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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 CIRCIUT

(Continued)

Mr. STEVENS. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, one of the great privileges of being a Member of the Senate is to recommend to the President names of people who should be members of the Federal judiciary—that is either the Federal district court, circuit court of appeals, but certainly not the U.S. Supreme Court because that is out of the purview of recommendations by a single Senator.

Since I have been in the Senate, I have been able to recommend to a Democratic President at least two. We are not a large State so we have the opportunity to only recommend two people to the Federal bench.

The first one I was able to recommend was a circuit court of appeals judge and the second was a district court judge. This decision was so important to me that I went out of my way to make sure whoever I recommended to President Clinton at the time would be someone the President would want to nominate to be confirmed as a member of the circuit court of appeals. In this case it was the Ninth Circuit Court of Appeals. Montana is included in the Ninth Circuit.

What did I do? First, I went out of my way to put together a group of Montanans—6, 7, 8, 10 Montanans—and I selected the best folks I could find in my home State to represent a cross-section, a broad array of interests and points of view. Some were lawyers; some were not lawyers.

I said to each one of them: I want you to suggest to me the very best three people in the State of Montana who should serve on the Ninth Circuit Court of Appeals. I do not care whether they are Republicans. I do not care whether they are Democrats, liberals, conservatives; I just want the best, the most solid people, the people who have deep common sense, have a tremendous sense of history in our country, the highest integrity. I just want the best.

The committee I appointed came back to me several weeks, maybe a month later with three names. I sat down with each of the three for an interview, and I spent about 3 hours with each of the three to try to determine for myself who was the best person that President Clinton could nominate from Montana to sit on the Ninth Circuit Court of Appeals.

It was a very difficult process. It was very difficult because the three the group suggested to me were all very good. I made a selection finally. It was Mr. Sid Thomas, who President Clinton appointed and who now sits on the Ninth Circuit Court of Appeals.

He has been a tremendous credit to not just the State of Montana and the Ninth Circuit, but the Nation. In fact, many members of the judiciary, including the U.S. Supreme Court, talked to me specifically about Judge Thomas and indicated to me they are very proud of him. He is a ''solid person,'' a very solid man, a solid judge.

The second instance was virtually the same. I put together another group. There was an opening in the Federal district court in Montana. I put together seven, eight, to nine people I thought would do a terrific job in coming up with the very best person to sit on the Federal district court in Montana.

I interviewed each of the three persons the group gave me. I had the same criteria for the committee: I want the best. I do not care if they have brown eyes or blue eyes. I do not care if there is any acid test. That is not relevant to me. I want the very best, most solid, thoughtful people with the highest integrity and a deep sense of the law and history of our State and our Nation.

I do not care whether they are Republicans, Democrats, liberals, conservatives—that does not mean anything to me. I just want the best.

They came up with three names. I interviewed the three people. I, again, had the excruciating choice to make because they were all very good. I made a selection finally, and I recommended to President Clinton a person who I think has done great credit to the U.S. Federal district court in Montana, Judge Don Malloy.

I can tell you, the bar in Montana thinks he is terrific. The plaintiffs bar, the defense bar—they all have the highest regard for him. Why? Because he is smart, he is hard working, and he does not play favorites. He is what a Federal district court judge should be.

Why do I say all that? I say that because we are now faced with whether or not the Senate should confirm to the DC Court of Appeals Miguel Estrada. Should we or should we not? Let me roll back history a bit.

Several years ago, I was on the Judiciary Committee. In fact, it was quite a few years ago. At that time, Justice Sandra Day O'Connor, not then a Justice, was nominated by the President to sit on the U.S. Supreme Court. With all deference to Justice O'Connor, that was the first time, at least in my memory, when a nominee essentially did not answer very many questions.

I asked her questions, other members of the committee asked her questions, and she essentially began this tradition of not answering the questions. Again, I have the highest regard for Justice O'Connor. I think she has been a great Justice of the U.S. Supreme Court. It bothered me as a member of the Judiciary Committee that a nominee was not answering questions. It just did not seem right.

We at that time decided, OK, she seems like a very good person. She was in the State senate in her home State of New Mexico, so let's vote to confirm her.

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

We are now faced with the situation where Mr. Estrada is not answering any questions whatsoever, and he is not providing other information to the committee. I am not now on the Judiciary Committee but I take this responsibility of whether or not the Senate should confirm a nominee to the circuit court of appeals, Federal district court, or the U.S. Supreme Court very seriously. I know all of us in this body do.

There are not very many decisions we can make that will be more important. There are not very many. Why is that? That is because these are lifetime appointments.

Mr. President, you run for reelection, I do, everybody in this body, every few years, every 6 years. Everybody in the other body runs for reelection every 2 years. Every Governor runs every 4 years, sometimes 2 years. Every President runs every 4 years, except those who cannot run because of the constitutional requirement. We face voters. We are held accountable. Voters have a chance to either reelect us or not. But boy, once someone is put in the U.S. Federal judiciary, an article III position, that is for life.

