HATCH. I will be happy to yield, without losing my right to the floor.

Mr. DURBIN. I would like to ask the Senator the following question: Is it not true that Richard Paez, a Hispanic American, nominated to be a U.S. Circuit Judge for the Ninth Circuit, at a time when the Senator from Utah was chairman of the Senate Judiciary Committee, waited over 1,500 days before that committee was forced to finally face a Senate record vote, a cloture vote on March 8, 2000, before his nomination was approved by the Senate?

Mr. HATCH. It was a disgrace.

Mr. DURBIN. I am sorry. I gave the wrong date on that. March 8, 2002.

Mr. HATCH. It was a disgrace that Judge Paez had to wait that long, but Judge Paez had an up-or-down vote on this floor allowed by my colleagues at my request. There was no formal filibuster at the time. Nobody said there was going to be a filibuster. We know we have had some cloture votes in the past, but they have been for votes of convenience or the majority leader has called them for some reason or another but not because there was a filibuster.

The important thing is—and, look, I think it is time for your side to understand it. The important thing is here was a judge that, yes, I do not think was treated fairly, but in the end he had a vote. In the end he sits on the Ninth Circuit Court of Appeals even though our side, almost to a person, in fact to a person, disagreed with that nomination. But we gave him a vote.

Let me tell you something—

The PRESIDENT pro tempore. The Senator will address the Chair, not the Senator.

Mr. HATCH. Let me address the Chair then in answering this question. Miguel Estrada, without one thing against him—and by the way, Judge Paez had plenty of things against him that indicated he was not only an activist judge but ruled without regard to the law. There were some legitimate concerns on our side, even though I believed he should have a vote and he ultimately did, unlike Miguel Estrada.

Let me tell you something, I have not seen one legitimate, substantive reason to not give Miguel Estrada the same privilege that, yes, it took time to do and I had to fight it through and there were all kinds of problems; some were very justified problems——

Mr. DURBIN. Will the Senator yield for another question?

Mr. HATCH. It is time to give Miguel Estrada the same privilege that we gave to Judge Paez.

Mr. DURBIN. Will the Senator yield for a further question?

Mr. HATCH. I will be happy to yield without losing my right to the floor.

Mr. DURBIN. Would the Senator be kind enough to explain that when he was chairman of the Senate Judiciary Committee and this Hispanic nominee Richard Paez was held up for over 1,500 days before his nomination was brought to the floor, it was necessary to file a cloture motion to close debate to bring his name for a vote before the Senate?

Mr. HATCH. It was not necessary. It was not necessary because I was fighting to have that happen and it did in fact happen, unlike what is happening today.

Let me make a suggestion to my colleagues on the other side. I am willing to have one cloture vote, but then let's vote up or down on Estrada. And if you win, I will live with that. If you can destroy this man's career so that he cannot be a Federal circuit court of appeals judge, I will live with that. You have a right to vote against him. But you do not have a right to filibuster this man, nor should you. It is shameful. And it is shameful to put him through this without one substantive reason to do it other than a phony request for privileged documents that everybody knows is phony.

The PRESIDENT pro tempore. The Senator from Utah has the floor. The Senator from Utah will please restrain from referring to another Senator by ''you.'' The Senator must be referred to as ''the Senator.''

Mr. HATCH. I will be happy to abide by that, and I am happy to be corrected by the Chair. I do get a little excited in this matter, and I apologize to my colleagues on the other side, but I think what has gone on does not deserve much consideration.

Mr. KYL addressed the Chair.

The PRESIDENT pro tempore. The current occupant of the Chair is no model of decorum, but I am trying to establish it.

Mr. HATCH. I figured that the Chair would understand.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. KYL. To the Senator from Utah, I have three questions regarding the Paez nomination which he just referred to. The first is if the Senator from Utah could tell us which party was in control of this body and by whom the cloture petition was filed.

Mr. HATCH. Well, I will be happy to. As I understand it, the Democrats were in control, and they filed the cloture motion—we were in control? OK. We were in control and we filed the cloture motion. I am sorry. I am so tired I cannot think straight.

Mr. KYL. The Senator, of course, makes the point. The cloture motion in the case of Judge Paez was filed by the party in control of this body, by the distinguished majority leader of the Republican Party at that time, TRENT LOTT.

I would also ask this question: Is it not true that the debate for Richard Paez lasted 1 day; that there was no filibuster of his nomination?

Mr. HATCH. Well, that is correct, and I suspect that my colleague and friend from Illinois would not vote for cloture for Mr. Estrada as I did for Judge Paez—as we did for Judge Paez.

Mr. KYL. Mr. President, will the Senator from Utah yield for one final question?

Mr. HATCH. I will be happy to yield, without losing my right to the floor.

Mr. KYL. With respect to the Paez nomination, is it not also true that a majority of the Republicans supported the cloture motion vote so that Judge Paez could get a vote but that many of those very same Senators then voted against him? Having given everyone in this body an opportunity to vote, they exercised their right to vote against him but did not deny the right of all the other Senators to vote for him, and that he was confirmed?

Mr. HATCH. That is correct. I am glad the Senator reminded me of that matter.

Mr. REID. Will my friend from Utah yield for a question?

Mr. HATCH. I would be delighted to yield without losing my right to the floor.

Mr. REID. Is the Senator from Utah aware that earlier this evening we voluntarily gave up the floor, as we knew that you and the majority leader wanted to come and make a statement?

Mr. HATCH. Which we would have done for you.

Mr. REID. I guess the question I am asking is: Who is filibustering this?

Mr. HATCH. I guarantee you it is not us. I guarantee you it is you, and if you deny it I would be happy to go to a vote right now.

Mr. REID. I was just wondering. This is taking quite a while.

Mr. HATCH. Let's go to a vote. If you are not filibustering, let's vote.

Mr. REID. Another question, if I could, Mr. President?

Mr. HATCH. Mr. President, I ask for the yeas and nays.

Mr. REID. On what?

Mr. HATCH. On this nomination.

The PRESIDENT pro tempore. Is there a sufficient second?

Mr. REID. It is debatable after that. So what difference does it make?

The PRESIDENT pro tempore. No, it is not debatable.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. There is a sufficient second.

This is ordering the yeas and nays on this nomination.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. It is improper to ask for the yeas and nays.

There is a sufficient second.

The Senator from Utah.

Mr. HATCH. I will be happy to yield, without losing my right to the floor.

Mr. HARKIN. He loses the right to the floor on the motion.

Mr. HATCH. I will be happy to yield to the distinguished Senator from Nevada for a question, without losing my right to the floor.

The PRESIDENT pro tempore. The Senator from Utah has the floor.

Mr. HARKIN. He lost the right to the floor.

Mr. REID. Is the Senator aware that both Democrats and Republicans have sought cloture in response to debate or objections to judicial nominees since the cloture rule was extended in 1949? Is the Senator aware of that?

Mr. HATCH. I did not hear the question.

Mr. REID. The question is, Are you aware that cloture votes on judicial nominees are well precedented in recent history?

Mr. HATCH. Not for true filibusters. I agree we have had cloture votes but not for true filibusters. It has been because a majority leader wanted to have a cloture vote, not because we were not willing to vote on nominees on either side. Your side was willing to vote and we were willing to vote and even when they had to go to cloture on Paez, the majority of Republicans voted for cloture, and then a number of Republicans voted against. But they did give him an up-or-down vote, even though there was widespread disagreement with Judge Paez.

Mr. REID. Is the Senator——

Mr. HATCH. I voted for him, by the way.

Mr. REID. Is the Senator aware that based on cloture votes, there have been——

The PRESIDENT pro tempore. Is the Senator asking the Senator from Utah to yield?

Mr. REID. Yes, I ask the Senator if he would yield for a further question?

Mr. HATCH. I yield for a question, without losing my right to the floor.

Mr. REID. Based on cloture votes, are you aware that there have been 17 filibusters on judicial nominees? Are you aware of that?

Mr. HATCH. No way. Nobody has ever called those a filibuster and there has never been a true filibuster against a circuit court of appeals nominee until this one, and your side has announced that this is a filibuster. No one has ever agreed that those others were filibusters. There were cloture votes, no question about it. But no circuit nominee has ever been defeated by denying cloture, none; zero; nada.

Mr. REID. Will the Senator yield for a question?

Mr. HATCH. I would be glad to yield, without losing my right to the floor.

Mr. REID. The Senator is aware and has acknowledged that there have been a number of occasions where cloture had to be invoked on numerous judges, not the least of which were Richard Paez and Marsha Berzon in recent years?

Mr. HATCH. Let me answer that question. There has never been a true filibuster, until this one, against a circuit court of appeals nominee. In recent years, both sides have used cloture on various occasions other than for filibuster purposes, but there has never ever been a true filibuster against a circuit court of appeals nominee until this time. And whenever there has been a cloture vote, the nominee received his or her vote up or down.

Mr. REID. Will the Senator yield?

Mr. HATCH. Which is not being given here and which is being denied here by the minority.

Mr. REID. Will the Senator yield for one final question?

Mr. HATCH. Without losing my right to the floor.

Mr. REID. I wish the Senator would explain to me what a filibuster is. What is a true filibuster?

Mr. HATCH. When there is an attempt to try and stop debate, when there is an attempt to try to defeat a candidate. And in every case we have had a vote up and down and the judge has been approved.

Mr. REID. But the Senator would acknowledge it took cloture to have that occur?

Mr. HATCH. No. No, I would not.

Technically, yes, but not because there was a filibuster. And the Senator knows that.

In recent years we have used cloture motions for almost everything. But the Senator is talking to the Senator from Utah who knows what a real filibuster is, and there has never been a true filibuster until today, until this filibuster.

Mr. HARKIN. Will the Senator yield?

Mr. HATCH. I am happy to yield to my colleague without losing my right to the floor.

Mr. HARKIN. Mr. President, I ask my friend from Utah, please explain why the difference in substance rather than form of what happened 2 years ago, now almost 2½ years ago, in the year 2000. The Judiciary Committee held a hearing in May 2000 on the nomination of one Bonnie Campbell, former attorney general of the State of Iowa to be a justice for the Eighth Circuit—and then, nothing.

Then the Republican leadership would not bring her name on the floor for a vote. Seven times that fall I came to the floor, I say to the Senator, to ask that her name be brought up to vote, up or down or that at least she get a vote in committee. The Republican leadership would not bring her name up for a vote. I ask the Senator from Utah, other than form, what is the difference in substance between that and today?

Mr. HATCH. She was never brought to the floor. I acknowledge that. She was not. She was 1 of 41 who were left hanging at the end of that administration in contrast to the 54 left hanging when the Democrats lost the Presidency and a Republican was President. In other words, 13 less. And 9 of the 41 were put up so late there was no way anyone could get through, so we are down to 32. And with 32 we had other problems. We can have all the statistics, but we ''bettered'' the Democrats in every case.

She was not brought up so there was, naturally, no filibuster.

The PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. Mr. President, would the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Ms. COLLINS. Would the Senator from Utah be so kind as to explain the ABA rating system under which it is my understanding that Mr. Estrada received the highest possible rating? Would the Senator further explain whether there was a split rating, or whether it was unanimous, and what the general concession of those on the other side of the aisle has been toward ABA ratings in the past?

Mr. HATCH. I thank the Senator for her very erudite question. Let me start with the last part of that.

When the Democrats were in control of the Judiciary Committee and they had a Democrat President, they said the ABA was the gold standard. I cannot remember when a nominee who had a ''unanimously well-qualified'' rating, the highest rating the American Bar Association gives, had any difficulty like this. They went through. It was that simple. There is a double standard here against this Hispanic gentleman.

I have to admit I was not very pleased with the ABA during many of the years when they made ratings that

were split all the time because of partisanship. They have cleaned that up. The ABA is doing a decent job and has done a pretty decent job in the last 4 or 5 years.

What happens is when a President decides to nominate somebody, the ABA then conducts its own investigation. They send top examiners—lawyers, if you will—into the area from where this individual nominee is nominated. They do a complete review with the top, most ethical, highest rated lawyers in that area, and others, and then they come and meet in what is called a standing committee and then they determine what kind of a rating to give. And the ratings, generally, are ''not qualified,'' ''qualified,'' or ''well-qualified.'' Sometimes those ratings have a split rating where some will be well qualified in part and qualified in part. We have even seen some ratings, well-qualified and not qualified.

In this particular case with this Hispanic nominee, Miguel Estrada, he received the highest possible unanimously qualified rating of the American Bar Association.

Just last year, two of the Senators—the Senator from New York, Mr. SCHUMER, and the Senator from Vermont, Mr. LEAHY—called the ABA rating the gold standard for reviewing judges. They were not the only ones. Now, all of a sudden, that standard does not seem to be good enough.

Ms. COLLINS. Mr. President, would the Senator from Utah yield for just one more followup question on the ABA?

Mr. HATCH. Without losing my right to the floor.

Ms. COLLINS. Is the Senator from Utah aware of any other case in which a judicial nominee received a highly qualified rating from the ABA and was subject to a filibuster on the Senate floor?

Mr. HATCH. I can't think of one case. In fact, there has never been a true filibuster conducted. In the cases where they have raised the question of cloture votes, cloture votes are called for one reason or another by majority leaders, but in each of those cases, as I recall, the nominees had an up-and-down vote. I would be happy to go to a cloture vote with our friends on the other side if afterwards they allow an up-and-down vote regardless of what happens on the cloture vote—happy to do it.

They do not seem to be inclined to do that. They want to filibuster the first Hispanic nominee to the Circuit Court of Appeals for the District of Columbia, who has a ''unanimously well-qualified'' rating by the American Bar Association, their gold standard, and who has all of these other qualifications that lawyers only dream about. And he has fulfilled the American dream. He is being denied his opportunity to serve by a double standard here that is being applied by my colleagues on the other side.

It is some Members. I know all of them cannot feel that way.

Ms. COLLINS. I thank the Senator from Utah for clarifying this issue for the Senator from Maine.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. Pursuing the same question, can the Senator ever recall a Hispanic nominee suggested by President Clinton, when he was chairman of the Senate Judiciary Committee, Hispanic nominee for the Federal judiciary who received a well-qualified rating in which the Senator, then-chairman of the Senate Judiciary Committee, refused to even give that nominee a hearing?

Mr. HATCH. Do you have anyone specifically you are referring to.

Mr. DURBIN. Enrique Moreno.

Mr. HATCH. In the case of Enrique Moreno, there was no consultation, a refusal to consult with home State Senators. That is basically something we do not allow in the Judiciary Committee. It is one of the reasons that we will use both sides—if there is not adequate consultation, it is one of the reasons we will use to not bring a nominee up. And I think the distinguished Senator from Illinois should know that. If you do not, be advised, that was the reason Enrique Moreno did not come up.

I even wrote a letter to the then-Chief Counsel of the White House. I think it was Chuck Ruff at the time, bless his memory. I wrote a letter to him saying: You will not consult—they basically admitted that—and they were going to bring this up regardless. It was not adequate or good enough and no chairman, I think, would allow that nominee to come forward without consultation—it is just that simple—Democrat or Republican.

Mr. DURBIN. Will the Senator further yield for a question? If the Senator will further yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. I do not want to bore the membership with another debate about the blue slip policy which the Senator indicated is going to change, but I want to make sure it is clear for the record in this case, we had a Hispanic American nominated for the bench by President Clinton, Enrique Moreno, who received a well-qualified rating from the American Bar Association, and was refused a hearing before the Senate Judiciary Committee when you were chairman because the two Republican Senators from Texas refused to approve the nomination. How is that different from a filibuster, for the fate of Enrique Moreno?

The PRESIDING OFFICER (Mr. ENSIGN). Will the Senator from Illinois address in the third person, not directly.

Mr. DURBIN. The Chair is correct. I ask the Chair to address the Senator from Utah as to how it is any different to have Enrique Moreno, with a well-qualified rating from the American Bar Association, nominated to the Federal judiciary, refused a hearing before then-Chairman Orrin Hatch, because two Republican Senators from Texas refused to approve him, thus, frankly, giving him less consideration than Miguel Estrada who is before us today.

Mr. HATCH. I don't think that is accurate at all. The fact is there was no consultation. I informed the counsel at the White House there was no consultation, and we were not going to bring this nominee up without consultation with both home State Senators. And both home State Senators agreed with that. Frankly, I think any chairman would have handled it exactly the same way. And it is not the same at all.

Miguel Estrada not only had a hearing, but he came through the process. It was a difficult process for him, but he came through it and the Judiciary Committee approved the nomination of Miguel Estrada. Miguel Estrada is now on the floor, so it is completely different from that situation. There was consultation in the case of Miguel Estrada. And, frankly, we are sitting here right now in a filibuster for the first time in history of a circuit court of appeals nominee, without question.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would like to address a question to the Senator from Utah if he would yield.

Mr. HATCH. Without losing my right to the floor.

Mr. KYL. Mr. President, I ask the Senator from Utah, first of all, if the Senator is aware there are many nominees who, for one reason or another, never got out of the Judiciary Committee? In other words, isn't it correct there are many nominees who, for a variety of reasons, do not make it to the floor of the Senate? Is that correct?

Mr. HATCH. The Senator is correct, in both Democratic control of the committee and Republican control of the committee. There are many reasons. The reason may be because of failure to consult. It may be because of further investigations that have to be conducted. It may be further FBI investigations have to be conducted. It may be because of lack of time. It may be because of holds on the Senate floor, which have been used by both sides through time.

But I can tell you this. There were less holdovers at the end of my tenure as chairman of the committee than there were in 1992, at the end of the Democrats' tenure when there was a Republican President.

Let me add one last thing to that, and that is none of us complained, to my knowledge, about Senator BIDEN as chairman when there were 54 holdovers and 97 vacancies. We had 41 holdovers, and nine of those were put up so late there was no way I could have gotten to them in the remaining few weeks we had. So there were really only 32 holdovers and there were a number of those

for which there were justifiable reasons for not bringing them up.

Mr. KYL. Further on this line of inquiry, if I could ask the Senator from Utah to yield, other than the case of Justice Abe Fortas, does the Senator from Utah know of any situation in which a nominee for the Supreme Court or the circuit court of appeals, for example, got to the floor of the Senate and then was stopped by a filibuster?

Mr. HATCH. There has only been one true filibuster in the history of this country, and that was the Fortas nomination. I have to say even President Nixon was against that filibuster. But it was a bipartisan filibuster of both Democrats and Republicans, unlike what we are faced with today where a minority of Democrats are filibustering against a Hispanic nominee for the Circuit Court of Appeals for the District of Columbia, a double standard.