I believe that is the way it should be. Why? Because these are the people we want to be totally impartial to do what is right and not be swayed by temporary whims and vogues of the moment. We try not to as elected officers. It is our job to represent people in our State. If they want something, we should give that to people, given what we think makes sense and is right for our home States and right for the country.

Federal judges are held to a different standard. State judges are not lifetime appointments. I do not know any who are. Federal judges are appointed for life. That is a huge responsibility they have.

We have to make sure we get the right people. It is our responsibility. When voters elect us, they basically say: Senator, we do not know all the ins and outs of what goes on in Washington, DC, but we want you to do the right thing. Just do not do something nutty or crazy, but, basically, do the right thing.

Most people give us a lot of latitude. So long as it sounds right, fits right, and smells right, it really is all right.

It does not sound right, it does not fit right, it does not smell right, it does not seem right, for this body to confirm somebody who will not answer any questions, who will not give us relevant information, and who has no prior history so it is hard for us to know.

I will bet this: At that Justice Department and perhaps at the White House, they sat down with Mr. Estrada and asked him a lot of questions. I bet he gave them a lot of answers. I bet there is somebody in this operation who is supporting his nomination in the executive branch who knows a lot about Mr. Estrada, who had long conversations with him. If they did, which is entirely proper—in fact, it is imperative and an obligation they have to ask him questions, particularly before the President suggests a nominee for the DC Court of Appeals. If they do, so should we have the information in the Senate. We have an equal responsibility to know how he feels about certain issues.

I am not saying he should address how he feels about certain cases decided by the Supreme Court or cases decided by even the court of appeals. I am not asking for that because judges have to be impartial. I am saying we have a responsibility to know who this fellow is: What makes him tick? What does he really think about? What are his values? What does he stand for? Will he be impartial? What does he think about our Constitution? What does he think about the court as the third branch of Government? There are tons of questions one could come up with, and we have that responsibility.

Why do I say we have that responsibility? I have already said it is a lifetime appointment, but in addition the Constitution tells us we have that responsibility. The advice and consent provision is in the U.S. Constitution.

When our Founding Fathers wrote the Constitution, they debated the advice and consent clause. They did not know what it should provide. There are various interpretations, but they knew it was very serious. One interpretation, that is one view, that was advanced very seriously when our Founding Fathers wrote the Constitution, was this: That the Senate should send a selection of three, four, or five names to the President and then the President makes the decision. The Senate would give the names to the President and then the President would decide. It is kind of like what I did a little bit when I was interviewing people in Montana. I got a bunch of names of the best people, and I made a decision who I thought was the best person.

Why did our Founding Fathers really wrestle over this question over what the proper mechanism would be for the Senate to jointly decide with the President who should or should not be on the Federal judiciary? It is pretty simple. It is our third branch of Government. It is the third of the three branches of Government, and it is not right that one branch of Government should dictate who does or who does not sit on the U.S. Supreme Court. That is not right. Rather, it is a joint decision. It is a decision which, just as the President took very seriously, we have an obligation to take equally seriously.

It reminds me a little bit of a number of years ago when an earlier President, President Franklin Roosevelt, decided he did not agree with the Supreme Court decisions. What did he do? He came up with an idea to add more Justices to the U.S. Supreme Court. It is colloquially referred to as court packing by President Roosevelt.

The Senate stood up. It said: No, that is the wrong thing to do. I am very proud to say that the Senator who stood up was from Montana. It was Senator Burton Kendall Wheeler. He said: No, it is not the right thing to do.

Just as he stood up, I think we have an obligation in the Senate to stand up when it is the wrong thing to do; that is, to pass judgment on—to agree with the President's nominee where we have no information, where he will not answer questions, he will not tell us what he thinks. What is this person really all about? What is the sense of the man? Where is he? Where is his soul? Who is he? That is what we have to determine in deciding whether he should be placed on the DC Court of Appeals. And I say that very respectfully.

I might add that the DC Court of Appeals is no ordinary, garden variety appellate court. It is a special appellate court, and that is because so many decisions made by Federal agencies go to the DC Court of Appeals as opposed to the Ninth Circuit or the Fourth Circuit. There are so many of them. There are environmental laws, for example, and labor laws that go primarily to the DC Court of Appeals, for which Mr. Estrada has been nominated, much more than to other courts. These decisions affect all of us around the country. They do not just affect the DC Circuit or people who reside in the DC Circuit. They affect all Americans. The DC Court of Appeals jurisdiction extends to the National Labor Relations Board, the Occupational Safety and Health Administration, the Federal Communications Commission, the Federal Elections Commission, the Environmental Protection Agency.

Obviously, decisions made by those agencies have a great effect on all Americans. When they are reviewed by the DC Court of Appeals, the decisions the DC Court of Appeals makes certainly have the same effect upon all Americans. Those rulings affect our workers, our businesses, our national environment, our families, and our homes. They affect political elections. They affect directly the present occupant of the chair, just as they affect me directly.

About 50 percent of the DC Court's caseload consists of appeals from regulations or decisions made by Federal agencies. Fifty percent of the DC Court of Appeals caseload is appeals of Federal agencies. In many cases, the DC Court of Appeals is the last word, too, on Federal decisions. We all know this.