Mr. KYL. Mr. President, I ask the Senator from Utah to yield for two other questions.

Mr. HATCH. Without losing my right to the floor.

Mr. KYL. This goes back, I would advise the Senator from Utah, to the question of whether or not there has been a full opportunity to discover what this nominee believes, what his background is, whether he is well qualified, whether there has been an opportunity, in other words, to question him and whether he has provided full and complete information. Would the Senator from Utah advise all of us how many hours, if it was hours, this nominee was before the Judiciary Committee and whether he answered all of the questions that were put to him at that hearing?

Mr. HATCH. In an unusual hearing, which was much longer than most circuit court of appeals hearings, from 10 o'clock to 5:30 that day, he was asked question after question. He was asked question after question by Democrats as well as Republicans, but mainly Democrats, to the extent that we have this transcript that is larger than most transcripts we have, other than Supreme Court nominees, where he answered the questions. The problem with the Democrats, as I understand it, is he just didn't answer the questions the way they wanted. But he answered them and he answered them in accordance with the directions of no less than Lloyd Cutler, one of the leading Democrat lawyers in the country.

Mr. KYL. Mr. President, my final question to the Senator from Utah, if he would yield please.

Mr. HATCH. I would be happy to without losing my right to the floor.

Mr. KYL. I think I counted 30 questions that were orally asked during the course of a hearing that, as I understand it, went from 10:06 a.m. to 5:25 p.m. In addition to that, the committee routinely sends a questionnaire to these candidates. That questionnaire was provided to Miguel Estrada, and it was returned. It is some 25 pages in length and is a complete answer, and he does not refuse to answer any of the questions that were posed by the committee. These are the same questions that are asked of every nominee who comes before the committee.

May I also ask the Senator from Utah if the answers to this questionnaire have been printed in the RECORD, and if they have not, if the Senator from Utah would place them in the Record?

Mr. HATCH. They have not been placed in the RECORD. Therefore, I ask unanimous consent the questionnaire and the answers be printed in the RECORD. Anybody who looks at that will realize it is a very intrusive questionnaire.

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

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name: Miguel Angel Estrada Castañeda

2. Address: Residence—Alexandria, Virginia; Office—Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036.

3. Date and place of birth: September 25, 1961, Tegucigalpa, Honduras (became naturalized U.S. Citizen on 2/4/86).

4. *Martial Status* (including maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Married to Laury Lea Estrada (nee Gordon), Senior Trial Attorney, U.S. Department of Justice, Narcotic and Dangerous Drugs Section, 1400 New York Avenue, N.W., Washington, D.C. 20005.

5. *Education:* List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted. State University of New York at Old Westbury, May 1979 to June 1980 (no degree) Columbia College, Sept. 1980 to June 1983; A.B. degree granted June 1983 Harvard Law School, Sept. 1983 to June 1986; Juris Doctor Degree granted on June 1986.

6. *Employment Record:* List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment: Gibson, Dunn & Crutcher LLP. Positions: Of Counsel attorney, July 1977–December 1999, and Partner, January 2000-present.

Office of the Solicitor General, United States Department of Justice. Position: Assistant to the Solicitor General, Sept. 1992 to July 1997.

Wachtell, Lipton, Rosen & Katz. Position: Associate, Sept. 1987–February 1988, February 1989–March 1990, and May 1992–September 1992.

United States Attorney's Office, Southern District of New York. Position: Assistant United States Attorney, March 1990 to May 1992.

United States Supreme Court. Position: Clerk to Hon. Anthony M. Kennedy, February 1988 to February 1989.

United States Court of Appeals for the Second Circuit. Position: Clerk to Hon. Amalya L. Kearse, August 1986 to July 1987.

Debevoise & Plimpton. Position: Summer Associate, Summer 1986.

Sullivan & Cromwell. Position: Summer Associate, Summer 1985.

Rogers & Wells. Position: Summer Associate, Summer 1984.

Harvard Law School. Position: Research Assistant to Professor Hal S. Scott, 1985–1986.

Boards:

1. Since June 2000, I have been a trustee of the Supreme Court Historical Society, an organization dedicated to expanding public awareness of the history of the Supreme Court of the United States.

2. Since 1998, I have been a member of the National Board of Directors of the Center for the Community Interest, an organization dedicated to improving the quality of life in public spaces.

7. *Military Service:* Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received. I have never served in the military.

8. *Honors and Awards:* List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee. My college and law degrees were both awarded with high honors. I was elected to Phi Beta Kappa in college.

9. *Bar Associations:* List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups. (a) Members, American Bar Association (1987–1993, 2001-present), (b) Barrister, Edward Bennett Williams White Collar Crime Inn of Court, Washington, D.C. (since 1998), (c) Barrister, Edward Coke Appellate Inn of Court, Washington, D.C. (since 2001), (d) Member, The Barristers, Washington, D.C. (since 1998), (e) Member, The Federalist Society (since 1993).

10. *Other Memberships:* List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong. To my knowledge, no organization of which I am a member is active in lobbying public bodies. In addition to the bar associations listed in response to question 9, I belong the following organizations: (a) Member, Old Town Civic Association, Alexandria, Virginia, (b) Member, Old Town Walled Garden Club, Alexandria, Virginia, (c) Member, The Alexandria Association, Alexandria, Virginia, (d) Member, Smithsonian Associates, Washington, D.C.

11. *Court Admission*. List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

I have been admitted to practice in the courts of the State of New York (since July 1987) and the District of Columbia (since December 1998). There have been no lapses in my admission to those courts. In addition, I am a member in good standing of the bars of the following federal courts:

U.S. Court of Appeals, Second Circuit, 3/25/91; U.S. District Court, Southern District of New York, 5/26/92; U.S. District Court, Eastern District of New York, 5/26/92; U.S. Supreme Court, 7/17/92; U.S. Court of Appeals, Fifth Circuit, 2/17/93; U.S. Court of Appeals, Ninth Circuit, 11/10/97; U.S. District Court, Western District of New York, 1/13/98; U.S. Court of Appeals, Third Circuit, 3/13/98; U.S. Court of Appeals, Fourth Circuit, 3/30/98; U.S. Court of Appeals, Eleventh Circuit, 5/01/98; U.S. Court of Appeals, District of Columbia Circuit, 5/07/98.

12. *Published Writings:* List the title, publisher, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the

Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have not written books, articles or reports, save for a law review note I authored while I was a student at the Harvard Law School. That Note, The Policies Behind Lending Limits, may be found at 99 Harv. L. Rev. 430 (1985). I was a member of the editorial board of the Harvard Law Review—a student journal—from the Fall of 1984 to the Spring of 1986.

I have occasionally been asked to offer, and have given, comments on drafts of scholarly articles. Although I do not regard my role in the writing or publication of those articles as ''editorial,'' the following published articles reflect author acknowledgments of my comments:

Donald J. Boudreaux & A.C. Pritchard, Civil Forfeiture and the War on Drugs: Lessons from Economics and History, 33 San Diego L. Rev. 79 (1996).

Debra Livingston, Police, Community Caretaking and the Fourth Amendment, 1998 U. Chi. Legal. F. 261.

Robert A. Ragazzo, Reconsidering the Artful Pleading Doctrine, 44 Hastings L.J. 273 (1993).

Robert A. Ragazzo, Transfer and Choice of Federal Law: The Appellate Model, 93 Mich. L. Rev. 703 (1995).

Robert A. Ragazzo, Unifying the Law of Hostile Takeovers: Bridging the Unocal/Revlon Gap, 35 Ariz. L. Rev. 989 (1993).

Benjamin E. Rosenberg, Criminal Acts and Sentencing Facts: Two Constitutional Limits on Criminal Sentencing, 23 Seton Hall L. Rev. 459 (1993).

From time to time, I have been asked to speak on issues of federal appellate practice, which sometimes raise broader issues of legal policy, at continuing legal education seminars sponsored by bar organizations. For example, for the past several years I have been a participant in the appellate litigation seminar that the District of Columbia Bar organizes every October. For the past several years, I also participated as a panelist in appellate practice seminars organized by the National Association of Attorneys General. I also participated in a similar program sponsored by the New York Bar in New York City in 1999. In May 1999, I was a panelist at a conference organized by the United States Sentencing Commission and the Federal Bar Association; my panel's discussion addressed, among other things, constitutional issues raised by sentences imposed under the federal Sentencing Guidelines. I have not retained any notes reflecting my remarks as one of the panelists in such bar seminars, nor am I aware of the existence of any transcript of my remarks.

In the Spring of 1999, I participated in a debate organized by National Public Radio's Justice Talking on the public policy issues raised by a City of Chicago loitering ordinance, which was then under review by the Supreme Court of the United States. See City of Chicago v. Morales, 527 U.S. 41 (1997). I was asked to participate in that debate because I had authored an amicus brief in support of Chicago's position on behalf of the U.S. Conference of Mayors, the National League of Cities, and the National Governors' Association. My opponent in that debate was Harvey Grossman, the Legal Director of the American Civil Liberties Union of Illinois, who was counsel for the parties who sought to challenge the Chicago ordinance. The debate was broadcast in the Fall of 1999. A transcript is attached.

13. *Health:* What is the present state of your health? List the date of your last physical examination.

My last physical examination occurred on March 15, 2001. I am advised that I am in good health.

14. *Judicial Office:* State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

15. *Citations:* If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never held judicial office.

16. *Public Office:* State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never been a candidate for, or held, elective public office. I have served in the following appointive public offices:

Law Clerk to Hon. Amalya L. Kearse (Aug. 1986–July 1987), United States Court of Appeals for the Second Circuit, Foley Square, 40 Centre Street, New York, New York 10007.

Law Clerk to the Honorable Anthony M. Kennedy (Feb. 1988–Feb. 1989), United States Supreme Court, One First Street, N.E., Washington, D.C. 20543.

Assistant United States Attorney (Mar. 1990–May 1992), United States Attorney's Office, Southern District of New York, One St. Andrew's Plaza, New York, New York 10007.

Assistant to the Solicitor General (Sept. 1992–July 1997), Office of the Solicitor General, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

17. *Legal Career:*

a. Describe chronologically your law practice and experience after graduation from law school including

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

From August 1986 until July 1987, I served as a law clerk to the Honorable Amalya L. Kearse, United States Court of Appeals for the Second Circuit. From February 1988 until February 1989, I served as a law clerk to the Honorable Anthony M. Kennedy, Associate Justice, United States Supreme Court.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

In addition to the clerkships identified above, I have been associated or employed by the following firms and agencies:

Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036, Of Counsel attorney, July 1997–December 1999, and Partner, January 2000–present.

Office of the Solicitor General, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, Assistant to the Solicitor General, Sept. 1992–July 1997.

Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Associate, Sept. 1987–February 1988, February 1989–March 1990, and May 1992–September 1992.

United States Attorney's Office, Southern District of New York, One St. Andrew's Plaza, New York, New York 10007, Assistant United States Attorney, March 1990 to May 1992.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I was a corporate lawyer, engaged primarily in transactional work, during the approximately two years I worked at Wachtell, Lipton, Rosen & Katz.

After leaving Wachtell, Lipton in March 1990, I became an Assistant United States Attorney, a job I held for over two years. As an Assistant United States Attorney, I represented the government in federal criminal trials (both jury and non-jury), bail and change-of-plea hearings, and in appeals before the United States Court of Appeals for the Second Circuit.

I left the U.S. Attorney's Office in May 1992 to join the Office of the Solicitor General, where my practice principally involved representing the U.S. government in cases before the United States Supreme Court. I also handled some cases in the regional courts of appeals, and gave advice to government agencies concerning whether adverse trial court rulings should be appealed to a regional court of appeals. Although most cases I personally argued before the Supreme Court involved criminal-law issues, a significant portion of my practice—*e.g.*,, advising other agencies on the advisability of appealing adverse decisions and opposing petitions for a writ of certiorari—raised a broad range of issues typical of civil litigation. I remained in the Office of the Solicitor General for approximately five years.

I left the Solicitor General's office to join the Washington, D.C. office of Gibson, Dunn & Crutcher in July 1997. My practice at Gibson, Dunn has primarily involved handling appellate matters, usually in civil cases, although I have also occasionally handled trial-court litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During my nearly eight years in public service, my client was the United States of America. In private practice, my former clients have included, among others, major investment banks acting as advisors in mergers and acquisitions, health care providers defending against malpractice, ERISA and RICO allegations, corporations seeking to set aside excessive damage awards, individuals seeking to set aside criminal convictions, and a *qui tam* relator seeking to sue a State of the Union for fraud.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Both as a governmental lawyer and as a lawyer in private practice, I have appeared in court frequently.

2. What percentage of these appearances was in: (a) federal courts; (b) state courts of record; (c) other courts?

The great majority of my court appearances (approximately 99%) occurred in federal court. I have rarely appeared in state courts.

3. What percentage of your litigation was: (a) civil; (b) criminal?

Approximately 70% of the litigation I personally handled was criminal. The remainder was civil.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you

were sole counsel, chief counsel, or associate counsel.

I tried approximately ten cases to judgment while I was a federal prosecutor. I was chief counsel in four of those, and was sole counsel in the remainder.

5. What percentage of these trials was: (a) jury; (b) non-jury?

All but one of the cases (approximately 90%) were tried to a jury.

18. *Litigation:* Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case: (a) the date of representation; (b) the name of the court and the name of the judge or judges before whom the case was litigated; and (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. In re Managed Care Litigation, MDL No. 1334 (S.D. Fla., Moreno, J.). I am counsel for Aetna, Inc. and its healthcare subsidiaries (''Aetna'') in a series of putative nationwide class actions that have been filed throughout the United States against Aetna and most members of the managed care industry. The Judicial Panel on Multidistrict Litigation has consolidated those cases for coordinated pretrial proceedings in the United States District Court for the Southern District of Florida. The suits generally allege that cost-containment mechanisms used by Aetna and other managed care companies amount to violations of RICO, ERISA and various state laws—because they allegedly provide incentives for physicians to provide deficient medical care, and thus fraudulently reduce the value of the insurance coverage purchased by subscribers—and they seek billions of dollars in damages. I share with one of my partners the day-to-day supervision of this litigation on behalf of Aetna, which is the largest defendant. In that connection, I have been responsible for developing our client's legal strategy, preparing all briefs in the case, and arguing dispositive motions.

Opposing Counsel: Jerome Marcus, Berger & Montague, 1622 Locust Street, Philadelphia, PA 19103; Tel.: (215) 875–3013.

Co-counsel: (1) Richard Doren, Gibson, Dunn & Crutcher, 333 South Grand Avenue, Los Angeles, California 90071; Tel.: (213) 229–7038 (co-counsel for Aetna); (2) John D. Aldock, Shea & Gardner, 1800 Massachusetts Avenue, N.W., Suite 800, Washington, D.C. 20036; Tel.: (202) 828–2140 (counsel for Prudential); (3) Brian D. Boyle, O'Melveny & Myers, LLP, 555 13th Street, N.W., Washington, D.C. 20004; Tel.: (202) 383–5263 (counsel for Humana); (4) Edward M. Crane, Skadden Arps Slate Meagher & Flom, LLP, 333 West Wacker, Suite 2100, Chicago, Illinois 60606: Tel.: (312) 407–0522 (counsel for Foundation Health Systems); (5) Robert Denham, Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, N.E., 16th Floor, Atlanta, Georgia 30303; Tel.: (404) 572–6940 (counsel for Coventry); (6) William E. Grauer, Cooley Godward LLP, 4365 Executive Drive, Suite 1100, San Diego, California; Tel.: (858) 550–6050 (counsel for PacificCare); (7) John G. Harkins, Jr., Harkins Cunningham, 2800 One Commerce Square, 2005 Market Street, Philadelphia, Pennsylvania 19103; Tel.: (215) 851–6701 (counsel for CIGNA); and (8) Jeffrey S. Klein, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153; Tel.: (212) 310–8790 (counsel for United Healthcare)

I have also briefed numerous cases in the federal courts of appeals and in the Supreme Court of the United States, and I have personally argued 15 case before the Supreme Court. Among the cases I have argued before that court are:

2. Stricter v. Greene, 527 U.S. 263 (1999). I represented the petitioner, a death row inmate, in a federal habeas challenge to his conviction and death sentence. The principal issue in the case was whether the prosecution violated the rule of Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose to defense counsel that a purported eyewitness to the crime had been repeatedly interviewed by the police and had made statements casting doubt on her in-court identification. I was the principal draftsman of the petitioner's merits briefs in the United States Supreme Court, and also argued the case before the Supreme Court. The Supreme Court ruled that the evidence was exculpatory under Brady, but that it was not sufficiently material to create a reasonable probability of acquittal.

Co-Counsel: Barbara Hartung, 1001 East Main Street, Richmond Virginia 23219; Tel.: (804) 649–1088.

Opposing counsel: Pamela A. Rumpz, Assistant Attorney General, Commonwealth of Virginia, 900 East Main Street, Richmond, Virginia 23219; Tel.: (804) 786–2071.

3. United States v. Gonzales, 520 U.S. 1 (1997). I represented the United States. The issue in the case was whether 18 U.S.C. §924(c), which provides mandatory sentences for defendants who use firearms in connection with narcotics crimes or violent offense, permits federal courts to impose a concurrent sentence when the defendant already is serving a state sentence. I was the draftsman of the certiorari petition and the petitioner's briefs on the merits, and also argued the case before the United States Supreme Court. The Supreme Court ruled that Section 924(c) requires that sentences under that provision must be consecutive to any other sentence that the defendant might be serving.

Opposing counsel: (1) Angela Arellanes, 320 Gold Avenue, S.W., Suite 1111, Albuquerque, New Mexico 87102; Tel.: (505) 247–2417, (2) Edward Bustamante, 610 Gold Street, S.W., Albuquerque, New Mexico 87102; Tel.: (505) 842–9093, and (3) Roberto Albertorio, One Civic Plaza, Room 4030, Albuquerque, New Mexico 87102; Tel.: (505) 924–3917.

4. Old Chief v. United States, 519 U.S. 172 (1997). I argued the case before the United States. The issue for the Court was whether a criminal defendant may ever prevent the government from introducing evidence of a fact relevant to the prosecution's case by stipulating to the existence of that fact. The Supreme Court ruled that a criminal defendant may, in some circumstances, keep the government from introducing evidence of the defendant's prior conviction if the defendant offers to stipulate before the jury that he is indeed a felon.

Opposing counsel: Daniel Donovan, Federal Defenders of Montana, 9 Third Street North, Great Falls, Montana 59403; Tel.: (406) 727–5328.

5. Montana v. Eglehoff, 518 U.S. 37 (1996). I represented the United States as amicus curiae in support of the position of the State of Montana. The issue in the case was whether the Due Process Clause of the Fourteenth Amendment, invalidates state legislation that renders any evidence of involuntary intoxication irrelevant and inadmissible in a prosecution for intentional homicide. I was the draftsman of the United States' brief, and also presented argument before the United States Supreme Court in support of Montana position. By a vote of 5 to 4, the Court upheld the constitutionality of the statute.

Co-counsel: Pamela P. Collins, Assistant Attorney General, Justice Building, 215 North Sanders, Helena, Montana 59620; Tel.: (406) 444–2026.

Opposing counsel: Ann C. German, P.O. Box 1530 Libby, Montana 59923; Tel.: (406) 293–4191.

6. Degen v. United States, 517 U.S. 820 (1996). I represented the United States. The petitioner had been indicted on federal narcotics violations and had fled to Switzerland to avoid prosecution. The issues for the Supreme Court were (i) whether federal courts possess inherent authority to forfeit property civilly, without a hearing, when the party claiming such property is a fugitive from United States justice, and (ii) whether such a forfeiture would violate the claimant's due process rights. I was the principal draftsman of the government's brief and also argued the case before the Supreme Court. The Court ruled that federal courts slack inherent authority to forfeit a fugitive's property.

Opposing counsel: Lawrence S. Robbins, Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W. Washington, D.C. 2006; Tel.: (202) 463–2000.

7. Citizens Bank of Maryland v. Strumpf, 516 U.S. 16 (1996). I argued the case on behalf of United States as amicus curiae in support of reversal. The issue in this case was whether the ''automatic stay'' provisions of the Bankruptcy Code, see 11 U.S.C. §362, are violated when a creditor temporarily withholds payment of a debt that the creditor owes to the bankrupt debtor in order to protect the creditor's set-off rights. The Supreme Court ruled that a creditor in such circumstances does not violate the Code's ''automatic stay'' provisions.

Co-counsel: Irving E. Walker, Miles & Stockbridge, P.C., 10 Light Street, Baltimore, Maryland 21202; Tel.: (410) 727–6464.

Opposing counsel: Roger Schlossberg, 134 West Washington Street, Hagerstown, Maryland 21740; Tel.: (301) 739–8610.

8. United States v. Robertson, 514 U.S. 669 (1995). I wrote all briefs and argued the case on behalf of the United States. The principal issues in this case were (i) whether the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 et seq. reaches the full extent of conduct that Congress could conceivably regulate under the Commerce Clause of the U.S. Constitution, and (ii) whether the evidence in the case satisfied the statute's ''interstate commerce'' requirement. The Court ruled that the evidence submitted by the government—including evidence that the defendant shipped materials from California to Alaska—satisfied the statutory and constitutional requirements.

Opposing counsel (last known address and telephone number): Glenn Stewart Warren, 2442 Fourth Avenue, San Diego, California 92101; Tel.: (619) 232–6052.

9. United States v. Mezzanatto, 513 U.S. 196 (1995). I wrote the briefs and argued the case on behalf of the United States. In order to induce the prosecutor to engage in plea negotiations, the defendant in this case had agreed to waive the protections of Fed. R. Evid. 410, which ordinarily render all evidence of plea negotiations inadmissible in court. The defendant later changed his mind, and testified at trial to a story that was inconsistent with what he had told the prosecutor. In reliance on the defendant's agreement, the trial court permitted the prosecutor to impeach the defendant with his prior inconsistent statements. The U.S. Court of Appeals for the Ninth Circuit reversed, ruling that the rules of evidence—including Rule 410—may never be waived by agreement of the parties. The Supreme Court granted certiorari to review that conclusion, and, after briefing and argument, reversed the Ninth Circuit's ruling. The Supreme Court held that rules of evidence, like most rights conferred by statute, may be waived by agreement of the parties.

Opposing counsel: Mark R. Lippman, 8070 La Jolla Shores Drive, La Jolla, California 92037; Tel.: (858) 456–5840.

10. National Organization for Women, Inc. v. Scheidler, 510 U.S. 249 (1994). I wrote the briefs and argued the case on behalf of the United States as amicus curiae in support of petitioner. The issue in the case was whether the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. incorporates a ''pecuniary purpose'' requirement for liability, so that only criminal enterprises that violate RICO for mercenary reasons would be liable civilly or criminally. (That interpretation of RICO had originated with the U.S. Court of Appeals for the Second Circuit, which had reversed the criminal convictions of several Croatian terrorists who engaged in multiple bombings and arsons for ''ideological'' reasons related to their desire to achieve independence for their homeland). The Supreme Court unanimously held that RICO does not embody a ''pecuniary purpose'' requirement.

Co-counsel: Fay Clayton, Robinson, Curley & Clayton, P.C., 300 South Wacker Drive, Suite 1700, Chicago, Illinois 60606; Tel.: (312) 663–3100.

Opposing counsel: G. Robert Blakey, Notre Dame Law School, Notre Dame, IN 46556; Tel.: (219) 231–6371.

19. *Legal Activities*: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In addition to the litigation described above, my practice has included preparing for civil litigation that did not proceed to trial or that was settled during trial; handling an international contract dispute that arose out of the privatization of oil fields and refineries in a central Asian republic (I and one of my partners represented our client in the arbitration of that contract dispute, which was conducted under UNCITRAL rules); advising clients conducting internal corporate investigations into possible violations of federal criminal law; and briefing and/or arguing appeals in civil and criminal cases.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to be derived from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not expect to have any deferred income or other benefits from any previous business relationships or employment. If I am confirmed, my law firm has agreed to pay out my capital, together with my annualized share of the firm's income for the current year, in cash at the time I resign my partnership to begin judicial service.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the dictates of the Code of Judicial Conduct and the provisions of applicable recusal laws, such as 28 U.S.C. §455.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please refer to my Ethics in Government Act report.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

Please refer to attached statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never played any role in any political campaign.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for ''every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged.'' Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

The bulk of my legal career has been in the public sector, but I have consistently devoted time to pro bono obligations while working in private practice. During my first stint in private practice (at Wachtell, Lipton), I accepted an appointment to represent an incarcerated defendant who was seeking habeas relief from his state conviction. I wrote all appellate briefs and argued the case before the United States Court of Appeals for the Second Circuit. See Campaneria v. Reid, 891 F.2d 1014 (2d Cir. 1989). The amount of time devoted to this matter was approximately 300 hours.

Since returning to private practice (at Gibson Dunn), my pro bono activities have included:

a. Writing an amicus curiae brief on behalf of the U.S. Conference of Mayors, the National League of Cities and the National Governors' Association in City of Chicago v. Morales, 527 U.S. 41 (1997). Morales was a constitutional challenge to a Chicago ordinance that made it unlawful for members of street gangs to loiter in public spaces. The amicus brief, to which I devoted approximately 120 hours, supported the arguments made by the City of Chicago.

b. Representing a death row inmate in a challenge to his conviction and sentence. See Strickler v. Greene, 527 U.S. 263 (1999). I was the principal draftsman of petitioner's Supreme Court briefs on the merits and argued the case on his behalf in the Supreme Court. I devoted approximately 450 hours to this representation.

c. Representing the City of Annapolis, Maryland in defending the City's loitering ordinance—which prohibits loitering with the intent to engage in drug dealing—from constitutional attack. See N.A.A.C.P., Anne Arundel County Branch v. City of Annapolis, Civ. No CCB–00–771 (D. Md). I have devoted approximately 120 hours to that representation. In April 2001, after the district court issued a ruling invalidating the ordinance, the City of Annapolis determined not to further defend the constitutionality of the ordinance.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates—through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not currently belong, nor have I ever belonged, to any organization that discriminates in any way on the basis of race, sex, or religion.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission that recommends candidates for nomination to the United States Court of Appeals for the District of Columbia Circuit. Attorneys from the White House Counsel's Office asked me to interview for the position. I was interviewed once by two White House attorneys. I was later informed that I was likely to be nominated for the position. I was nominated on May 9, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your view on the following criticism involving ''judicial activism'': The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become a target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this ''judicial activism'' have been said to include: (a) a tendency by the judiciary toward problem-solution rather than grievance-resolution; (b) a tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals; (c) a tendency by the judiciary to impose broad, affirmative duties upon governments and society; (d) a tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and (e) a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In my view, federal judges may decide only concrete cases or controversies that properly come to them; they may not ''make law'' or reach beyond the facts and circumstances of the particular case they must decide. That limited judicial role flows from the text of the Constitution, the separation of powers inherent in our constitutional scheme, the federal-state balance, and the presumption of validity that generally attaches to legislative actions.

FINANCIAL STATEMENT NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and

other immediate members of your household.

ASSETS

Cash on hand and in banks	$73K
U.S. Government securities—add schedule (savings bonds)	12K
Listed securities—add schedule	0
Unlisted securities—add schedule	0
Accounts and notes receivable:	0
Due from relatives and friends	0
Due from others	0
Doubtful	0
Real estate owned—add schedule 1105 Prince St., Alex., VA	575K
Real estate mortgages receivable	0
Autos and other personal property	120
Cash value—life insurance	0
Other assets—itemize:	
IRAs, 401(k), and KEOGH Plans	164K
Total Assets	824K

CONTINGENT LIABILITIES

As endorser, comaker or guarantor	0
On leases or contracts	0
Legal Claims	0
Provision for Federal Income Tax	0
Other special debt	0

LIABILITIES

Notes payable to banks—secured	0
Notes payable to banks—unsecured	0
Notes payable to relatives	0
Notes payable to others	0
Accounts and bills due	0
Unpaid income tax	0
Other unpaid tax and interest	0
Real estate mortgages payable—schedule (schedule attached	386K
Chattel mortgages and other liens payable	0
Other debts—itemize	
DOJ TSP Loan	19K
Mastercard	10K
American Express	10K
Student Loan	21K
Total liabilities	446K
Net Worth	378K
Total liabilities and net worth	

GENERAL INFORMATION

Are any assets pledged? (Add schedule.)	0
Are you defendant in any suits or legal actions?	0
Have you ever taken bankruptcy?	No

MIGUEL A. ESTRADA MORTGAGES

1. Temple-Island Mortgage Corporation (first mortgage on residence) $256,000.

2. Bank of America (line of credit secured by second mortgage on residence) $130,000, Total $386,000.

FINANCIAL DISCLOSURE REPORT FOR NOMINEES

I. POSITIONS. Partner, Gibson, Dunn & Crutcher LLP; Trustee, Supreme Court Historical Society; Director, Center for Community Interest.

II. AGREEMENTS. 2001 Termination of Partnership Agreement.

III. NON-INVESTMENT INCOME 1999 Gibson, Dunn & Crutcher LLP, $301,000; 2000 Gibson, Dunn & Crutcher LLP $510,000; 1999 Department of Justice (attorney); 2000 Department of Justice (attorney).

VI. LIABILITIES—American Express, Citibank MasterCard, Alabama Comm'n on Higher Education.

VII. Page 1 INVESTMENTS and TRUSTS—income, value, transactions: Solomon Smith Barney Money Market Fund; Citibank Accounts America's First Federal; Credit Union Savings Accts; Vanguard 500 Index Fund; Dreyfus S&P 500 Index Fund; SouthTrust Bank Account.

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS

Part II (Agreements): In the event I am confirmed, my law firm, Gibson, Dunn & Crutcher LLP, has agreed to pay my share of the firm's capital and insurance reserve in cash promptly after the resignation from the partnership. The firm has also agreed to pay me, at the same time and also in cash, my annualized share of the firm's income for the current year, computed on the basis of the per-share income earned by the firm during the year 2000.

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. §501 et. seq., 5 U.S.C. §7353 and Judicial Conference regulations.

Mr. REID. Will the Senator from Utah yield for a question?

Mr. SESSIONS. Will the Senator yield?

Mr. HATCH. Let me yield first to the distinguished Senator from Alabama and then I will be happy to yield to my friend from Nevada without losing my right to the floor.

Mr. SESSIONS. I will ask the distinguished chairman of the Judiciary Committee, who has been involved in these matters for so many years, aren't we confusing here home State Senators' objections with a filibuster? And isn't it true that, to this very day, really earlier in this year, the Democratic Senators on the Judiciary Committee virtually demanded home State Senators be given even more power to block nominees than in the past?

Mr. HATCH. I believe there have been some demands that have been far in excess of what has been allowed by their own chairmen in the past, especially Chairman KENNEDY and Chairman BIDEN. I think the Senator states it correctly.

Mr. SESSIONS. My second question, Mr. President, would be: The point is there has been no movement from the other side to change the basic traditional view of the power of home State Senators to object. In fact, they affirm that and insist they should be given that, and even expand it.

Mr. HATCH. I think the Senator is correct.

I said I would yield to the distinguished Senator from Nevada.

Mr. REID. Without the Senator losing his right to the floor, I attempted 20 minutes or so ago to add a little levity to this debate, indicating the distinguished Senator from Utah is aware I attempted to add a little levity by suggesting you had joined in the filibuster. That didn't go over. It wasn't very funny, as I learned very quickly.

Mr. HATCH. It wasn't very funny, but I appreciate the Senator trying to interject levity. We could use maybe a little bit around here, but this is a tough issue and we are all upset.

Mr. REID. It should be a little more humorous, obviously, than I was able to provide.

Mr. HATCH. I respect the Senator, anyway.

Mr. REID. I ask the distinguished Senator from Utah, we are here. It is now 10:30 at night.

We have an agenda with people who are going to be covering the floor for us. But I ask the Senator, because we have other people on the floor: How much longer does he think he is going to want to take tonight on this matter, just so my colleagues over here know. Obviously the Senator knows. He knows a little more than I know because it seems to be thinning out a little bit here. Can the Senator inform the Senate—especially this Senator—as to how much longer we are going to go tonight?

Mr. HATCH. I am not quite sure. I have a statement to make, and I want to get that in the RECORD. I would like to take any questions my colleagues have on either side of the aisle. This is an important issue. So it is 10:30 at night. It is nothing to me. I am fighting for Miguel Estrada.

Mr. REID. Will the Senator yield for one final question?

Mr. HATCH. Sure, without losing my right to the floor.

Mr. REID. I understand the importance of this nomination. I know the Senator believes I understand its importance. I am not in any way denigrating or trying to stop anyone from speaking tonight. I only would ask if the Senator would give us some general idea as to whether we are going to be here all night or another hour or two hours. Can the Senator give us any indication?

Mr. HATCH. I am prepared to be here all night, if that is what it takes. I do not want to foreclose any questions from my colleagues. I don't know how many questions there will be. But I am here to answer them, and I would like to make a statement for the RECORD before we finish. I will try to expedite that, if I can.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I have been listening to these brilliant legal minds asking questions.

Mr. REID. Mr. President, does the Senator from Oklahoma have the floor?

Mr. INHOFE. Yes.

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

Mr. HATCH. I yield for a question.

Mr. INHOFE. I thank the Senator from Utah.

I was trying to get across with just a prelude, if you will accept that. There are several of us here who are not attorneys and who are certainly not great legal minds. As we look at this, I recall, though, another hearing, the origin of filibuster dealing back with the days of civil rights. And what comes to my mind is, as I have been listening to these questions being asked and the objections to Miguel Estrada by the minority—correct me if I am wrong—that the filibuster was created and maintained for some civil rights legislation in the first place. Is that correct?

Mr. HATCH. That is generally the viewpoint around here.

Mr. INHOFE. Will the Senator share with those of us who are not attorneys the origin for filibuster?

Mr. HATCH. The filibuster comes from the word filibustero, which is Spanish. It is a word for pirating, by taking improper control, in this case of the Senate. I hope I am saying that right. I think I am pretty close.

Mr. INHOFE. I thank the Senator.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. TALENT. I wonder if my colleague read the statement by former Congressman Herman Badillo from New York who called the opposition to block Mr. Estrada ''grandstanding'' and ''this treatment of Mr. Estrada is demeaning and unfair not only to the nominee but the confirmation process and the integrity of the Senate.''

I wonder if my colleague believes that is a pretty remarkable statement coming from a former Democratic Member of Congress about the opposition being mounted to a fellow Hispanic.

Mr. HATCH. I did read the quote in the Wall Street Journal, and I thought it was a tremendous article. It was written by the former Democratic Congressman from the State of New York. I was privileged to hear Congressman Badillo the other day at our press conference when the Hispanic community came together to decry what is going on against Miguel Estrada. He made one of the most profound and strong statements at that press conference. I have nothing but respect for him. I respected him when he was in Congress, and he certainly has been speaking up, and he is a Democrat.

But he is not the only Democrat. Seth Waxman is one of the all time great Solicitors General—wonderful Democrat attorney who I happen to have a lot of respect for. He has spoken up for Miguel Estrada as have so many other colleagues at the Solicitor General's Office. But Mr. Badillo very firmly feels this is an injustice, that it is a double standard, that this is prejudice against this nominee. I can't speak for him, but this is what I got out of his remarks and out of his article; and that there is no justification whatsoever in fighting against Miguel Estrada, and absolutely no justification in conducting the first filibuster in the history of the country against a circuit court of appeals nominee.

I have to say I was very impressed with his article, and I appreciate the Senator reading from it.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, will the Senator yield for a question?

Mr. HATCH. I am delighted to, without losing my right to the floor.

Mr. GRAHAM of South Carolina. It is my understanding one of the attacks is Mr. Estrada is in fact a rightwing ideolog who may use his political philosophy to shape the law in an unfair way. Is that correct?

Mr. HATCH. I suspect that is what is worrying people on the other side.

Mr. GRAHAM of South Carolina. Is my understanding correct that it is not only the Senator's suspicion, but they have actually said that? People on the other side have said one of the concerns they have about this gentleman is they are suspicious of his ideology and that he may be inflexible in applying the law in a fair way. Is that correct?

Mr. HATCH. My colleagues on the other side who don't know Miguel Estrada—there is only one person who has given their criticism, and that was Professor Bender from Arizona State University who I think has more than been rebutted here on the floor.

Mr. GRAHAM of South Carolina. Along those lines, if the Senator will continue to yield.

Mr. HATCH. Could I take a moment to read a few paragraphs from the White House letter responding to the Senate Democrats' continuing action here on the notion that Mr. Estrada did not answer questions of the Members?