The U.S. Supreme Court is taking fewer cases on appeal. The caseload of the U.S. Supreme Court has fallen off dramatically in the last couple or 3 years, which means that the courts of appeals' rulings are that much more important. They are almost like a supreme court in many respects because the U.S. Supreme Court is taking fewer cases.

I will give an example of the power of the DC Court of Appeals in my State of Montana. This is Montana. Don't forget we are in the Ninth Circuit—not

the DC Circuit—as is the State of the Presiding Officer. The DC Court of Appeals has exclusive jurisdiction over cases brought against the Environmental Protection Agency, particularly regarding the Superfund.

I know in the Presiding Officer's State there are huge Superfund issues. They are dramatic. Superfund is tremendously important to my home State of Montana as well. In the town of Libby, MT, for example, they have suffered from decades of asbestos contamination at the hands of W.R. Grace. It is just tragic. It happened to the people of Libby, MT. As a result, Superfund cleanup efforts are now taking place in an attempt to make the town and its residents whole again. It is a gigantic undertaking.

Libby is not the only Superfund site. As the Presiding Officer knows, we have Superfund sites around the country. In Montana, for example, we have the largest Superfund site in the Nation. It is called the Clark Fork Basin. It starts up in Butte and ends up eventually down in the State of the Presiding Officer. It is huge. These sites threaten the health and well-being of so many people not only in my State but in other States as well.

When Congress created the Superfund, our goal was to ensure that the public health and environment were protected and made whole, particularly the cleanup. So decisions made by the DC Court of Appeals overseeing the Environmental Protection Agency obviously greatly influence whether the intent of the law is actually fulfilled on the ground; that is, in Montana or any other State in the Nation, because EPA is all over America. It is not only the Ninth Circuit where the Presiding Officer and I live. There is no question that in the State of Montana we have a terrific interest, a big interest, in who sits on the DC Circuit Court, given that court's influence over our Nation's health, safety, and welfare laws.

Different Members may disagree with different decisions made by the DC Court of Appeals, but we do agree we want a very thoughtful, fully considered, and impartial decision. That is what we want. That is what we expect. That is why, in my judgment, this body has to go to extraordinary lengths to determine whether nominees to the courts of appeals, district courts, and the Supreme Court, are the right people. It is our duty.

We cannot just pass it off and say, oh, the President appointed him. We cannot stop there. It would be irresponsible. When we are elected, we are elected by people in our States to hold up the Constitution of the United States. Certainly the President can appoint, but just as certainly the Senate has the right and, indeed, the obligation to advise and consent and, given the tradition of the advice and consent clause and balance of powers, give it the same weight as the President.

That is why I think at the bare minimum the Senate has the right to ask for more information. Who is this man? Find out more about him. Look at his writings. What is he hiding? What is there to hide? We all know the more information in the public arena, the more likely it is we will make the right decision. We know that. It is only proper the White House ask Mr. Estrada to answer some questions and give some information. This is not rocket science. This is pretty easy. This is simple stuff.

I do not feel it is proper for the Senate to confirm Mr. Estrada. This is very important. I cannot think of many decisions we make that are ultimately more important, particularly regarding the DC Court of Appeals. We may have different conclusions when he gives us information, but at least he should talk to us.

(The remarks of Mr. BAUCUS pertaining to the submission of S. 396 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I continue to oppose the Estrada nomination. What is at stake in this nomination is a lifetime appointment to the second highest court in the land. The D.C. Circuit Court of Appeals makes decisions that affect millions of Americans every day—whether they will drink clean water and breathe clean air—whether workers will be safe in the workplace, and can join unions without fear of reprisal by their employer—whether minorities and women will be able to stop workplace harassment.

Yet our Republican colleagues want us to rubber stamp the nomination of Miguel Estrada to this important court. They say to us, you do not need to look at his record. You do not need to ask him what kind of judge he would be. You do not have to ask him to explain the serious discrepancies in the answers he gave during his hearing in the Judiciary Committee. They even make the preposterous and shameless claim that Mr. Estrada is being opposed because he is Latino.

Our Republican colleagues obviously do not appreciate the importance of the position that Mr. Estrada seeks. If they did, they would not be in such a rush to confirm a divisive nominee about whom we know so little.

Our duty under the Constitution is not to rubber stamp. It is to provide informed advice and consent in the nomination process. Our duty is to ensure that the Federal judiciary is fair and independent, a place where everyone, even the most vulnerable among us, can obtain protection of their rights. If we become a Senate that simply rubber stamps judicial nominees, the nomination process becomes a charade. Whoever happens to have the favor of the White House can become a Federal judge simply by refusing to give the Senate the information necessary to provide real advice and consent. The Federal courts would become a political lackey of the executive and legislative branches, and would lose their essential independence.

We all know the importance of this judicial independence and the critical role that the Federal courts have in the lives of millions of our fellow citizens, especially those who are minorities.

The Latino experience is typical of minority groups that seek justice. When the executive branch has failed them, when the legislative branch has failed them, it is the Federal courts, independent of political forces, that have protected their rights. Federal courts have protected Latinos' right to fair redistricting rules in Lopez v. Monterey County. Federal courts have also protected Latinos' right to bilingual education. They have protected Latinos' right to sit on a jury free from challenge on the basis of their race. They protect Latinos' right to be free from racial profiling.

When the Senate considers a judicial nominee, it must take this history into account. We must consider whether the nominee accepts the historic role of the courts in the protection of basic rights. One of the most serious concerns raised by the Congressional Hispanic Caucus, which met with Mr. Estrada, was that he does not understand and appreciate this history. The Hispanic Caucus does not lightly oppose the nomination of a Latino to a Federal court. In fact, they have never done it before. It would have been far easier for them to decide that a Latino judge on the DC Court of Appeals could be called a victory for them. But they realized it would be a victory in name only. They saw that Mr. Estrada would not uphold the basic rights of the Latino community, and they decided—unanimously—to oppose his nomination.

When the Hispanic Caucus reviews a judicial nominee, they look for a person who will have a sense of fairness, who will be sensitive to claims of racial bias and discrimination, and who are aware of the fundamental role of the Federal courts in ending these injustices. Mr. Estrada failed to satisfy them on each of these important points.

The Hispanic Caucus asked Mr. Estrada about his legal work on two cases in which he defended anti-loitering ordinances. Statutes such as these have too often been used for racial profiling and to harass minorities performing lawful activities. The members of the Hispanic Caucus left that meeting convinced that Mr. Estrada did not understand the effect of these anti-loitering statutes on minorities, or that he did not care about them.

Mr. Estrada has also demonstrated his lack of sensitivity on issues affecting Latinos in his numerous statements about race and affirmative action. He has been dismissive of the under-representation of Latinos among

law clerks in the Supreme Court. You do not have to be Latino to understand that there are long-standing barriers to full participation by Latinos. But Mr. Estrada does not see it that way. Perhaps this is why Mr. Estrada has never tried to improve opportunities for Latino lawyers or law students.

But if you cannot see the problem, you cannot be part of the solution. I am deeply concerned, given these statements by Mr. Estrada, that he would oppose basic programs, that have done so much to open the doors of opportunity for minorities throughout our Nation.

In light of all of these facts, the Hispanic Caucus has decided to oppose this nomination. As I said, they did not make this decision lightly. They have supported the nomination of conservative judges in the past, including judges nominated by the current administration. Jose Martinez, for one, was nominated by this administration. The Caucus met with him. Not all of the members of the Caucus agreed with Mr. Martinez's politics, but they saw that Mr. Martinez was sensitive to the needs and experience of the Latino community. He understood the historic and important role of the Federal courts in the lives of Latinos. So the caucus supported his nomination and Judge Martinez is now a United States District Judge for the Southern District of Florida.

When Democrats oppose Mr. Estrada, we are standing with these groups. We are standing up for the rights of Latinos and other minorities. In fact, it has been Senate Republicans who have unfairly blocked the confirmation of Latino nominees. The last Republican-controlled Senate unfairly refused to confirm eight—eight—qualified Latino nominees. Two who were nominated to the Fifth Circuit Court of Appeals from Texas were not even given hearings by the Republicans.

The Fifth Circuit is one of the areas where the highest percentage of minorities in this country live. Where were our Republican colleagues when these qualified judges were waiting for confirmation? Where were our Republican colleagues when Richard Paez waited for confirmation longer than any other nominee in U.S. history? Where were they? They were in control of the Senate.

When Republicans call on us to rubberstamp a judicial nominee, telling us that we have no right to look into his record to see what kind of judge he may be, they are ignoring their own history, and they are ignoring the proper role of the Senate. President Bush, more than perhaps any other President, has made it his goal to pack the courts with judges who will roll back basic Federal rights, including civil rights, workers' rights, and environmental protections. Ideology clearly guides the President's decision to nominate judges. It clearly guided the decision to nominate Mr. Estrada. It would be wrong to ask Senators now to ignore his ideology. Judges should be committed to basic principles and ideals. They should respect our judicial system and the co-equal relationship between the executive, legislative, and judicial branches. It makes no sense for the Senate, in fulfilling its constitutional role, to adopt a head-in-the-sand approach and abandon all ideological considerations in deciding whether to confirm Mr. Estrada.

Now we have, instead, a Republican stampede to confirm a nominee we know very little about. Despite the critical importance of the Federal courts, and despite the immense power of the appellate court to which he has been appointed, Miguel Estrada has not answered the questions put to him. He has not been forthcoming about the views that he would bring to the bench. He has failed to resolve the serious discrepancies in his answers to the questions put to him during his hearing. The Bush administration refuses to turn over important documents to the Senate as we consider this nominee, despite clear precedent for doing so.

At the same time, what we do know about him clearly indicates that he fails to appreciate the role of the Federal courts and Federal rights in the protection of the most vulnerable members of our society. On this inadequate and unsatisfactory record, the Senate should not confirm a nominee to such an important position.

IRAQ

Mr. President, tomorrow, the United Nations inspectors will report to the Security Council about Iraq's weapons of mass destruction. In all likelihood we will continue to hear from Mr. Hans Blix that the inspections are proceeding, but that Iraqi authorities need to be much more cooperative. We know that the administration is lobbying Mr. Blix to submit the strongest possible case that Iraq is not cooperating.