When asked by Senator EDWARDS about judicial review, Mr. Estrada answered:

> Courts take the laws that have been passed by you and give you the benefit of understanding that you take the same oath that they do to uphold the Constitution. And, therefore, they take the laws with the presumption that they are constitutional. It is the affirmative burden of the plaintiff to show that you have gone beyond your oath. If they come into court, then it is appropriate for courts to undertake to listen to the legal arguments, which is that the legislature went beyond its role as a legislature and invaded the Constitution.

That is a deliberative and very important answer to questions they claim he never answered.

Mr. GRAHAM of South Carolina. Will the Senator continue to yield for one more question?

Mr. HATCH. I would be delighted to, without losing my right to the floor.

Mr. GRAHAM of South Carolina. Would the Senator agree with me that if one of the really serious questions about whether or not this man is a rightwing ideolog who couldn't shape the law in a proper fashion—that any rightwing ideolog would have a very difficult time working for the Clinton administration? Would you agree with me about that concept?

Mr. HATCH. That was my experience with the Clinton administration. I don't know of any rightwing ideolog——

Mr. GRAHAM of South Carolina. Did this gentleman in fact work for the Clinton administration?

Mr. HATCH. He did, indeed, and he received rave reviews for his work at the Solicitor General's Office in the Clinton administration by a Democrat Solicitor General.

Mr. GRAHAM of South Carolina. Will the Senator agree that for any conservative to be able to work for the Clinton administration and do well shows a tremendous amount of tolerance?

Mr. HATCH. I certainly agree with that. Mr. Waxman, who is a highly regarded and respected lawyer, was the Solicitor General—one of them. Mr. Estrada worked under three Democrat Solicitors General who saw his work product. Mr. Waxman is highly respected. I doubt he would put his reputation on the line, as he did, by vouching for Mr. Estrada if he were not absolutely convinced he would be a fair and unbiased Federal judge. That is none other than Seth Waxman, the Solicitor General in the Clinton administration.

I don't understand all this argument by the other side and why a filibuster of this highly qualified person who has the highest rating of the American Bar Association, their gold standard. I have to say I have to admit it is a good standard at this point, too. They are doing a fair job. It isn't just because of Mr. Estrada I say that. I have been saying it for a couple of years. But one time I wasn't very pleased with it.

Mr. ENZI. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. ENZI. In the Senator's 27 years serving in this body, has the Senator seen anything that has progressed on a judicial nomination the way this nomination has, and does he have any concern this may be setting a precedent?

Mr. HATCH. There is no question that this is setting a precedent. In response to my colleague's very important question, this is a very terrible precedent because if the Democrats succeed in filibustering the first Hispanic judge nominee to the Circuit Court of Appeals of the District of Columbia—the first filibuster in the history of the country, a true filibuster, then Katy bar the door. I remember there were some on our side who wanted to filibuster, and cooler minds took over and said, We are not going to do that. First of all, we think it is wrong.

Second, we think it is unconstitutional to do it.

Third, it isn't fair to the President, to the Senate, to the nominee, nor to the process. It isn't fair. And that is the position we took.

And now we have what I consider to be a very unfair process, for no good reason, because I have not heard one substantive argument against Miguel Estrada, not one in all of this debate, other than: We didn't like his answers. Well, that is tough. Vote against him if you don't like his answers. That is your right. Some of our people voted against some of their judges because they did not like their answers. That is OK. It is honorable.

But do not filibuster a circuit court of appeals nominee or a Federal judge of any stature.

Mr. SANTORUM. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. Mr. President, has any Member of the Senate questioned the nominee's intelligence?

Mr. HATCH. Not one. Nobody could. We know how bright he is.

Mr. SANTORUM. And has any person questioned his temperament?

Mr. HATCH. Yes, Paul Bender has. But he——

Mr. SANTORUM. Has any Member of the Senate questioned his temperament?

Mr. HATCH. There have been some who have been concerned about that because of Mr. Bender's comments. But Mr. Bender, when he was his supervisor at the Department of Justice, gave him rave reviews in all categories.

Now, I think the contemporaneous rave reviews, which Mr. Bender tries to get out of now, should take precedence over his partisan comments made long after the fact.

Mr. SANTORUM. Will the Senator yield for a further question?

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. I ask the Senator from Utah, what is generally the standard by which the Senate is to analyze nominees and pass judgment on them? What are the qualities and characteristics of a nominee that are the traditional areas by which individuals who have been nominated are judged?

Mr. HATCH. Well, for a Federal circuit court nominee, it would be honesty, integrity, temperament, physical capacity—or ability to work—but, in addition, an FBI report that is favorable, and an ABA rating, that isn't necessarily followed but, nonetheless, is helpful if it is favorable. And in this case it is not only favorable, but it is the highest rating they could possibly give. And there are other legitimate considerations, but all of them he has passed.

Mr. SANTORUM. Further, I guess the question I have is, other than Mr. Bender's comment, which came well after the fact and does not comport with his contemporaneous reports—other than that one particular statement—of all the qualifications that are traditionally used by Members of the Senate to evaluate nominees for judicial positions, circuit court positions, has any Member of the Senate questioned any of those qualities?

Mr. HATCH. Not really. Not really. Not really, other than some who relied on Mr. Bender's comments. And I might add that Mr. Bender worked for Seth Waxman, who rebutted what Mr. Bender said, and put his reputation on the line as a Democrat former Solicitor General, and speaks very favorably on all of those issues with regard to Mr. Estrada.

I would certainly give much more credibility to Mr. Waxman than I would to Mr. Bender, who I think has acted reprehensibly under the circumstances.

Mr. SANTORUM. So, Mr. President, if the Senator will yield for just a clarifying question.

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. What I understand the Senator from Utah is saying is that on every quality by which judicial nominees are judged traditionally here in the Senate, on every single one of those qualities, he has either had no argument from the other side that he does not meet those standards or, in many cases, he has exceeded those standards, except in one case with respect to judicial temperament. In that case, we have the person who makes those claims having written contemporaneous reports that rebut his own later testimony, and the supervisor rebutting that testimony. So other than that one case, on all of the other qualities by which we are to judge a candidate here, there is no argument about his qualifications?

Mr. HATCH. That is right. By the way, when the ABA does its review, it is looking for every one of those qualities. It is looking for people who would rebut those qualities. It is looking for people who both support him and are opposed to him. It is looking for people who say he does not have the right temperament, or he does not have the right intelligence, or he does not have the right integrity, or he does not have the right health. The ABA goes into all of that. So does the administration. And so do we as Senators if we want to.

In this particular case, virtually everybody who worked with him gives him high raves.

Mr. SANTORUM. Mr. President, if the Senator will yield for an additional question.

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. Given that he is qualified on all of those grounds, one is left with the possibility that he may be objected to because of his ideological position. Has any comment been made or any evidence been produced by any Senator that his ideology is out of the mainstream of traditional jurisprudence in any of the activities in which he has been involved?

Mr. HATCH. I am not aware of anyone. I have heard remarks on the floor by colleagues on the other side that they are concerned he may not uphold all of their believed decisions. But he has said he would uphold precedent, that he would abide by the law as enunciated by the Supreme Court, and that he would examine everything as thoroughly as he could, do the very best job he could to be fair. He has said exactly the right things you would want a circuit court nominee to say.

Mr. SANTORUM. Mr. President, if the Senator would yield for an additional question, I would just ask that to be clarified. Has the other side produced any evidence that, in the history of this nominee as a lawyer, he has produced any information or any information has been produced that shows that his principles or ideology are outside of the mainstream? Has any evidence been produced to that effect?

Mr. HATCH. Absolutely none. And that is one reason it is a fishing expedition—because they want to see if they can find something for which they can criticize him. But not only did they wait 615 days to hold a hearing—which they controlled, they chaired, they questioned—but they also allowed for written questions afterwards. And only two of them—the Senator from Illinois and the Senator from Massachusetts—prepared written questions for him, which he answered, which we put into the RECORD today.

Frankly, I do not know of anyone who could point out any defect in this man's character and his ability to be a great circuit court of appeals judge.

Mr. SCHUMER. Will my colleague yield?

Mr. INHOFE. Will my colleague yield?

Mr. HATCH. To further answer that question, I would like to read from the letter the White House just sent up here today:

> In some recent hearings, including Mr. Estrada's, Senator Schumer has asked that nominees identify particular Supreme Court cases of the last few decades——

I think the correct reference was to the last 40 years, although I have heard Senator after Senator on the other side talk about the whole jurisprudence of the country, even though the question is referring to the last 40 years. But:

> In some recent hearings, including Mr. Estrada's, Senator Schumer has asked that nominees identify particular Supreme Court cases of the last few decades with which they disagree. But the problems with such a question and answer were well stated by Justice Stephen Breyer.

Of course, Justice Breyer is a Democrat, and he is now sitting on the Supreme Court.

The White House letter goes on:

> As Justice Breyer put it, ''Until [an issue] comes up, I don't really think it through with the depth that it would require . . . so often, when you decide a matter for real, in a court or elsewhere, it turns out to be very different after you've become informed and think it through for real than what you would have said at a cocktail party answering a question.''
>
> Senator Schumer also has asked nominees how they would have ruled in particular Supreme Court cases. Again, a double standard is being applied. The nominees of President Clinton did not answer such questions. For example, Richard Tallman, a nominee with no prior judicial service who now serves on the Ninth Circuit, not only would not answer how he would have ruled as a judge in Roe v. Wade—but even how he would have ruled in Plessy v. Ferguson, the infamous case that upheld the discredited and shameful ''separate but equal'' doctrine. So, too, in the hearing on President Clinton's nomination of Judges Barry and Fisher, Senator Smith asked whether the nominees would have voted for a constitutional right to abortion before Roe v. Wade. Chairman Hatch interrupted Senator Smith to say ''that is not a fair question to these two nominees because

regardless of what happened pre-1973, they have to abide by what has happened post-1973 and the current precedents that the Supreme Court has.''

In other words, I corrected a member of my party on the committee for asking that question of a Clinton nominee.

I hate to say it, but Miguel Estrada has answered their questions. He just hasn't answered them the way they wanted because they haven't been able to find any real defects in the answers he has given.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. ALEXANDER. Is the Senator from Utah aware that the following Supreme Court Justices had no prior judicial experience: Harlan Fiske Stone, Louis Brandeis, Hugo Black, and William O. Douglas?

Mr. HATCH. All giants of the law and none of whom had prior judicial experience.

Mr. ALEXANDER. Will the Senator yield for a further question?

Mr. HATCH. Yes.

Mr. ALEXANDER. Is the Senator aware that Felix Frankfurter and Earl Warren and Byron White and Lewis Powell and William Rehnquist and Stephen Breyer and Thurgood Marshall and Harry Blackmun and Warren Burger and Ruth Bader Ginsburg all had no prior judicial experience before they were appointed and confirmed to the U.S. Supreme Court?

Mr. HATCH. The Senator is exactly right. It just goes to prove how ridiculous the accusations are that some have made against Miguel Estrada. And it also goes to show that there is a double standard with regard to this Hispanic nominee.

Mr. ALEXANDER. Would the Senator yield for one final question?

Mr. HATCH. Without losing my right to the floor.

Mr. ALEXANDER. If the Senator would agree that all of those distinguished men and women with no prior judicial experience went on to become distinguished members of the U.S. Supreme Court, then can the Senator help us understand why the Members of the other side suddenly think it is not just important but disqualifying for someone who is nominated for a lower court to have no judicial experience? Why is this suddenly a new criterion when many of the most distinguished jurists in our country's history have had a diverse background of experience? Why is this suddenly a new standard for Miguel Estrada?

Mr. HATCH. The Senator really raises the issue—that is why there is a double standard—when all of these great Supreme Court Justices and others never had a day of judicial experience. I will submit Miguel Estrada has had more time in the judiciary than any of them had before they came to the court because not only has he argued before the Supreme Court, he was a clerk at the Supreme Court. He knows how the Court works. He knows how it moves, thinks, and breathes. Yet he is being mistreated here. Why the double standard? I can only think of one, and that is, they don't like what they think his philosophy is. They don't like the fact that a Republican President has supported him and has nominated him. They don't like the fact that he is a Hispanic conservative Republican. They are afraid that because he is a Hispanic conservative Republican, he might upset the balance on this court. And on this court, over 90 percent of the cases are unanimously decided.

I can tell you, all of their fears are unjustified. They are incredible the way they are being made. And they are, most importantly, unfair criticisms—most importantly, unfair. That is what bothers me. Why can't we be fair to this Hispanic nominee who has fought so hard to be part of the American dream and has earned a right? Why can't we be fair to him? What is wrong over here? What is wrong?

Not only is he a Hispanic nominee, a Republican, appointed by this President, whom I can see some of my colleagues don't like. I can accept that. But Miguel Estrada is a person who suffers from a handicap as well. He has a speech impediment. And if you watched the hearings, you could see that. Yet this young man has gone to the height of the profession in spite of those things. In spite of all the blocks, all the barriers, all the glass ceilings, all of the criticisms, he has lived the American dream. He is an example to every young lawyer, not just Hispanic young lawyers—especially to them—but every young lawyer of how you can fulfill the American dream.

I haven't seen a glove laid on him by the other side. Yet they are still filibustering him. Why the double standard? I think the Senator makes a tremendous set of points there. I am personally grateful for his participation.

Mr. ALEXANDER. I thank the Senator.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, will my colleague from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. SCHUMER. My colleague from Utah has talked about how it is unfair to block a conservative nominee who is Hispanic. I would like to ask my colleague a question about Judge Rosemary Barkett, a Hispanic woman, born in Mexico, who spent her early years there before her parents immigrated to the United States. At an early age, she devoted herself to religious service and took vows to become a nun, then a schoolteacher, educating children in Florida, then became a very distinguished lawyer. After years in private practice, she underwent a rigorous screening process, and she was appointed to the State trial bench.

Mr. SANTORUM. Regular order.

Mr. SCHUMER. My question is, did my good friend from Utah not say about Judge Barkett:

> I led the fight to oppose [Judge Rosemary Barkett's] confirmation . . . because [her] judicial records indicated she would be an activist who would legislate from the bench?

Why is that any different than people on this side opposing Miguel Estrada because he might be a judicial activist who would legislate from the bench?

Why is my colleague accusing some on this side of being anti-Hispanic when he opposed a Hispanic judge similarly rising through the ranks because he disagreed with her philosophy?

I yield to my colleague for an answer to that question.

Mr. HATCH. I am happy to have the question from my dear colleague from New York. No. 1, I didn't know she was Hispanic. That is irrelevant to me anyway. I didn't know that. And if she is, I didn't know it until today. No. 2, I did read her judicial records. She was an activist. I did vote against her. But there is a difference here: I voted. I allowed you to have a vote. We had a vote, and she is now sitting on the court.

Mr. SCHUMER. Will my colleague yield for a further question?

Mr. HATCH. Sure.

Mr. SCHUMER. That is not the question I asked.

Mr. HATCH. You asked me why this is different from—wait, let me just finish.

Mr. SCHUMER. Will my colleague yield for an additional question?

Mr. HATCH. I will yield in just a second. Let me finish.

The PRESIDING OFFICER. Senators will address through the Chair, not to each other.

Mr. HATCH. Let me just finish here. You asked me why should this be any different from Miguel Estrada. There is nobody who can say that Miguel Estrada would legislate from the bench. There is nobody who has one ounce of information that would indicate he would be an activist judge. He isn't a judge. In fact, your side has argued that because he doesn't have judicial experience, he should not go on this position—some have argued. I hope it hasn't been the distinguished Senator from New York with his great knowledge of the law.

But there was a complete difference. The bottom line is this: Yes, I still think I was right on that particular vote. I may have been wrong, but I believed I was right. I did it sincerely. But she did have a vote. And she did pass, as I recall. She is now sitting as a judge. And I didn't hold her up, nor did I filibuster her, nor did I stand on this floor and say she should not have a chance for a vote, which is what your side—I should say, the Democrat side in this Chamber—is doing. I think there is a lot of difference, a world of difference, between my vote which was

cast sincerely. I have hardly voted against any judges since I have been here. I have been one of the strongest supporters of the Federal judiciary, if not the strongest supporter in this Chamber, ever since I have been here.

I can say this: I still believe my vote was right. If it was wrong, I apologize, but I didn't hold her up. I didn't filibuster her. I made sure she had a vote. And she got one, and she sits on the court today.

I can't ask a question, I guess, of the Senator, but I will just ask him to think it through. There is really a difference between Rosemary Barkett's handling and Mr. Estrada's. He is not even getting a chance for a vote. She did get her chance for a vote. I was one who helped her to get it.

Mr. SCHUMER. Will my colleague yield for an additional question?

Mr. HATCH. Without losing my right to the floor.

Mr. SCHUMER. Now that the Senator from Utah knows that Judge Barkett is Hispanic, would he in any way characterize his own action as anti-Hispanic?

Mr. HATCH. No. Nor am I characterizing yours that way. I have characterized it as anti-conservative Hispanic Republican, which is different.

The PRESIDING OFFICER. The Senators are advised not to address each other in the first person.

The Senator from Oklahoma is recognized.

Mr. INHOFE. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. INHOFE. It is a sincere last question. It is very important because I just got a phone call that I am going to be asked a question. First of all, I want to inform the Senator from Utah that in Oklahoma, our fastest growing population has been Hispanic for 25 years. I used to be a commercial pilot in Mexico. I know Hispanics.

When I was the mayor of Tulsa, we appointed the first Hispanic commission anywhere in the Southwest. It is still there today.

Now, the question is this, and I am going to be asked this question this weekend: Why was this Hispanic man, when nobody could question his qualifications, rejected? I have to answer this to the Hispanic commission of Oklahoma Saturday. What shall I say?

Mr. HATCH. There is no legitimate reason. It is a double standard. It is unfair. It is unfair to him and to our President, and he should be given at least a vote up or down. If my colleagues want to vote against him, that is their privilege. I would find no fault with that, even though I would disagree. It is unfair to the process and to the Senate.

What is going on here is that for the first time in history, a true filibuster is being waged against a nominee. It happens to be the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia.

Mr. INHOFE. One last question. You have answered it already, and this is not whether or not we want to vote for or against Miguel Estrada, but does he deserve a vote, a public vote, on the floor of the Senate?

Mr. HATCH. Based upon the past history of this body, he deserves a vote. He is not getting it right now because of a filibuster for the first time in history. I have to say I decry that. That is not fair. It is a double standard. It is not right.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. COLEMAN. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. COLEMAN. Mr. President, I was an urban mayor of a vibrant, diverse community, including Chicanos, Salvadorans, and Puerto Ricans. Is it true that Miguel Estrada was attacked by Democratic Hispanic Members of the House as being Hispanic in name only?