We all agree that Saddam Hussein is a dangerous and deceptive dictator. We live in a dangerous world and Saddam must be disarmed. The question is how to do it in a way that minimizes the risks to the American people at home, to our armed forces, and to our allies.

I am still hopeful that we can avoid war. War should always be a last resort.

Earlier today, President Bush quoted President Kennedy and referred to the Cuban missile crisis. President Bush praised my brother for understanding that the dangers to freedom had to be confronted early and decisively.

President Kennedy did understand this. But he also genuinely believed that war must always be the last resort. When Soviet missiles were discovered in Cuba—missiles far more threatening to us than anything Saddam has today—some leaders in the highest councils of our government urged an immediate and unilateral strike. Instead, the United States took its case to the United Nations, won the endorsement of the Organization of American States, and persuaded even our most skeptical allies. We imposed a blockade, demanded inspection, and insisted on the removal of the missiles—all without resorting to full-scale war.

As he said then:

> Action is required . . . and these actions [now] may only be the beginning. We will not prematurely or unnecessarily risk the costs of . . . war—but neither will we shrink from that risk at any time it must be faced.

I continue to be concerned that the Bush administration is persisting in its rush to war with Iraq, even as we face grave threats from al-Qaida terrorism and North Korea's nuclear ambitions. The administration has done far too little to tell Congress and the American people about what our country and our troops will face in going to war with Iraq, especially if we have little genuine support from our allies.

We are nearing decision time. I urge President Bush to come clean with the American people about this war. Before endangering the Nation's sons and daughters in the Iraqi desert, our citizens deserve full answers to four questions.

First, the President must explain what he considers victory in Iraq. The American people deserve at least this much. Is it disarmament? Is it the overthrow of Saddam? Is it the establishment of a stable, democratic government? If we get rid of Saddam, but leave his bureaucracy in power, will that be a victory? Or, as General Zinni has said, will we be doing what we did in Afghanistan—drive the old Soviet Union out and let something arguably worse emerge?

This should be a basic consideration in committing American lives to this war. Our country should know what we are fighting for. But the administration has failed to define even this most basic question for the American people.

Second, the President must explain whether we are doing all we can to see that America will be secure at home. A war in Iraq may well strengthen al-Qaida terrorists, not weaken them, especially if the Muslim world opposes us. We have not broken Osama bin Ladin's will to kill Americans. Our Nation has just gone on new and higher alert because of the increased overall threat from al-Qaida. What if al-Qaida decides to time its next attack for the day we go to war? The war against al-Qaida must remain our top priority.

In fact, our Nation's intelligence experts have maintained consistently since 9/11 that al-Qaida terrorism is the greatest threat to our security here at home. They also fear that an American attack on Iraq will only make matters worse by inflaming anti-American sentiments across the Arab world.

Third, the President must fully explain how long, even after the war ends, we will have to commit our forces and economic resources to deal with the consequences of the war. This war will be different than the Gulf war. We will not stop short of Baghdad. If we want to change the regime, we may well have to fight in Baghdad and engage in hand-to-hand combat and

urban guerilla warfare. When the war is over, our troops will become an occupying force, possibly for many years. The tribal, ethnic, and religious fault lines that Saddam has held together through repression may fall apart—much as they did in the brutal civil wars in the former Yugoslavia, in Rwanda, and other countries.

Will the United States have to manage Iraq for years to come on our own? Are we prepared to commit billions of American dollars to Iraq for years to come? Will our troops be part of a United Nations force? Will they become sitting targets for terrorists?

Finally, the President must explain whether our Nation is prepared to use this war as the new foreign and defense policy for the future. Are we prepared to invade any nation that poses a threat?

Iran, Libya—forget Libya. Pan Am 103; 67 American servicemen who were killed; 13 families in the State of Massachusetts; scores of families in New Jersey and other States—a country that has used chemical warfare against its neighbors and against Chad in the south.

Libya, Iran, with all of the harboring of terrorists and Hamas—the terrorists that are so active in Syria, and these other countries. What are we going to do about these nations as they continue to move forward in developing weapons of mass destruction? What are our policies going to be about them? Which country will be next? Will we attack them, too?

Are we really prepared, as the administration is considering, to radically change our nuclear weapons policy and use nuclear weapons in Iraq and other conflicts? Even contemplating the first use of nuclear weapons in Iraq under current circumstances and against a non-nuclear nation dangerously undermines the crucial and historical distinction between conventional and nuclear arms. It undermines our international commitment to the Nuclear Non-Proliferation Treaty that we will not consider a first strike against a country that is a nonnuclear country. If we use the Nation's nuclear arsenal in this unprecedented way in Iraq, it will be the most fateful decision since the nuclear attack on Hiroshima. All of us are hopeful we will not use the tactical nukes. We have abundant testimony that our conventional weapons are quite capable and able to handle any of the challenges we are going to face in terms of deep bunkers and other activities. But we have to listen to those in the administration who are talking in a different way about the development of a tactical nuke, and also about perhaps changing what they consider to be the STRAPP amendment that limits the research to 5 kilotons and the administration's consideration of that.

Obviously, implications of any use of any nuclear war in Iraq would inflame the people not only of that nation but certainly of Arabs all over the world—and not only the Arabs and the move towards developing smaller, more easily usable nuclear weapons and all of the challenges we would have of being more attractive to use under certain circumstances with the dangers of proliferation and the fact these weapons could be proliferated and stolen and used and captured by terrorists.

On each of these questions, the President must reassure the American people. They deserve to know that we are not stepping into quicksand and that this military operation is well thought out. He must convince the Nation that we are putting as much effort into thinking about how we get out of Iraq as we are about getting into Iraq.

We must take both the short-term and the long-term view of this enormous problem. Whether war with Iraq will be a sprint or a marathon we must always remember the finish line.

There is no more important decision by Congress or the President under the Constitution than the decision to send our men and women in uniform to war. The administration must make a compelling case that war with Iraq is now the only alternative and explain it to the American people

The administration says we can fight a war in Iraq without undermining our most pressing national security priority—the ongoing war against the international al-Qaida terrorist network.

al-Qaida—not Iraq—is the most imminent threat to our national security. Our citizens are asked to protect themselves from Osama bin Ladin at home with a roll of duct tape, while the administration sends the most deadly and sophisticated army in the world to go to war with Saddam Hussein. Those are the wrong priorities.

On Monday, Tom Ridge, the Secretary of Homeland Security said that the heightened security warning that has millions of Americans stocking up on food, water, duct tape, and plastic sheeting is connected to al-Qaida and not ''the possibility of military involvement with Iraq.''

On Tuesday, FBI Director Mueller told the Senate Intelligence Committee that ''the Al Qaeda network will remain for the foreseeable future the most immediate and serious threat facing this country.''

On Wednesday, CIA Director Tenet told the Senate Armed Services Committee that the heightened alert issued this week is because of the threat from al-Qaida—not Iraq.

For any Member of this body who thinks we have done what we need to do in homeland security, call any mayor in your State, call any mayor in a major city or a small city in your State, and ask them whether they have received the support for the training of first responders. Ask them if they have the various vaccines, how that program is going—and it isn't going, because we have failed to develop a compensation fund for that and to match our determination for vaccines with the other kinds of supportive efforts in terms of health care.

Ask any mayor in any sized city what degree of support they are getting and whether they believe they are receiving the kind of assistance they need—whether it is in the radios, in the communications, whether it is in the training, whether it is in the wide area of support for public health interests—and you will get the answer that all of us heard—that I heard—within the last 10 days when the mayors across this country came together and met here. And the answer is clearly: No, no, no, it is not there.

In addition to threatening American lives, Saudi Arabia has indicated it will ask American troops to leave its soil. NATO's division over war has threatened the alliance. The Chairman of the Federal Reserve, Alan Greenspan, has said uncertainty over Iraq is slowing our Nation's economy.

There you have three activities: Osama bin Laden, wherever he is, American troops out of Saudi Arabia, division in the alliance, stagnation here at home in the economy. And we are all blaming Osama bin Laden. We are about to send our troops on into Iraq, not giving inspections a chance to finish. The wrong priorities, Mr. President.

As I mentioned in terms of what we are doing here at home, I am concerned about the state of our preparedness. Clearly, there is much more we need to do at the Federal, State, and local levels to strengthen our defenses against a terrorist attack.

First responders are not adequately prepared for a chemical or biological attack. The radios are not interoperable, and they lack the training and gear to protect them in the event of an emergency. Ask any of your mayors, as I mentioned, across the country. You will get your answer.

This isn't just a Democrat pointing this out. Last week, our former colleague, Senator Rudman, of the State of New Hampshire, said:

> There was no rational answer for the White House failure to seek more funds for the domestic security in the 2004 budget. I'm very concerned. We have to put more money into the Coast Guard, into communications gear, into preparedness for the use of weapons of mass destruction, into police and firefighters. We have to spend a huge additional amount of money on port security. Money isn't the only answer, but it is a pretty clear indication of a nation's priorities in this area, and it has not been there in terms of the support on homeland security.

Even before the war has begun, we hear of possible threats from a wave of suicide bombers. War with Iraq could swell the ranks of terrorists and trigger an escalation in terrorist acts. As Gen Wesley Clark told the Armed Services Committee last September, war with Iraq could ''super-charge recruiting for Al Qaeda.''

These are real dangers—dangers that the administration has minimized in its determination to attack Iraq.

The administration maintains there are convincing links between al-Qaida

and Iraq that justify war. But al-Qaida activists are present in more than 60 countries, including Iran, Pakistan, Afghanistan, and also in the United States. Even in the administration, there are skeptics about the links with Iraq. Intelligence analysts are concerned that intelligence is being politicized to justify war, as the New York Times pointed out in a recent article which I will ask to be printed in the RECORD.

Mr. President, I ask unanimous consent that article be printed in the RECORD.