Mr. HATCH. Well, in essence, because he was basically accused of not being Hispanic enough. I believe he was accused of being Hispanic in name only. They even said he didn't give back enough to the community, even though this man worked his guts out to get to where he is as a Hispanic lawyer in this country and deserves credit for it, and he is an idol and will be an idol to a lot of young people who want to do the same.

Mr. COLEMAN. Will the Senator yield for one more question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. COLEMAN. Is it true that Miguel Estrada—we have heard this before—came here as a teenager, learned to speak English, overcame a disability, graduated with honors in college, graduated with honors magna cum laude in law school, was editor of the law review, and he came back to public service? Is it true, then, that he is supported by many Hispanic organizations, really as a role model of the American dream?

Mr. HATCH. You should have heard the LULAC press conference this week. It was truly remarkable. He was accused by his opponents of being very unfair. LULAC happens to be the oldest Hispanic organization in the country. I believe, if I am right, the head of LULAC is a Democrat. I may be wrong. He is outraged, by the way. With this double standard that is going forth against Miguel Estrada, he is right to be outraged.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. SANTORUM. Isn't the difference the Senator from New York suggested about your comment about Judge Barkett and the situation with Miguel Estrada that Judge Barkett had an extensive record to analyze and you concluded by that record there was judicial activism? Is there any record that would lead any Member on the other side to suggest that Miguel Estrada would be a judicial activist?

Mr. HATCH. Of course, he is not a judge. Rosemary Barkett was a judge and had written a number of legal opinions. Some of them I thought were whacko and, frankly, were.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. I am still answering the question of the Senator from Pennsylvania.

Mr. DURBIN. I will bet you are.

Mr. SANTORUM. Will the Senator yield for an additional question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. SANTORUM. Is there anything in Mr. Estrada's background that would give you the opinion he would be a judicial activist on the court?

Mr. HATCH. Not any. In fact, even the Democrats who have known him have been praising him and have supported him. I might add that I don't think you would get better support than Ron Klain. There should not be a Democrat on that side who doesn't believe he is an honest lawyer. There should not be a Democrat on that side who doesn't accept Seth Waxman as a great lawyer, or one who doesn't believe Walter Dellinger is an exceedingly fine law professor, lawyer, and practicing attorney. There should not be a Democrat who should disagree with the former African-American Solicitor General of the United States.

I want to say this. I don't see any comparison with Rosemary Barkett at all. This man is not a judge. In accordance with the double standard, it has been said he should not be a judge because he has no judicial experience. We just have proven there are all kinds of Clinton judges who had no prior judicial experience. Yet we put them through and they are serving well, as have literally hundreds of judges who never had a day of judicial experience. It is just unfair, plain unfair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. DURBIN. I ask the Senator from Utah, when the Senator was chairman of the Senate Judiciary Committee and refused a hearing and vote for Enrique Moreno, who was rated well-qualified for an appointment to the Fifth Circuit Court of Appeals, was the chairman of the committee, the Senator from Utah, aware of the fact that Mr. Moreno was born in Juarez, Mexico, in the company clinic of a smelting plant where his father was employed; when he was 2 years old, his family emigrated to El Paso, TX, where Mr. Moreno attended school and his father worked as a carpenter, his mother as a seamstress; he left El Paso to attend undergraduate and then law school at Harvard, and he

practiced for 19 years? Was the Senator from Utah aware of that background when he would not give him an opportunity for even a hearing before the Senate Judiciary Committee, or a vote before that committee, or on the floor of the Senate?

Mr. HATCH. Mr. President, I believe the Senator is being very offensive. He normally is quite partisan but quite reasonable. He is being offensive because he keeps referring to me as denying him a vote in committee when, in fact, I have explained before that there was no consultation. The Senators from Texas told me there was no consultation, which they demand on their side all the time, and which we demand on our side all the time, which I demanded of the Clinton administration, and I demand of the Bush administration.

I think the Senator is being very unfair by trying to imply that I deliberately kept Enrique Moreno, who may be all of these wonderful things, and I assume that he is—I cannot recall all those details. I have respect for him; I have tremendous respect for him. I would like to have seen him have a chance, had there been consultation. But I do respect the home State Senators, and I think I respect the Democrat home State Senators, too.

I have not even talked about the withholding of blue slips because that was not the issue. The issue was consultation and, in this case, there was zero, ''nada'' consultation.

Mr. DURBIN. Will the Senator yield for another question?

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

Mr. HATCH. Wait a minute, I feel I have been unfairly attacked by the Senator, by someone who knows the process and I think ought to be fair and I think normally is.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. No. Look, as chairman, I can only do certain things. I will tell you this, I put through, as ranking member or chairman, 377 Clinton judges, the second most judges confirmed for a President in history. The highest confirmed happened to be through President Reagan, and there were 382, 5 more. I believe that I would have put through even more than President Reagan or President Clinton had it not been for Democrat holds on the floor against other Democrat nominees.

Let me go further because—let's be fair about it—President Reagan had 6 years of his own party in control of the Senate, in the Senate Judiciary Committee to help him get those 382 judges. President Clinton had 6 years of the opposition party, and yet we gave him virtually the same number as the all-time champion, President Reagan.

Mr. DURBIN. Will the Senator yield?

Mr. HATCH. I think my record shows I have not only been fair, I have bent over backwards. I will acknowledge that I have had problems on my side, just like your chairman when he was chairman, Senator LEAHY, had problems on his side with some who have always wanted to manipulate the system a little bit differently. But I was fair, and I do resent anybody implying that I was not fair.

In the case of Enrique Moreno, he would have had hearings had there been consultation, which I am sure the distinguished Senator from Illinois would be the first to raise if he was not consulted with regard to judges coming from his State.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. I would like to ask the Senator from Utah this question: He has raised the issue of fairness when it comes to Hispanic nominees.

Mr. HATCH. That is right, and I wanted fairness when you asked questions.

Mr. DURBIN. Let me finish the question.

Mr. HATCH. Well, finish it then.

Mr. DURBIN. The Senator suggested it was fair for two Republican Senators from Texas to block a man like Enrique Moreno from even having a hearing because that was their right.

Mr. HATCH. Is there a question there?

Mr. DURBIN. The question is coming. Is it not the right of Senators to raise questions on the floor about Miguel Estrada? Why is that unfair while the treatment of Enrique Moreno was fair? He did not even have a hearing. Miguel Estrada had a hearing, an opportunity to answer questions, and he refused to answer the questions. How is this fair to Enrique Moreno and unfair to Miguel Estrada?

Mr. HATCH. I will tell you again. How many times do I have to repeat it for somebody who has been on the Judiciary Committee and ought to know? If there was not consultation, you would be the first to say: I am not going to let that person go. Or you would be the first to criticize the administration.

The PRESIDING OFFICER. The Senator is reminded not to say ''you'' in the first person.

Mr. HATCH. Let me say this to the Chair. I have answered it about three times now. Let's be fair about it. As chairman, I cannot do everything. All I can do is abide by the rules of the committee, which are that there has to be consultation, not phony requests for consultation. You have to at least consult. They did not even consult.

I wrote a letter to the then-counsel, bless his departed soul, Chuck Ruff, for whom I happened to care a great deal, and there are very great reasons I do. He was a great lawyer, and I got along well with him. I said: You did not consult and they did not. He basically admitted it. Those two Senators were well within their rights to say: We are not going to have him if we are not going to get consultation. And they were within their rights.

As chairman, I had no choice other than to do that. I think the Senator knows that. That is why I believe the questions are very unfair to me.

Now, I will admit, Miguel Estrada was given a hearing by the Democrats. Senator SCHUMER presided over it, and there was more than one Democratic Senator present. It was a fair hearing. I believe it was. It went from about 10 in the morning to 5:30 at night, longer than most hearings. They asked every question they wanted to ask.

I assumed the Democrats believed they were going to win the election and therefore they would never have to have Miguel Estrada come up for a vote any time. When we won the election, suddenly I got a request for confidential documents of the Solicitor General. I should say the White House got that request the day before the hearing. He has had a hearing. He has had a vote in committee. He has come out of the committee.

He is now on the floor, and now we find this situation where for the first time in history, a circuit court of appeals nominee is being denied a right to an up-or-down vote. That is abysmal. And he just happens to be the first Hispanic nominee to the Circuit Court of Appeals for the District of Columbia. I think it is wrong. I think it is unfair. I think it is unfair to the President. It is unfair to him. It is unfair to the Senate. It is unfair to the Senate Judiciary Committee. It is unfair, I think, to the whole process.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. I ask this question in relation to Richard Paez, and I will not go to the question of the cloture vote necessary to bring him to the floor, but I ask the then-chairman of the Senate Judiciary Committee if it was fair to Richard Paez, nominated by the President, to the Ninth Circuit, well-qualified by the ABA, to have waited 3 years and then to have faced a motion to proceed on the floor which the Senator from Utah and a majority of the Republicans voted against after this man had waited for 3 years for a vote? Was that fair to Richard Paez?

Mr. HATCH. There were plenty of reasons Richard Paez was held up by people on our side. He had ruled in a number of cases in ways that appeared to be, and I think was, in fact, activist judging. Without my support, Richard Paez would not be sitting on the Ninth Circuit Court of Appeals. So, again, I feel impugned by the question because without me going to bat for him, which I did, without me fighting for him on the floor, which I did, without me giving him a vote, which I did—which you are not; I should say the Democratic side is not—he would not be sitting on the Ninth Circuit Court of Appeals, and he knows it and you know it—every Democrat on the other side knows it.

Unfortunately, I want to talk personally to my colleagues. I will do it

through the mechanism of the Chair. But the fact is, had I not supported him, he did not have a chance to be on the court because there were many people who believed he was an activist judge and, I have to confess, it was a close question.

I finally asked him to come visit with me. I sat down with him. He is a nice man. He is a good man. I have to admit, I felt he was an activist judge. But I also felt he was a good man.

Mr. DURBIN. Will the Senator from Utah yield for a question?

Mr. HATCH. Let me just finish. I told him I would support him, and I did. Unlike this particular situation, he got his vote and he passed with my support, which would never have happened without it.

Mr. DURBIN. Will the Senator yield for one final question? I promise I will not ask any further questions.

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. In the case of Richard Paez, a Hispanic nominee who waited over 4 years for a vote, was there ever a time when Richard Paez refused to answer questions you posed to him?

Mr. HATCH. Not that I know of.

Mr. DURBIN. Was he evasive to you or did he try to in any way conceal his true background and true record? Was there ever an instance of that?

Mr. HATCH. I have to say we did not try to destroy the man. We did not try to ask questions that were improper. We did not try to ask him his opinions on how he was going to vote, all of which was done with Miguel Estrada, and he refused to answer those kind of questions, as he should have, as anybody who reads Lloyd Cutler would agree he should have.

I refer you to the President's letter which I am going to get to in a minute, if my colleagues will allow me to, because I want to make a statement before we finish this evening. In all honesty, Miguel has not been treated very fairly and he is certainly not being treated fairly by a filibuster—or should I say the ''filibustero''?—on the floor of the Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, with respect to the Paez and Berzon matters, I ask the chairman if he remembers I was one who questioned those nominees and he made a decision in both of those cases to support them after serious thought was given to it?

Mr. HATCH. That is correct.

Mr. SESSIONS. Is it not a fact the Republican majority leader, TRENT LOTT, was the one who moved for cloture on Paez and Berzon?

Mr. HATCH. No question about it.

Mr. SESSIONS. The vote was 86 to 14, and 85 to 13 to invoke cloture, and I supported cloture even though I opposed the nominees?

Mr. HATCH. That is correct. I have to say our side was fair to Mr. Paez in the end. Admittedly, I wish it did not have to be delayed that long, but in all honesty he was treated fairly in the end. I wish it had been earlier, but I have to say I had my own qualms and my own questions and there were plenty of reasons for that. There were people all over California who did not want him on the Ninth Circuit Court of Appeals, which is considered one of the most activist courts in the country, because of the ''activist'' decisions he was making in contradistinction to what California law really was. Prior to each and every cloture vote in the past which has been mentioned, the Senators in the leadership on our side agreed to provide enough votes to invoke cloture before the cloture petitions were even filed on these Democrat nominees.

I wish my colleagues on the other side would agree to that precedent in relation to the cloture votes they keep referring to. Would they assure us, as we did them, that their side will provide enough votes to invoke cloture before we even file a cloture petition for Estrada? That is what we did for Judge Paez and now Judge Berzon.

So there was no real filibuster. You cannot call that a filibuster. We provided the necessary votes for them to get votes on the floor, and they did get their votes up or down. That is something Miguel Estrada is being denied right now.

Where is the fairness? I do not see any fairness in that. Why should he be denied the same privileges we gave to two people most every Republican disagreed with, but nevertheless gave them a vote and they are now both sitting on the Ninth Circuit Court of Appeals?

I have to tell you I had much angst and many upset stomachs that occurred because of these two nominees, but I voted for both. Without me, neither of them would have made the Ninth Circuit Court of Appeals. It is just that simple.

Mr. SESSIONS. Mr. President, to follow up on that question, I felt strongly about those nominees. I did not dislike them personally, but I felt Paez and Berzon were activists. In fact, their writings clearly indicated that.

Is it not a fact both Paez and Berzon, in separate opinions, have declared the longstanding ''three strikes you're out'' law in California unconstitutional? And I think one of them has been reversed already by the Supreme Court more than once?

Mr. HATCH. That is my recollection. And I have to say there are those who believe at least one, if not both, are activists on the Ninth Circuit Court of Appeals, which is virtually reversed every time by the Supreme Court. It is the most reversed court of appeals in the country.

Mr. SCHUMER addressed the Chair.

The PRESIDING OFFICER. Will the Senator yield for a question?

Mr. SCHUMER. I would like to ask my friend from Utah a question.

Mr. HATCH. Sure, without losing my right to floor.

Mr. SCHUMER. My friend from Utah just characterized the kinds of questions, such as what are your opinions of court cases, in an attempt to destroy the career of Mr. Estrada. I would like to ask the Senator, you were just talking about Judge Paez with Senator SESSIONS. I ask the Senator, my friend from Utah, if you recall some of the questions Senator SESSIONS asked Richard Paez: In your opinion, what is the greatest Supreme Court decision in American history? What is the worst Supreme Court case?

I would ask my colleague two questions. Was Senator SESSIONS attempting to destroy the career of Richard Paez? Second, does he recall that instead of saying, I cannot answer that, Senator Paez gave answers to both of those questions?

Mr. HATCH. Do you mean Judge Paez?

Mr. SCHUMER. Now Judge Paez.

Mr. HATCH. I believe it is within the power of each Senator on the Judiciary Committee to ask any question they want to, no matter how stupid they may be, and we have had plenty of stupid questions from both sides, to be honest with you.

I do not think those are stupid questions. Nor did I think the Senator's questions when he basically asked Miguel Estrada this question, can you think of any cases in the last 40 years with which you disagree with the Supreme Court, nor do I find fault with Mr. Estrada saying, no, I do not. You and I might. I could think of some cases where we have passed laws. I was the cosponsor of the Violence Against Women Act. I did not like to see it overturned. On the other hand, I do understand why it was and I do think it was a legitimate decision even though I may have disagreed with it at the time.

Mr. SCHUMER. Will the Senator yield for another question?

Mr. HATCH. Without losing my right to the floor.

Mr. SCHUMER. I am glad to see we are not destroying careers by asking those kinds of questions.

Mr. HATCH. The only way we are destroying careers, in all fairness, is by having filibusters, not by having up-or-down votes. If we distort the record of people, I think that—I think both sides have done that from time to time, I am not saying deliberately, but nevertheless there have been some times where I think the Senate has not acted in the best form.

Mr. SCHUMER. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. SCHUMER. I was pursuing this line of questioning before, and then somehow we turned to other people to ask questions. But when I asked my colleague before how he could say this about Judge Barkett, which is a reasonable thing for him to say—I do not

begrudge him one bit. I do not think he has an ounce of discrimination in his body—how that was not anti-Hispanic, but opposing Judge Estrada was anti-Hispanic, he prefaced his remarks by saying, well, you are opposing not Hispanics but conservative Hispanics; you are anti-conservative Hispanics—was my friend from Utah being anti-liberal Hispanic when he opposed Judge Barkett or was he simply ignoring the fact that she was Hispanic—he said he did not even know—and instead opposing her on her views and her record, something at least to this Senator is not only legitimate but an obligation to know about the views and the record? So I would like to—

The PRESIDING OFFICER. The Senator is reminded to address the Senator through the Chair and in the third person.

Mr. SCHUMER. I thank the Chair.

So, Mr. President, I ask my colleague, the Senator from Utah, how one is any different from the other. And isn't, as it seems to most of us, one the mirror image of the other, either exactly blasphemous or equally pure?

Mr. HATCH. I believe the Senators can ask any questions they want. Like I say, no matter how dumb or stupid or intelligent or alert they are—I have seen both. In the case of Rosemary Barkett, I confess I never knew she was Hispanic. And even if I did, it would be irrelevant to me. Nor have I accused any Democrat of being prejudiced against Miguel Estrada because he is Hispanic. I do not believe that. I do not believe there is a prejudiced bone over there. I do not believe there is over here either. But I have said I believe our colleagues on the other side are filibustering because Miguel Estrada is a Hispanic Republican conservative nominated by President Bush, a Republican President.

I have also said I believe one of the reasons why there is such a vicious fight to stop him from going on the Court of Appeals for the District of Columbia is because my colleagues on the other side believe he is conservative, and believe he might tip the balance of the court. That is what we get when we get a President. That is what we get when we vote.

If my colleagues on the other side disagree with Miguel Estrada, you have every right to vote against him. I think you shouldn't. There is no reason at all. I don't see one substantive reason so far, advanced by the minority, why he shouldn't sit on the court. Certainly, the fact he has no judicial experience in the eyes of the Democrats, that is not a valid reason.

Since we are talking about things I may have said about Clinton nominees, I have been in on hundreds, if not thousands, of judges since I have been in the Senate. Let me remind the Senator from New York what I said prior to the cloture vote on one Clinton nominee. I said: I personally do not want to filibuster Federal judges. The President won the election. He ought to have the right to appoint the judges he wants. I believe that with every fiber of my being. I think that is what you get when you get a President.

I didn't think most of President Clinton's judges—I would not have appointed most of them if I were President, but I was not President. And I submit I don't believe the distinguished Senator from New York would probably nominate the same judges as President Bush, but President Bush deserves the courtesy of having his judges voted up and down, and that is a courtesy not being granted for the first time in history.

When the minority mentions some cloture votes, we have no majority to make sure it is invoked. There was no filibuster to make sure the nominees get a vote up and down. I would be happy if my friends on the other side would do the same for this fine nominee, even if you disagree, and then vote no as some colleagues did. I voted yes on some of the most controversial judges because I start with the premise that the President deserves support, whoever the President is, as long as the nominee is qualified.

As much as I disagreed with Marsha Berzon, she was very qualified. She was one of the top labor lawyers in the country. I admit, some of my colleagues did not feel the same way as I did. I led the fight to put her on the bench. She personally came to me and thanked me, as did Judge Paez.

I would like to see the same fair treatment to Miguel Estrada. I don't see it here. I think I made a pretty good case it is not here and there is nothing fair about this process.

Mr. SCHUMER. If my colleague from Utah will yield for a final question.

Mr. HATCH. Without losing my right to the floor.

Mr. SCHUMER. One judge nominated to the same DC Circuit Court of Appeals, Mr. SNYDER—a fine judge, well respected, the highest ABA rating, same thing as Miguel Estrada in a lot of ways—never got a hearing, he never got a vote. He is from DC. There were no home State Senators to object to him, unlike Mr. Moreno.

I ask my colleague, why wasn't it very unfair not to let Mr. SNYDER have a vote on the very same circuit to which we are debating Miguel Estrada's entrance?

Mr. HATCH. I cannot answer that other than to say I wish we could have. He was not named for the 11th seat on the Circuit Court of Appeals for the District of Columbia, in contrast to Mr. Estrada who was nominated for the ninth seat. There is a real difference because there was a question whether the 11th and 12th seats at that time should have been filled. But the ninth seat certainly should be filled, and everyone I know agrees with that, including people on the Democrat side.

I wish I could have gotten them all through, to be honest. To also be honest, I don't know of an end of session where any Judiciary Committee has been able to get them all through. Frankly, I think you can go back in time and find more nominees left hanging when the Democrats controlled the committee at the end of the first Bush administration than we left at the end of the Clinton administration. You could go through all the statistics and criticize all you want and some criticisms are justified.

I wish we could have done a better job back then when I was on the Judiciary Committee. I give an illustration. Tomorrow we have a markup on three circuit court of appeals nominees. Some have indicated the Democrats will filibuster the markup. One person on that markup is Mr. Roberts, who has been sitting there for 11 years. Mr. Paez sat there for 4 years, but he got a vote and he is now sitting on the Ninth Circuit Court of Appeals. Mr. Roberts has been sitting there for 11 years and has had three nominations by two different Presidents and is considered one of the two greatest appellate lawyers in the country by Supreme Court Justices and many others. There is not anything you can find against him other than he is appointed by President Bush, a Republican President, and he may be conservative. I don't know whether he is or is not, but he has been held up for 11 years through three nominations.

I have been informed that there may be a filibuster in committee tomorrow. That would be the first filibuster that I have seen in my 27 years on the Judiciary Committee. If that is true—I cannot believe it is true. I believe my colleagues would allow votes and allow them to come to the floor in an orderly fashion. I have to say that I hope that is not true. If that is true, then I think any reasonable person can conclude that my colleagues on the other side are not willing to do their constitutional duty to fill the courts with the President's nominees.

I will stay here all night and debate my record with the Senator from New York or anyone else, but this has nothing to do with the——

Mr. SCHUMER. Will the Senator yield?

Mr. HATCH. I am answering a question.

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

Mr. HATCH. I will stay all night to debate my record in comparison to any Democratic record. That has nothing to do with whether or not Miguel Estrada should be confirmed. The only thing that has to do with is whether we vote. And I think it would be very unfair not to vote up or down on Miguel Estrada.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from New York.

Mr. SCHUMER. I ask my final question. I have so many but I know the hour is late.

Mr. HATCH. I add one last thing on that. I cannot see any reason for this action against Miguel Estrada unless,

of course, the opposition to Mr. Estrada, based upon what I have been hearing tonight, is really retribution for perceived past wrongs perpetrated against Clinton nominees when I was, in fact, one of the best assets you had in getting nominees through. I took a lot of criticism from the conservative right who I told to get lost, I have to say, in contrast to what I think is the liberal left who seem to have lockjaw control over my colleagues on the other side.

I yield for a question as long as I don't lose my right to the floor.

Mr. SCHUMER. The final question in relation to the hearing tomorrow, would the chairman of the committee, the Senator from Utah, just give us 1 day of questions for Mr. Roberts? As the Senator well knows, we had an unprecedented three court of appeals nominees before us in 1 day—all three controversial, all three very erudite. We never had that before. We took all day.

To his credit, our chairman waited until 9:30 but that is when the questions finished with Mr. Sutton and one of the reasons many Members find difficulty voting on Judge Roberts, who is a brilliant man. I would just like to ask some questions. We have not had a chance to ask questions.

I ask my colleague, if you give us 1 day of hearings on Judge Roberts, we would agree to vote the very next day. Would that be acceptable to the Senator?

Mr. HATCH. Of course not. Because we had a full day of hearings. Mr. Roberts was there, Mr. Sutton was there, Justice Cook was there. We went from 9:30 that morning to 9:30 at night, and I was prepared to stay all night if I had to. Any Senator could have come and asked any questions they wanted. Many Senators asked all the questions they wanted to at that time. Afterwards we kept the record open for Senators to read and review the record and submit any written questions that they wanted. We have had 2 weeks to do that.

There comes a time when you have to say let's treat these people fairly.

I know there is no reason in the world to hold up Mr. Roberts or the other two either. The fact that my colleagues spend all their time—not all their time but enough of their time interrogating Mr. Sutton, they still interrogated Mr. Roberts and Justice Cook. I think we should proceed and I think it is fair to proceed. I think the Senator said it right when he said he is a distinguished appellate lawyer, one of the best in the history of the country. I don't see any reason for the delays in these matters.

I was open, as I have always been, to any questions that the Senators from the other side wanted to ask. We stayed there for a very lengthy hearing.

Look, fair is fair. Let's treat these people fairly.

I hope my colleagues will not filibuster tomorrow because that will be the first time I recall a filibuster in the committee. If that is so, then it is clear that we have the politics of mass obstruction—which politics were suggested by two very ultraliberal law professors at a Democrat retreat in 2001. If that is true, then this is all part of the game, to slow down everything in the judiciary no matter how many emergencies we have, and we have plenty, and to stop President Bush from having his judges confirmed.

I don't think it is fair. I don't think anybody else who watches it thinks it is fair. I call upon my good friends to be fair.

I have to say, I like everybody in this body. I care for everybody in this body. I care for my friend from New York and he knows it. I know he cares for me. But it is time to wrap it up and say, look, you have had your shot. And knowing you, you always take your shot. I should not be talking to you personally, I acknowledge to the Chair. My friend from New York is not known for shyness, but he is known as a fair person and he is known as a good lawyer, at least by me. I am asking him to help be a leader on that committee. I am asking the distinguished Senator from New York and others to be leaders on this committee, to help us do our job, to help fill these courts.

Yes, you may not like him. My colleagues on the other side might not like the nominees of President Bush any more than we liked the nominees of President Clinton. But I put them through. Like I say, President Clinton, he would have been the all-time champion in confirmation had it not been for Democratic holds on your side. So I think we were fair. I would like you to be fair to our people.

If there are no further questions, I would like to make a statement.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask the Senator to yield for one question.

Mr. HATCH. Without losing my right to the floor.

Mr. SESSIONS. I say to the Senator, I know in the heat of this debate some on the other side have seemingly questioned the fairness of your leadership. I know they have not had the opportunity to be in Republican conference when you have been absolutely consistent with the views you expressed here on the floor to the Republicans who may have had different views. Would you share with us what you have advised Republicans in meetings about the impropriety of filibusters and how you have been consistent in that and other issues that arise on matters here today?

Mr. HATCH. I thank my colleague for asking that question because everybody knows, including my friends on the other side, that I argued vociferously against the few who wanted to filibuster on our side.

I expect my colleagues in good faith to argue on their side against that. It is a dangerous thing to do. It is a wretched thing to do, filibuster a judge. It is the first time in history. If they want to filibuster some judges, why would they pick on the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia, a man who suffers from a disability yet rose to the top of his profession. He came up the hard way. He fulfilled the American dream, a man who is an example to every young Hispanic person in this country, and to me. He is an example to me, and I think everybody in this body.

Why wouldn't we let this fellow have an up-or-down vote like we always did? We always made sure that, regardless of the reason for a cloture vote, we made sure that cloture was invoked and a vote up or down occurred.

I have to say, I think there is an element of unfairness here that I have not seen in my 27 years in the Senate. It is a shame that it is happening against the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia, who has not had a glove laid on him. And because they can't find anything wrong, they want to go on fishing expeditions long after they held their hearing, and then try to justify this holdup and this filibuster for those reasons. It is unbelievable to me.

Look, I made this point before and I am going to make it one more time and I hope everybody in America watches this. The Senate Democrats held a retreat. They can't deny this. It has been reported thoroughly. They were given suggestions by at least two very liberal law professors. Once President Bush became elected, these law professors, wanting to promote only their ideology, suggested that, No. 1, bottle up the nominees in committee. If we have a filibuster tomorrow, they are fulfilling that part of their suggestions of mass obstruction.

We have a filibuster now here on the floor, but I will get to that. Then they said: If you can't bottle them up in committee, then inject ideology into the confirmation process, and that is exactly what has happened. Some of the Senators on the other side have demanded to know the ideology of the nominees, as if that is relevant. And every nominee, and especially Miguel Estrada, if you read his answers to questions, has said we will abide by prior precedent. We will observe the principle of stare decisis. We will rule in accordance with the law and with the rule of law. So there is no reason to inject ideology because they said they would put their own personal beliefs aside. Miguel Estrada said that on numerous occasions in response to questions by the Democrats.

If they can't win on injecting ideology, and we are seeing that at every step of the way here now, then seek all unpublished opinions. I will never forget Dennis Shedd. He was chief of staff to Senator Thurmond on this committee, one of the nicest people we have ever had work on this committee.

I would compare him to Ron Klain, two really nice guys, two really smart guys, two really decent people, two wonderful attorneys. Ron Klain was Al Gore's top aide, and at the time I believe he worked on the Judiciary Committee. I can't remember which Senator he worked for at the time, but he went throughout the whole campaign with Al Gore. He was one of his top advisers. He is one of the top lawyers in this city and he is a personal friend. I admire him.

But when they couldn't get Judge Shedd in any other way, they requested all his unpublished opinions. He has been serving for over 10 years. Where are those unpublished opinions? Published opinions are where the judge writes an opinion and it becomes published and printed in some law book. Unpublished opinions are stored in repositories. To get 10 years of unpublished opinions took thousands and thousands of hours, an estimated $75,000. They had to go to Atlanta, as I recall, to do this, all for the purposes of a fishing expedition, hoping to find just something to hang on Dennis Shedd, who is a well-respected Federal district court judge. That is the kind of crap they had to go through.

I understand one of these professors at that infamous retreat will be here tomorrow to speak to the Democrats and possibly continue to misguide them.

Then they said if bottling him up in committee doesn't fully work—of course it will work for a while, which we may see tomorrow if they filibuster these judges, inserting ideology into the confirmation process. If that doesn't work then, if they are judges, seek all unpublished opinions and see if you can find something to pin on them to defeat them. If that doesn't work, then do this: Seek privileged internal memoranda, which they are trying to do in this case without one ounce of justification, to try and get into the actual memoranda written by Miguel Estrada in his job, in his duty as an Assistant Solicitor in the United States Solicitor General's Office, in three areas: his recommendations on appeal, his recommendations on certiaria, and his recommendations on amicus curae matters. Never in the history of the Justice Department has the Solicitor General's Office ever been willing to give up those privileged documents; and they shouldn't. It is the phoniest, most unjustified request that I have seen in a long time, and I have seen a lot of phony, unjustified requests.

If all of that doesn't work—if bottling up doesn't work, injecting ideology, seeking all unpublished opinions, and if you can't get privileged, unpublished memoranda, then these law professors said to filibuster—for the first time in the history of the country, filibuster.

That is what we are going through right now. Isn't it a crime—well, maybe that is too harsh. Isn't it a shame and even despicable that they are filibustering the first Hispanic nominee for the Circuit Court of Appeals for the District of Columbia who has lived the American dream, who has the highest rating possible unanimously—and it is their gold standard—of the American Bar Association.

It is absolutely amazing that we are going through this. We have now been doing it for over a week. You would think this is a Supreme Court nominee. Of course, that is part of this. The whole purpose of giving Miguel Estrada a rough time is to say, Mr. Estrada, we don't want your kind on the Supreme Court.

That is really what the bottom line is here. That is why these professors are doing that—because this President has nominated some of the greatest lawyers in the history of the country on the circuit court of appeals. And every one of them has to be considered ultimately for the Supreme Court.

But this is a shot across the bow right now—that you had better darned well conform to a particular ideology or you are just not going to make it.

I hope our colleagues, those with clear minds and fair attitudes, will prevail on that side, as we had to prevail on this side against filibustering. If they don't, ''Katie bar the door,'' because I am not sure I will be around next time to stop the filibusters—not to say that I am all that important. But the fact is, I did stop them the last time. There were only a few who wanted to do that. The vast majority of the Republicans said that would be awful, and I think the vast majority of Democrats ought to say the same. I think they ought to wake up and realize what they are doing. It is wrong. It is not fair to this President. I admit many of them do not like this President, but he is the President. It is unfair to the Judiciary Committee who voted this man out of committee. It is unfair to the process, which has always had an up-or-down vote once the person has been brought up on the floor. It is unfair to Miguel Estrada.

I think I have said all that I care to say this evening.

I yield the floor.

Mr. WARNER. Mr. President, I rise today in support of the nomination of Miguel Estrada, who has been nominated by our President to serve on the United States Court of Appeals for the District of Columbia Circuit.

Article II, Section 2 of the Constitution provides the President with the authority to nominate, with the ''Advice and Consent of the Senate,'' individuals to serve as judges on the Federal courts. Thus, the Constitution provides a role for both the President and the Senate in this process. The President has the power to nominate, and the Senate has the power to render ''Advice and Consent'' on the nomination.

Article II, Section 2 of the Constitution places the composition of our Judiciary entirely in the hands of the President and the Senate. Therefore, in order for our Judiciary to effectively administer justice, it is incumbent upon the ability of the Executive and the Legislative branches of Government to work together.

Throughout the quarter century I have had the honor of representing the Commonwealth of Virginia in the United States Senate, I have conscientiously made the effort to work on judicial nominations with the Presidents with whom I have served. Whether our President was President Carter, President Reagan, President Bush, President Clinton, or President George W. Bush, I have accorded equal weight to the nominations of all Presidents, irrespective of party.

Based on the last several years, I am concerned that we as a body are no longer according equal weight to the nominations of our Presidents irrespective of party. The process has become highly politicized and, as a result, we are ultimately discouraging highly qualified nominees from serving in our Judiciary.

If we as a Senate continue to let partisanship remain the hallmark of the Senate's judicial confirmation process, and we hold up judicial nominees based on their party affiliation, then our judiciary will suffer.

Throughout my 25 years in the United States Senate, I have always carefully scrutinized judicial nominees and considered a number of factors before casting my vote to confirm or reject.

The nominee's character, professional career, experience, integrity, and temperament are all important factors. In addition, I consider whether the nominee is likely to interpret law according to precedent or impose his or her own views. The opinions of the officials from the State in which the nominee would serve and the views of my fellow Virginians are also important. In addition, I believe our Judiciary should reflect the broad diversity of the citizens in serves.

These principles have served well as I have scrutinized the records of over a thousand judicial nominees. One most recent instance that is important for us to remember is my support for the nomination of Judge Gregory to serve on the United States Court of Appeals for the Fourth Circuit.

Judge Gregory was first nominated by President Clinton and subsequently nominated by President Bush. Regardless of which President nominated Judge Gregory, the fact is that he was highly qualified for the federal bench. Therefore, I supported his nomination when President Clinton nominated him late in the 106th Congress, and when President Bush nominated him early in the 107th Congress. Judge Gregory is now the first African American Judge to ever serve on the United States Court of Appeals for the Fourth Circuit, and he is serving with distinction.

Judge Gregory's qualifications were clear-cut. Regardless of which President nominated him, he deserved the support of the United States Senate.

The same is true with the nomination of Miguel Estrada.

Mr. Estrada has received a unanimous ranking of ''Well Qualified'' by the American Bar Association. And, in my view, his record indicates that he will serve as an excellent jurist.

Mr. Estrada's resume is an impressive one. Born in Honduras, Miguel Estrada came to the United States at the age of 17. At the time, he was able to speak only a little English. But just 5 years after he came to the United States, he graduated from Columbia College with Phi Beta Kappa honors.

Three years after he graduated from Columbia, Mr. Estrada graduated from Harvard Law School where he was an editor of the Harvard Law Review.

Mr. Estrada then went on to serve as a law clerk to a Judge on the United States Court of Appeals for the 2nd Circuit and as a law clerk to Judge Kennedy on the United States Supreme Court.

After his clerkships, Mr. Estrada worked as an Assistant United States Attorney, as an assistant to the Solicitor General in the Department of Justice, and in private practice for two prestigious law firms.

Throughout his career, Mr. Estrada has prosecuted numerous cases before Federal district courts and Federal appeals courts, and he has argued 15 cases before the United States Supreme Court.

Without a doubt, Mr. Estrada's legal credentials make him well qualified for the position to which he was nominated. I am thankful for his willingness to resume his public service, and I am confident that he would serve as an excellent jurist.

Mr. President, Miguel Estrada's nomination is a clear-cut case. I urge the Senate to confirm his nomination.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I know the audience has dwindled since this phase of this debate started at 9 o'clock. I apologize to the Presiding Officer and to the staff that has been here for 2 workdays already today. But it would certainly be unfair to the people who we represent on this side of the aisle for me not to say a few words to counteract and rebut the statements they have made for 3 hours.

First, I like President Bush. I certainly disagree with what my friend from Utah has said—that people over here dislike the President. I don't know if that is the case. President Bush is one of the most likable people I have ever met. I don't agree with a significant number of policies that he has enunciated, but that has nothing to do with disliking President Bush. This debate has everything to do with our constitutional prerogative under article II, section 2, of the Constitution that requires Senators to review the judicial nominations sent to us by the President of the United States. We have a right, we have an obligation to do that.