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

SPLIT AT C.I.A. AND F.B.I. ON IRAQI TIES TO AL QAEDA

(By James Risen and David Johnston)

WASHINGTON, Feb. 1—The Bush administration's efforts to build a case for war against Iraq using intelligence to link it to Al Qaeda and the development of prohibited weapons has created friction within United States intelligence agencies, government officials said.

Some analysts at the Central Intelligence Agency have complained that senior administration officials have exaggerated the significance of some intelligence reports about Iraq, particularly about its possible links to terrorism, in order to strengthen their political argument for war, government officials said.

At the Federal Bureau of Investigation, some investigators said they were baffled by the Bush administration's insistence on a solid link between Iraq and Osama bin Laden's network. We've been looking at this hard for more than a year and you know what, we just don't think it's there,'' a government official said.

The tension within the intelligence agencies comes as Secretary of State Colin L. Powell is poised to go before the United Nations Security Council on Wednesday to present evidence of Iraq's links to terrorism and its continuing efforts to develop chemical, biological and nuclear weapons and long-range missiles.

Interviews with administration officials revealed divisions between, on one side, the Pentagon and the National Security Council, which has become a clearinghouse for the evidence being prepared for Mr. Powell, and, on the other, the C.I.A. and, to some degree, the State Department and agencies like the F.B.I.

In the interviews, two officials, Paul D. Wolfowitz, deputy defense secretary, and Stephen J. Hadley, deputy national security adviser, were cited as being most eager to interpret evidence deemed murky by intelligence officials to show a clearer picture of Iraq's involvement in illicit weapons programs and terrorism. Their bosses, Defense Secretary Donald H. Rumsfeld and the national security adviser, Condoleezza Rice, have also pressed a hard line, officials said.

A senior administration official said discussions in preparation for Mr. Powell's presentation were intense, but not rancorous, and said there was little dissension among President Bush's top advisers about the fundamental nature of President Saddam Hussein's government. ''I haven't detected anyone who thinks this a not compelling case,'' the official said.

Mr. Bush asserted in his State of the Union address this week that Iraq was protecting and aiding Qaeda operatives, but American intelligence and law enforcement officials said the evidence was fragmentary and inconclusive.

''It's more than just skepticism,'' said one official, describing the feelings of some analysts in the intelligence agencies. ''I think there is also a sense of disappointment with the community's leadership that they are not standing up for them at a time when the intelligence is obviously being politicized.''

Neither George J. Tenet, the director of central intelligence, nor the F.B.I. director, Robert S. Mueller III, have publicly engaged in the debate about the evidence on Iraq in recent weeks, even as the Bush administration has intensified its efforts to build the case for a possible war.

The last time Mr. Tenet found himself at the center of the public debate over intelligence concerning Iraq was in October, when the Senate declassified a brief letter Mr. Tenet wrote describing some of the C.I.A.'s assessments about Iraq.

His letter stated that the C.I.A. believed that Iraq had, for the time being, probably decided not to conduct terrorist attacks with conventional or chemical or biological weapons against the United States, but the letter added that Mr. Hussein might resort to terrorism if he believed that an American-led attack was about to begin.

Alliances within the group of officials involved have strengthened the argument that Mr. Bush should take a firm view of the evidence. ''Wolfowitz and Hadley are very compatible,'' said one administration official. ''They have a very good working relationship.''

There were some signs that Mr. Powell might not present the administration's most aggressive case against Iraq when he speaks to the United Nations, leaving such a final definitive statement to the president in some future address.

''You won't see Powell swing for the fences,'' the official said. ''It will not be the end-all speech. The president will do that. The president has to lay it out in a more detailed way.''

Deputy Secretary of State Richard L. Armitage told the Senate Foreign Relations Committee last Thursday that Mr. Powell would not assert a direct link between the Iraqi government and the September 11 attacks on New York and Washington.

In demonstrating that there are links between Iraq and Al Qaeda, Mr. Powell is expected to focus on intelligence about possible connections between Mr. Hussein, an Islamic militant group that may have produced poisons in a remote region of northern Iraq and a Qaeda terrorist leader, Abu Mussab al-Zarqawi. Much of the intelligence had been publicly known for months.

Some of the most recent intelligence related to Mr. Zarqawi centers on charges that he orchestrated the plot on Oct. 28 in Amman, Jordan, in which two Qaeda followers—under Mr. Zarqawi's direction—stalked and shot to death Laurence Foley, an American diplomat.

In December, the Jordanian authorities announced that the two men had confessed to killing Mr. Foley and that they had been directed by Mr. Zarqawi.

The connection to the Foley killing was important because the United States had evidence that Mr. Zarqawi, a Jordanian of Palestinian descent, has spent time in Baghdad earlier in 2002. American officials describe Mr. Zarqawi as a major figure in Al Qaeda's leadership and say that after he was wounded in the fighting in Afghanistan after September 11, he made his way to Iraq in the spring of 2002.

He was hospitalized in Baghdad for treatment of his wounds, and then disappeared in August, after Jordanian officials told the Iraqi government they knew he was there. There have been recent reports that he is in hiding in northern Iraq, but that has not yet been confirmed.