I will talk about a number of issues, but the first thing I want to talk about is the fact that cloture or filibusters on judicial nominations are well-established precedents; they have been long-established in this body and are appropriate in the context of Senate's Constitutional responsibility to advise and consent. There is no question that the use of filibusters has increased in recent years.

The Congressional Research Service reports that filibuster and cloture are used much more regularly today than at any time in the Senate's past. Approximately two-thirds of all identifiable Senate filibusters have occurred since 1970. Cloture was sought most frequently on nominations in the 103rd Congress; that is, in 1993–1994 when the House and the Senate were controlled by the Democrats, and the Republicans used the filibuster and cloture as the tool of the minority. In that Congress, cloture was sought on 12 nominations—judicial and otherwise, and invoked in only 4.

Cloture votes on judicial nominees are well precedented in recent history. Both Democrats and Republicans have sought cloture in response to debate on judicial nominations since the cloture rule extended to nominations in 1949. Cloture was not sought on the nominations until 1968 because prior to that concerns over nominations were resolved, or the nominee was defeated behind closed doors.

Since that time, all Senators who have served in this body have recognized that things have changed a great deal since 1968. There were very few votes, period, in the Senate in those early days. Now we have hundreds of votes in every session. From 1968 to 2000, there were 17 cloture attempts on judicial nominees. Of the 17 cloture attempts on judicial nominations, in 6 of them the Democrats were in the majority and in 7 of them the Republicans were in the majority. Of the 17 cloture attempts, 2 involved nominees to the U.S. district courts, 8 involved nominees to the U.S. court of appeals, and 3 involved nominations to U.S. Supreme Court.

Opposition to judicial nominations have been based on objections to judicial philosophy of the nominee, concerns that the nominee would treat all parties fairly on procedural grounds, and, in this instance, I might add, for lack of having information on the nomination given us by the President.

There is ample precedent for filibustering judicial nominations. Based on cloture votes, there have been, as I have stated, 17 filibusters on judicial nominations. Often there is extended debate on the nomination.

For example, the nomination of Clement Haynesworth to the U.S. Supreme Court was defeated after lengthy debate—7 days of debate. The nomination of G. Harrold Carswell to the U.S. Supreme Court was defeated after 12 days of debate in 1970. The nomination of Robert Bork to the U.S. Supreme Court in 1987 was defeated after 8 days of debate.

So when the majority says that filibuster on judicial nominations is without precedent, ask them about the filibuster led by Senator Thurmond—recently retired—in 1968 on the nomination of Justice Abe Fortas to be Chief Justice of the United States. Ask the majority about the filibuster in 1994 on the nominations, as we have heard tonight, on Barkett and Sarokin. Ask them about the nomination of Berzon, and Paez to the Ninth Circuit, and the scores of other judicial nominations that were held up by using extreme delaying tactics when the Republicans were in charge.

I stated earlier that of the 79 Clinton judicial nominations not confirmed in the first Congress, there were 31 circuit and 48 district court nominees. Fifty-nine of these were never allowed a vote by the Republican-controlled Senate—59 out of the 31 circuit and 48 district court judges. Out of the 79 judges, 59 of them weren't even allowed a vote. The Republicans didn't have to worry about a filibuster. They simply didn't bring up President Clinton's nominees.

As I have indicated, being more specific, 31 circuit court nominees and 22 were blocked from getting the vote and being confirmed. And I read into the RECORD all the names of the district court judges who simply were blocked from getting a vote and were not confirmed. I also read into the RECORD circuit court nominees who were not given an opportunity to be voted on, and certainly were not confirmed.

Now, it was the Framers' intent that we do exactly what we are doing now. And there have been a number of writings on that. It is very important we understand that what is being done here does not happen very often, but it does happen, Mr. President.

I personally—other than this right here—have been involved in only one other filibuster involved in nuclear waste. I am told that I hold the record as a first-year Senator for the longest filibuster in the history of the country. So I know what a filibuster is. Most Senators have never been involved in a filibuster. We have one here.

Why? Because we are in an area where we really do believe that the person who is being asked—Miguel Estrada—to be confirmed as a member of the DC Circuit is a person from whom we are entitled to get some information.

As I said to the majority leader, personally, and I have said publicly, there are only a few things that can be done in the procedural posture of which the Senate is now engaged. These are not in order of priority: No. 1, pull the nomination. No. 2, the leader or anyone can get a petition signed for cloture and try to invoke cloture. Or it would seem to me the other thing that we could do is have this man, who said he does not care, prevail upon the President to say: Give them those memos I wrote while I worked at the Solicitor

General's Office. It has been done before, he should say. It has been done with Chief Justice Rehnquist. Senator LEAHY has the stack of those memos provided in Rehnquist's case. He wanted to become Chief Justice, Judge Rehnquist did. We said: We want to see those records, those solicitor general memoranda. We got them. We reviewed those. It has been done in other cases. So there is certainly precedent for that. Similarly we should be privy to Mr. Estrada's memoranda; Mr. Estrada should answer our questions.

I know my friend, the distinguished Senator from Utah, has stated: I have a book here with all the answers to these questions.

Well, earlier today, I compared Miguel Estrada's answers to the questions to a series of answers my grandson gave to questions my son asked him. He just turned 3 years old. And I will repeat it.

We have a home in Nevada. It is new. It is in Searchlight, NV. We have some new furniture in our new home. And we had my grandchildren and some of my boys there. And my little grandson, Wyatt, wrote on one of the couches with a pen. So his dad was upset, and he began to interrogate his son, my grandson.

He said: Did you do this? And little Wyatt said: No. So my son, becoming more concentrated in his interrogation of this 3-year-old boy, said: Well, who did it, then? And my 3-year-old grandson said: I don't remember his name.

Well, that is like the answers we have gotten from Miguel Estrada. They are answers that I compare to my grandson's answers. Sure, he said something. My grandson gave an answer. And if you printed that out in a book, it would fill up a sentence or so. And Miguel Estrada has filled up a book answering questions by not answering.

When we were in the majority, we could have stopped a lot of judges. We have heard people over here asking their questions to the distinguished chairman of the committee: Is this retribution? Is this vengeance? Well, we said, when we took over control of the Senate, that, in fact, if we wanted to really be mean spirited and treat the Republicans like they treated us, we could have stonewalled the appointment of judges. We said we would not do that. And our record stands: 100 judges in a period of 17 months. And just this past Monday we voted unanimously for three additional judges.

And we will vote for a lot more.

We believe this man, Mr. Estrada, has some serious problems. We believe we have a few questions we want Miguel Estrada to answer. As I have stated, Miguel Estrada's answers to the Judiciary Committee's questions are just like on this chart: a big blank. We do not know any more, other than the tone of his voice in what he said, what he knows. With the answers he gave, we do not know anything more than when we started the Judiciary Committee hearing.

And if we want to talk a little bit about his legal philosophy, I think it is important because my friend, the distinguished chairman of the committee, said he wanted to know about—I cannot remember all the names, Marsha Berzon, Richard Paez, all the names he mentioned—he wanted to know if they were judicial activists, wanted to know their judicial philosophy. And he said, with a couple of them, they were judicial activists. He said he knew that, but he felt—for example, for Paez, Senator HATCH is absolutely right, he interceded with Richard Paez and was able to help get that nomination through. No question. Senator HATCH made a very valid, honest statement. But even then, he knew in his mind what the judicial philosophy of Richard Paez was.

We do not know what Miguel Estrada's legal philosophy is. We do not know. For example, a question by Senator DURBIN, a Senator from Illinois, asked: Give us an idea of some Supreme Court opinions with which you disagree. He had no opinion.

And as we talked about earlier today, I wonder if some people who have not been to law school, maybe have taken a course in constitutional law in undergraduate school—and if you are a lawyer like he is—couldn't you dig up maybe the Dred Scott decision that said slavery was legal and constitutional? I don't think he agrees with that. Couldn't he have let us know?

Here is Miguel Estrada's legal philosophy: a big blank. To say he has represented clients as a private lawyer is no answer, provides little insight into his philosophy.

As I said earlier today, I have been to trial lots of times. I have tried cases before courts over 100 times, presented the client's case to a jury. And a jury had to arrive at a decision based on how I conducted that case. But after having reviewed every case that I tried, there would be no way of determining what my judicial philosophy is because every time I went to court, I was representing somebody charged with murder, or someone who was charged with robbery, or I was representing someone who was trying to get money as a result of a wrongful eviction from an apartment house, on and on with all the different cases that I tried. From that, no one would know what my judicial philosophy would be because I was representing individuals in cases.

So to say, Estrada has argued cases, why don't you look at the cases he argued? That has nothing to do with his judicial philosophy. We want answers to questions, as we got answers to questions from the 100 judges Democrats moved through this body when we were in the majority, and the three who were just approved, confirmed with us in the minority.

So we are entitled to know what Miguel Estrada's legal opinions are. You see, the reason we are making such a big deal about trying to get these memoranda from his work at the Solicitor General's Office is that it may give us some idea how he stands on legal issues.

He won't tell us, so maybe we can find out from reviewing some of the papers he has written while he was employed. That is why we are concerned. We are concerned because we honestly believe we have a constitutional obligation to review this man's records.

Let me just say there has been a lot of talk tonight. There are TV ads running as we speak. By the way, these TV ads are being paid for by an organization, the ''Committee for Justice'', that was founded by the man who gave Miguel Estrada the rating from the American Bar Association, Fred Fielding. Mr. Fielding is the one who started this group, and he is running ads against us. That is an interesting proposition. At the ABA, the person who reviewed and interviewed Miguel Estrada, gave his recommendation to the ABA—and they accepted what he told them—is a person who formed this committee that is running ads against us. They are running all over the country.

It seems to me the ABA has a slight problem. According to their manual:

> No member of the Committee shall participate in the work of the Committee if such participation will rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee.

The ABA better review this procedure they have, make sure their reviewers comply with it.

What these ads Mr. Fielding is running are saying, among other things, is that we are anti-Hispanic. That's the rhetoric of my friends on the other side of the aisle.

We have been accused by one Senator of sending the message ''if you are a minority and a conservative, we hate you.'' The distinguished chairman of the committee said: ''Hispanics face a new obstacle from Democrats who would smear anyone who would be a positive role model for Hispanics.''

I am disturbed by the hyperbole, the rhetoric being used to propel the nomination of Miguel Estrada to one of the most powerful courts in the United States, the DC Circuit. I am at a loss to understand it as anything other than an attempt to silence Senators who today seek to exercise their constitutional duty to decide whether this judicial nominee merits support.

Let no one within the sound of this Senator's voice be mistaken: We are not going to be intimidated from fulfilling this constitutional role.

We know these statements about Democrats are false. The Hispanic community, the American people, and my colleagues know the truth: The Democratic party has put the vast majority of Hispanic appellate court judges on the bench. This is the first Hispanic circuit court nomination we have ever received from the President. This is the first one, Miguel Estrada.

As important as our record on Hispanic judges, the Democratic party is

the champion of issues of importance to the Hispanic community, from fair labor practices to immigration to protection of civil rights.

To recount our record: Of the 10 Latino appellate court judges who are now serving, 80 percent were appointed by Democrats. Several of these nominees were denied Senate consideration for years, while the Republicans controlled the Senate. Judge Paez, we have heard about that. Thirty-nine Republicans voted against his nomination. Judge Sonia Sotomayor, nominated to the Second Circuit, was similarly stalled. Her confirmation took 433 days. Twenty-nine Republicans voted against her confirmation.

And then there were the Hispanic nominees who were denied hearings or even votes by Senate Republicans during the Clinton administration: Jorge Rangel, Enrique Moreno, Christine Arguello, Ricardo Morado, Annabelle Rodriguez. These facts and these names bear witness to the false claims made by my colleagues on the other side of the aisle.

Despite these facts, Democrats don't believe that turnabout is fair play. Where President Bush has sent the Senate open and direct nominees, those nominees have won swift confirmation in the Democratic-controlled Senate. President Bush has nominated eight Hispanic Americans to the Federal district courts, four have been swiftly confirmed: Judge Christina Armijo, Judge Philip Martinez, Randy Crane, Jose Martinez.

This anti-Hispanic rhetoric is a red herring.

Mr. Estrada's background has nothing to do with my concerns. The red herring nature of this debate is belied by the fact that leading Latino groups don't support Estrada. They include the Congressional Hispanic Caucus; the Puerto Rican Defense and Education Fund; the Mexican American Legal Defense and Education Fund; the National Association of Latino Elected & Appointed Officials; the National Council of La Raza; National Puerto Rican Coalition; Puerto Rican Defense and Education Fund, California La Raza Lawyers.

These groups are joined by scores of others in opposition to Estrada, including the Leadership Conference on Civil Rights, the Alliance for Justice, the National Organization for Women, the National Association for the Advancement of Colored People, People for the American Way.

These groups are all dedicated to assuring equal opportunity in America, protection of minority rights, and advancement of the public interest. They, like many of my colleagues, are deeply concerned by Mr. Estrada's limited record and his unwillingness to engage with the Senate in an open and searching discussion of judicial philosophy and his record.

While we are talking about this, let me say there has been some talk that the Congressional Hispanic Caucus is split. There is some dissension among the ranks, some claim. The 20 members of the Hispanic Caucus are unanimously opposed to the nomination of Miguel Estrada.

A release was issued yesterday where Ciro D. Rodriguez, a Member of Congress from Texas, chairman of that caucus, said:

> It is disheartening to see that Members of the Republican Senate continue to make misleading and unfounded statements regarding the Congressional Hispanic Caucus's opposition to the Bush nominee Miguel Estrada. The [Congressional Hispanic Caucus] will continue to stand by its unanimous opposition to this unqualified nominee and will not waiver.
>
> Senate Republicans continue to hit below the belt, insulting Hispanic Members of this Congress who have been elected to serve as a voice for the people in their community. Today Senate Judiciary Chairman Orrin Hatch continues to make misleading, partisan swipes. He incorrectly claims that the [Congressional Hispanic Caucus] is split in its opposition, and he mischaracterizes our arguments. Yesterday, the [Congressional Hispanic Caucus] released a letter to Senator Hatch demanding an apology for comments he made during Senatorial debate, likening Members of the [Congressional Hispanic Caucus] ''to the lioness eating her cubs.''

They go on to say:

> We have yet to receive an apology or even an acknowledgement from the Senator that his comments were out of line and insulting.
>
> The [caucus] has supported numerous highly qualified Hispanic appointees by the Bush administration. We oppose Mr. Estrada based on our review of his inadequate qualifications for what is viewed as the second most powerful court in the Nation.

There has been a lot of talk about LULAC being so widely in favor of Miguel Estrada. Mario G. Obledo, who is a recipient of the Presidential Medal of Freedom Award, past national President of LULAC, cofounder of the Southwest Voter Registration and Education Project, first general counsel and past president of MALDEF, cofounder of the Hispanic National Bar Association, founder of the National Coalition of Hispanic Organizations, opposes the confirmation of Miguel Estrada.

He says, among other things:

> I write to join other Latino civil rights organizations in opposing the confirmation of Miguel Estrada to the D.C. Circuit Court of Appeals. My history in the Latino civil rights community is lengthy. I am a past National President of LULAC, a co-founder of the Southwest Voter Registration and Education Project, the first General Counsel and later President of MALDEF, as well as a cofounder of the Hispanic National Bar Association. I am a recipient of the President Medal of Freedom Award, this nation's highest civilian honor in recognition of my involvement with civil rights. I have been an attorney for 43 years, and a former member of the faculty of Harvard Law School. I was formerly the Secretary of Health and Welfare for the State of California. I am the founder and President of the National Coalition of Hispanic Organizations. I mention some of my past and current work in the Latino community so that there is an understanding of how intertwined my life has been and still is with the betterment of my community.

My opposition to Miguel Estrada's confirmation is based upon the following. First, I believe that Mr. Estrada showed himself unwilling to allow the Senate to fully evaluate his record. He was less than candid in his responses. Yet, Mr. Estrada, as every other nominee who is a candidate for a lifelong appointment, must be prepared to fully answer basic questions, particularly where, as here, there is no prior judicial record and no legal scholarly work since law school to scrutinize. He declined to give full answer to many of the questions posed to him by the Senate Judiciary Committee. When he did give answers, those answers raised troubling doubts concerning his ability to be fair.

There are serious questions raised by his sparse record on basic civil rights and constitutional matters. It is unclear that Mr. Estrada would recognize that the First Amendment protects the rights of Latino youth to congregate and associate on public streets. It is also likely that Mr. Estrada would not place proper limits on law enforcement as required by the Fourth Amendment. Given his views of enumerated rights, there are serious questions whether he would recognize a suspect's right not to make incriminating statements. His record leads me to conclude that he would not take seriously and fairly Latino allegations of racial profiling by law enforcement. Based on his actions in pro bono litigation, there is a question whether he believes that organizations which have long represented the interests of communities would have the right to represent those interests in court. In addition, his views concerning the continued viability of affirmative action programs are also suspect.

Given these concerns, I oppose the confirmation of Mr. Miguel Estrada.

Finally, I am dismayed and disturbed with the tone that has been adopted by some of Mr. Estrada's most vocal supporters. Instead of focusing on the merits, they have resorted to name-calling and insults. If they cannot obtain sufficient support for Mr. Estrada on the merits alone and can only gain it by falsely accusing Senators of being anti-Hispanic or accusing Latino organizations who oppose him of ''selling out'' their people, then it does make one wonder whether Mr. Estrada deserves the life-term appointment after all. There are some brilliant lawyers who cannot serve as fair and impartial jurists. I now conclude that Mr. Estrada may be a very talented lawyer but he cannot serve as a fair and impartial jurist. His nomination should be defeated.

Mr. President, we also have a letter dated today, from the League of the United Latin American Citizens, LULAC, addressed to Senators DASCHLE and HATCH. Among other things, this letter goes on to say that the LULAC organization supports Miguel Estrada. But the second paragraph says:

> We are extremely disappointed that his nomination became mired in controversy. That said, we are alarmed by suggestions by some of the backers of Mr. Estrada that the Senate Democrats and members of the Congressional Hispanic Caucus are opposed to the nomination because of race, ethnicity, and Hispanic bias. We do not subscribe to this view at all, and we do not wish to be associated with such accusations.

I ask unanimous consent that this letter be printed in the RECORD.

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

LEAGUE OF UNITED
LATIN AMERICAN CITIZENS,
Washington, DC, February 12, 2003.

Hon. ORRIN G. HATCH,
Washington, DC.
Hon. THOMAS DASCHLE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATCH AND SENATOR DASCHLE: As you are aware, the League of United Latin American Citizens, has taken a position in support of Miguel Estrada for the D.C. Circuit Court of Appeals based upon our review of his qualifications and legal record. We believe that he is an extremely well qualified nominee with an outstanding legal record that demonstrates his knowledge of the law, his solid judicial temperament, and his ability to set aside any personal beliefs he may have and make sound legal arguments based on the constitution and precedent.

We are extremely disappointed that his nomination has become mired in controversy. That said, we are alarmed by suggestions from some of the backers of Mr. Estrada that the Senate Democrats and the members of the Congressional Hispanic Caucus are opposing his nomination because of his race, ethnicity or an anti-Hispanic bias. We do not subscribe to this view at all and we do not wish to be associated with such accusations.

LULAC has had a long and productive working relationship with many Senate Democrats and all of the members of the Congressional Hispanic Caucus and our experience is that they would never oppose any nominee because of his or her race or ethnicity. On the contrary, it is most often the Democratic members of the Senate who support LULAC's priority issues and score highest on the National Hispanic Leadership Agenda's congressional scorecard which LULAC helps to compile. Nine times out of ten it is the Congressional Hispanic Caucus that is the champion or our legislative priorities as outlined in the enclosed LULAC legislative platform.

Nevertheless, the under representation of Hispanics in the Federal judiciary is of great concern to our organization and we have consistently encouraged both Democratic and Republican Presidents to appoint more Hispanics to the Federal courts. Hispanics, however, remain severely underrepresented in the judiciary comprising only 3.8% of federal judges while making up 14% of the US population.

Consequently, we do not support the attempts of either party to prevent qualified, fair-minded, Hispanic nominations from moving forward for a timely confirmation vote. While we clearly believe that the filibuster of Miguel Estrada is unfair, we also believe that the delay of many of President Clinton's Hispanic nominees including Richard Paez, Enrique Moreno and Sonia Sotomayor were unfair. It would be in the best interest of both Democratic and Republican Senators to encourage more Hispanic nominations to the federal courts and to avoid embroiling these nominees in the partisan disputes that prevent the consideration of these candidates based on their merits.

Sincerely,

HECTOR M. FLORES,
LULAC National President.

Mr. REID. This letter goes on to say they have had a longstanding relationship with us, the Democrats; and basically it goes on to say that they support Latino nominees for courts. They want more.

Mr. President, we have heard statements here that we don't need these memoranda Mr. Estrada wrote when he was in the Solicitor General's office; other people have not had to give them, so why should he? Other people have turned these memos over is the short answer. Another answer is that Mr. Estrada—going to why it's so important here—is that he has virtually no other record for us to examine. The other side of the aisle, my colleagues, have called the request for these memos unprecedented. Senator LEAHY produced a number of actual Solicitor General memos turned over in the past.

We have heard a lot about Mr. Paez and about Marsha Berzon. Let me take them as an example. This woman was asked to produce the minutes of meetings she attended when she was a member of the ACLU, American Civil Liberties Union. My colleagues went further and even required Ms. Berzon to supply the minutes of the meetings of the ACLU while she was a member even if she didn't attend the meetings.

We don't want to go nearly that far. We want to find out what is in the memoranda. It is not unprecedented. My friends have said these documents are privileged. Everybody in this body knows that the attorney-client privilege doesn't apply to the Senate. In the 15-page letter that the President's lawyer, Mr. Gonzalez, wrote back to the Senate today—actually to Senators LEAHY and DASCHLE in response to our request to produce these memoranda—even Mr. Gonzalez recognizes that these are not privileged. Both the House and the Senate have explicitly rejected calls to incorporate that privilege into our rules. A judgment has already been made that to do so would impede our ability to do our work, and would impede it certainly with this nomination.

My friends on the other side of the aisle have implied that our requests are dangerous. I don't believe that. They have implied it would cripple the Solicitor General's office if these memoranda were released. The office functioned just fine after we got the information from Bork and Rehnquist. The Solicitor General's office survived just fine. We knew when we asked for that information before that it was on a very limited basis and it would only apply to them and not to everybody.

The administration claims that these documents—it reminds me of some other documents that this administration has tried to hide. I remember the Vice President and his National Energy Policy Development Group. We wanted to know if the Vice President met frequently with the oil companies in formulating the nation's energy policy. They went to court to stop that.

I would simply say here that what we are asking for is certainly fair and we should get it. It would be the right thing to do.

If the President and those on the other side of the aisle think so much of this man, it seems that is a very light step to take: to answer the questions and give reasonable, detailed answers, and not refuse to provide the memos that he wrote in the Solicitor General's office.

They say this is the first true filibuster. That certainly is not the case. There have been a number of filibusters—at least 17 on judges. Republicans have filibustered Democratic nominees. Republicans can call it what they want. Their attempts to invoke cloture walked, talked, and looked like filibusters—they were filibusters. They didn't have the votes to sustain any number of those instances.

There has been talk in the evening that the reason the judge from Texas, Judge Moreno, didn't get a vote is because there was no consultation; it had nothing to do with blue slips, simply with the fact that there was no consultation.

I ask unanimous consent that this letter be printed in the RECORD, dated April 28, 1997, from Charles Ruff, the attorney for President Clinton—like Gonzales is the attorney for President Bush now.

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

THE WHITE HOUSE,
Washington, DC, April 28, 1997.

Hon. ORRIN G. HATCH,
U.S. Senator, Russell Office Building, Washington, DC.

DEAR SENATOR HATCH: Thank you for taking the time to meet with the Attorney General and me.

As I told you, we are making every effort to send forward in the next weeks nominations for the senior positions at the Department of Justice, including Associate Attorney General, and Assistant Attorney General for the Civil Rights and Criminal Divisions, and the Office of Legal Counsel. We share your commitment to fill these critical positions at the earliest possible date and appreciate your willingness to work with us in achieving that goal.

With respect to judicial nominees, we recognize that, although the selection of judges is among the President's most important constitutional duties, senators from both parties have historically played an important role not only through their formal votes on such nominations but by providing their advice before a nomination comes to a vote. We are committed to achieving the fullest possible measure of bipartisan consultation before the President makes his selection of a nominee. As we discussed, the nature of that consultation should be shaped to meet the circumstances in particular states—the interests of the senators involved, the number and type of openings to be filled, and other factors. For example, we met recently with Senators Gramm and Hutchison to discuss their interest in having commissions review the qualifications of candidates, and my staff will be working with theirs to determine how best to implement such a process. Similarly, I understand that Attorney General Edmisten is working with Senators Nickles and Inhofe to develop a bipartisan process for identifying potential District Court candidates. And in Pennsylvania, Senators Specter and Santorum have worked with Congressman Murtha to establish commissions to review the qualifications of interested candidates. In addition to these formal vehicles for consultation, we have met and will continue to meet with Republican senators and their staffs to explore how best to obtain

their input and to ensure that they are advised when the President is preparing to announce a nomination in their state.

I know that you fully appreciate the nature of the President's special prerogatives in this important area, just as we are sensitive to the special role played by the members of the Senate. We are grateful for your leadership and your assistance, and we will be happy to discuss further any specific issues that may arise relating to the nomination process.

Sincerely,

CHARLES F.C. RUFF,
Counsel to the President.

Mr. REID. Mr. President, he says, among other things:

We are committed to achieving the fullest possible measure of bipartisan consultation before the President makes his selection of a nominee. . . .We met recently with Senators Gramm and Hutchison to discuss their interest in having commissions review the qualifications of candidates, and my staff will be working with theirs to determine how best to implement such a process.

So there was consultation.

This President does not abide by the advice and consent clause of the Constitution. Article II, section 2: We have a constitutional obligation to do just what we are doing. Republicans held up scores of Clinton nominations. These nominees were subjected to secret holds, given no hearings or even votes. On two separate occasions today, I have read into the RECORD the names of these people who simply were dumped without even a hearing.

My friends on the other side of the aisle did not make their objections known to the American people. We have in the light of day. They did not raise their objections in the light of day. They never engaged in debate like this because they hid behind secret holds.

Their assertion that holding up Miguel Estrada is anti-American, anti-Hispanic. I hope we have answered that assertion. This charge is simply without foundation. Democratic administrations have placed nearly all the judges who now serve at the appellate court level. The Democrat-controlled Senate expeditiously approved all of President Bush's Hispanic nominees to the Federal district courts.

We have done the very best we could to move forward on judicial nominations, and we have determined it was time to draw the line because we are entitled to more than a blank page.

Miguel Estrada's ABA rating means we should approve him. That is what we are being told. Of course, all should be reminded that the Republicans, when they were in the majority, got rid of the ABA rating. They did not want them to be part of the process. But now because Miguel Estrada got this ABA rating given by Fred Fielding, my colleagues have deemed the ABA the gold seal of approval.

Mr. Estrada did receive a well-qualified rating from the ABA, and he may deserve it, but it just does not look right. I am not here to in any way impugn the legal qualifications of a Harvard law graduate. I didn't graduate from Harvard. It is a fine law school. But let's not brag about this ABA rating, in the manner it was obtained.

While serving on the ABA review committee, Mr. Fielding founded the partisan ''Committee for Justice'' with C. Boyden Gray, another partisan Republican. There is nothing wrong being Republican partisan. It is part of our system. Some of my best friends are Republican partisans. But they should not be involved in giving people ratings at the ABA and then setting up committees and paying for ads—running partisan ads if somebody does not approve their nominee.

The committee is running untrue partisan ads against Democratic Senators in an attempt to keep us from performing our constitutional duty. When Fielding recommended Estrada's well-qualified rating, he was serving on President Bush's transition team and serving as a lawyer for the Republican National Committee. This does not seem quite right to me.

You have to ask yourself, when Americans hear that the ABA rates a nominee well qualified, do they think the President's foot soldiers in the effort to pack the bench play a major role in making that rating? I doubt it.

You have to ask yourself, doesn't Mr. Fielding's dual role—purportedly ''independent'' evaluator and partisan foot soldier—violate the ABA's rules?

''Governing Principles of the Standing Committee on Federal Judiciary, Appendix,'' adopted by the ABA Board of Governors February 1988. I ask unanimous consent that this appendix be printed in the RECORD. It states, among other things:

No member of the Committee shall participate in the work of the Committee if such participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee.

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

APPENDIX: GOVERNING PRINCIPLES OF THE STANDING COMMITTEE ON FEDERAL JUDICIARY

The Standing Committee on Federal Judiciary shall continue to direct its activities to evaluating the professional qualifications of persons being considered for appointment to the federal bench on the basis of predetermined and objective evaluation criteria which shall be provided prior to evaluation to persons whose qualifications are to be evaluated. The Committee will continue, if asked, to provide to the Attorney General and, following nomination, the Senate Judiciary Committee, its appraisal of the professional competence, integrity and judicial temperament of such persons.

In view of the special nature of the function performed by this Committee and the confidence reposed in the Committee's evaluations, the integrity and credibility of its processes and the perception of these processes are of vital importance.

No member of the Committee while serving as a member or within one year following such service, shall seek or accept a nomination to the federal bench.

No member of the Committee shall participate in the work of the Committee if such participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee.

Because confidentiality and discretion are of critical importance to the evaluation processes of the Committee, only the President of the Association, his designee, or the Chair of the Committee shall respond to any media or general public inquiries or make any statements to the media or general public relating to the work of the Committee.

The President of the Association shall take any action necessary to ensure adherence to these principles.

Mr. REID. Mr. President, Mr. Fielding's work in this so-called well-qualified rating does not meet the smell test. It certainly does not meet the test the ABA adopted.

We have also heard tonight, last night I should say at this point, that there is a vacancy crisis on the Federal bench. Yet when my colleague, Senator HATCH, served as chairman of the Judiciary Committee during the Clinton years, he declared that a vacancy rate of 67 judgeships on the Federal bench was ''full employment'' basically.

My colleagues have also asserted there is a crisis in the DC Circuit, noting there are four vacancies in the DC Circuit. I say to my colleagues, if they were concerned about such a crisis in the DC Circuit, why didn't they fill the vacancies? Do you know why? They said the court had too many judges; they did not need more judges. Even though we had well-qualified people, such as Elena Kagan and Allen Snyder, they said the court had enough judges to do the work they do.

They held them up so they could fill the court—hoping they would take the majority and the White House. They wanted their judges on this important court that rules on civil rights, workers' rights, environmental protections, women's rights, and a number of other issues.

Now suddenly the court that was jammed to the gills, which really did not need more judges, now needs them all.

We are going to help them fill vacancies because we believe the circuit needed the help when we were in the majority, when we had President Clinton as President. But one of those people we are not going to allow to go to the DC Circuit is Miguel Estrada unless we get the information we have requested.

Let me briefly state again that there has been some statement that the Solicitor General's memoranda are privileged. They are not. Senate rules do not incorporate the attorney-client privilege. Both the House and Senate have declined to adopt that privilege as part of their rules because we found it would impede our ability to do our work.

The wisdom of that is revealed in the debate of this nominee. He has written very little besides these memoranda, if anything. I understand he wrote one law review note in law school. My colleagues have opined providing these memoranda would decimate the Solicitor General's Office. As I established,

it did not with the nomination of Bork when we got the information, it did not with Rehnquist when we got the information, it did not with Easterbrook when we got the information, and Civiletti and others.

Mr. President, this is, as Senator HATCH would call it, a true filibuster. They do not happen very often. There have to be strong principles involved, and there are. As I said last night, my friend from Utah can state as many times and in as many different ways he wants that there is not a problem with this nominee, and all I can say is, there is a problem with this nominee.

We, on this side of the aisle, try to be very fair, as does the other side of the aisle. We have a wide-ranging political philosophy on our side of the aisle, and it is not really often—because Democrats are noted for their independence—that we unite in this manner.

We do so here because important principles are at stake, because our constitutional duty is at issue. We do so because a nominee to a life-time seat on the second highest court in the land should engage with us in a forthright manner as he asks for the honor to one day pass judgment on important freedoms enjoyed by the American people.

It is not very often we join together in a cause, but we have joined together in this cause because it is wrong for Miguel Estrada to go rushing on to the DC Court of Appeals with a blank slate, our not knowing what his judicial philosophy is, not knowing what his record is. We want to know what he wrote when he had the opportunity to write memos when he was Assistant Solicitor General, and we want him to answer questions. We are entitled to know that. These are not outlandish requests.

The legal memoranda are a blank sheet of paper. His legal philosophy is a blank sheet of paper. His answers to the Judiciary Committee's questions are a blank piece of paper. We deserve more than that. The Constitution demands more than that.

Let me again apologize to the Chair for taking a few minutes this morning, but I believed it would be a bit of laziness on my part to walk out tonight, after having heard 3 hours of debate by my friend from Utah giving one side of the story, because this has two sides. This debate has two sides. Of course, we believe strongly that on a matter of principle we are right. The Republicans believe they are right. That is what the Senate is all about.

We are doing nothing that is unusual or untoward. That is what the Senate is all about. That is why the Founding Fathers gave the Presiding Officer and me the opportunity to serve, to represent a State. There are two Senators from each State. The small State of New Hampshire, with two Senators, has as much opportunity, right, and power in this body as the two Senators from California with 35 million people in it. That is what the Senate is all about.

In the long term, this debate is going to be extremely important and helpful to the Senate because what it means is Presidents in the future, when they send nominees to go on courts, are going to have to answer a few questions. They cannot send blank slates to become judges.

I apologize to the Chair and to the very tired staff. They have worked long and hard. The Presiding Officer and I will be home asleep, and these folks will still be working to prepare the RECORD and take care of things.

So I apologize to everyone for keeping them late. I know how hard they work and how important each of them really is to the Senate and the institution. I hope we can wrap things up pretty quickly.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, I think the Senator from Nevada spoke with his usual eloquence and none of us could tell he was up that early in the morning.

LEGISLATIVE SESSION

Mr. TALENT. Mr. President, I ask unanimous consent that the Senate proceed to legislative session.

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

MORNING BUSINESS

Mr. TALENT. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

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

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred November 24, 2001, in Cincinnati, OH. Theodore Jenkins, 43, was savagely beaten and stabbed. Jenkins told police that he was attacked by five men who beat him with a nightstick and stabbed him four times in the back. The attackers used racial slurs during the beating, and police investigated the incident as a hate crime.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

JACKIE ROBINSON

Mrs. BOXER. Mr. President, I am proud to join Senators KERRY and MCCAIN in co-sponsoring their bill to award Jackie Robinson the Congressional Gold Medal in recognition of his profound and lasting contributions to the cause of equality and civil rights in America.

Jackie Robinson has always been a hero of mine—initially because he was the greatest of all Brooklyn Dodgers when I was a young Dodger fan growing up six blocks from Ebbets Field, and later because I realized how he had changed America forever and for better.

Jackie Robinson was a peerless athlete who excelled in many sports and changed the way that baseball was played. He helped Brooklyn win five pennants and one unforgettable World Championship, when we no longer had to ''wait till next year.''

Even more important, he was a courageous pioneer who overcame tremendous pressure and prejudice to break the color line in major league baseball. It is hard for us today to imagine the obstacles he faced back in 1947, when our nation's schools, military, and public facilities were all strictly segregated. Overcoming taunts, assaults, and death threats, Jackie Robinson played baseball—and played magnificently. His grace, dignity, determination, and tremendous ability made him a hero to millions of Americans of all races and backgrounds.

Jackie Robinson once said, ''A life is not important except in the impact it has on other lives.'' By this high standard, Jackie Robinson's life had monumental importance. As Senator KERRY pointed out when introducing this bill, Dr. Martin Luther King once said that he could not do what he was doing if Jackie Robinson had not done what he did. As our nation keeps struggling to realize Dr. King's great dream, we can salute Jackie Robinson as one of the fathers of that dream.

I urge all of my colleagues to honor this great American by co-sponsoring and passing this bill to award Jackie Robinson the Congressional Gold Medal.

AMERICAN HEART MONTH

Mr. TALENT. Mr. President, I rise today in recognition of February as American Heart Month. As a strong supporter of the American Heart Association, I want to make clear that prevention of heart disease should be a priority of health care funding. I have always believed that focusing resources on prevention will save lives as well as taxpayers dollars.

Heart disease is the leading cause of death in Missouri and in the United States. Almost 18,000 people in Missouri died of heart disease in 1999.