But despite Mr. Zarqaqi's earlier presence in Baghdad, American officials have no evidence linking Iraqi officials to Mr. Foley's killing, or direct evidence that Mr. Zarqawi is working with the Iraqi government.

''All they know is that he was in the hospital there,'' one official said.

If he is in northern Iraq, American officials believe that Mr. Zarqawi may be with members of a militant group there called Ansar al-Islam. There is evidence that he has links to the group, and that he may have been working with it to develop poisons for use in terrorist attacks, possibly including a recent plot to poison the food supply of British troops.

But intelligence officials say there is disagreement among analysts about whether there are significant connections between Ansar al-Islam and the Baghdad government. Some administration officials, particularly at the Pentagon, have argued that Ansar al-Islam has close ties to the Iraqi government, but other intelligence officials say there is only fragmentary evidence of such a link.

Intelligence professionals have expressed fewer reservations about the administration's statements concerning Iraq's weapons programs. There is broad agreement within intelligence agencies that Iraq has continued its efforts to develop chemical, biological, and probably nuclear weapons, and that it is still trying to hide its weapons programs from United Nations inspectors.

Officials said the United States had obtained communications intercepts that show Iraqi officials coaching scientists in how to avoid providing valuable information about Iraq's weapons programs to inspectors. At the United Nations, Mr. Powell may also display American satellite photographs showing Iraqi officials moving equipment and materials out of buildings before they can be inspected by the United Nations.

Still, there have been disagreements over specific pieces of intelligence used publicly by the White House to make its case, including the significance of one report that Iraq had imported special aluminum tubes for use in its nuclear weapons program.

In testimony before the Senate Foreign Relations Committee on Thursday, Mr. Armitage acknowledged that the administration had at times relied on inconclusive reports that had not served to strengthen Washington's case.

He agreed with the suggestion of Senator Joseph R. Biden Jr. of Delaware, the committee's ranking Democrat, that the administration should instead stick with the indisputable evidence that Iraq has in the past stockpiled chemical weapons, tried to make biological weapons, and has continued to deceive United Nations inspectors.

''As we used to say in the Navy, KISS, 'Keep it simple, sailor,' '' Mr Armitage said. ''Go with your strong points.''

Mr. KENNEDY. Although the U.N. inspectors have found no evidence so far of a revived nuclear weapons program in Iraq, there is ample evidence in North Korea. North Korea possesses 8,000 spent nuclear fuel rods capable of being reprocessed, by May, into enough plutonium to make up to 6 nuclear bombs. With inspectors gone and North Korea gone from the Non-Proliferation Treaty, we face an urgent crisis, with nothing to prevent that nation from quickly producing a significant amount of nuclear materials and nuclear weapons for its own use, or for terrorists hostile to America and our allies.

North Korea has already provided missiles to deliver chemical, biological, and nuclear weapons to terrorist

states, including Iran, Syria, and Libya. We understand that. North Korea has already provided the missiles to deliver chemical, biological, and nuclear weapons to terrorist states. Desperate and strapped for cash, North Korea can easily provide nuclear weapons or weapons grade plutonium to terrorist groups, which could be used against us in the very near future. And we are talking about the production of weapons grade plutonium in the next few weeks. There is no division of opinion on that, absolutely none. There is no division of opinion on that. As some have described it, it would be a cash cow for North Korea that is absolutely strapped for cash.

Despite these alarm bells, the administration refuses to call the situation on the Korean peninsula what it is: a genuine crisis. If this is not a crisis, I don't know what is.

The administration refuses to directly engage the North Koreans in talks to persuade North Korea to end its nuclear program. By ignoring the North Korean crisis in order to keep focus on Iraq, the administration has kept its eye on the wrong place.

The administration says we can handle the war in Iraq, we can handle the war against al-Qaida, and we can deal with the problems of the nuclear crisis in North Korea. Any administration should seek to avoid three simultaneous foreign policy crises. In this case, we can, and we should, by not rushing to war with Iraq.

It is far from clear that we will be safer by attacking Iraq. In an October 7, 2000, letter to the Senate Committee on Intelligence, CIA Director George Tenet said the probability of Saddam Hussein initiating an attack on the United States was low. But his letter said: ''should Saddam Hussein conclude that a U.S.-led attack could no longer be deterred, he probably would become much less constrained in adopting terrorist actions.''

Yesterday, Admiral Jacoby, the Director of the Defense Intelligence Agency, told the Senate Armed Services Committee that Saddam Hussein would use weapons of mass destruction ''when he makes the decision that [his] regime is in jeopardy.'' CIA Director Tenet agreed with this assessment.

This assessment begs the question: If Saddam will not use weapons of mass destruction against the United States until his regime is about to fall, why is it in our national security interest to provoke him into using them?

The administration must be more forthcoming about the potential human costs of war with Iraq, especially if it pushes Saddam into unleashing whatever weapons of mass destruction he possesses. The administration has released no casualty estimates, and they could be extremely high. Many military experts have predicted urban guerilla warfare—a scenario which Retired General Joseph Hoar, who had responsibility for Iraq before the gulf war, says could look ''like the last 15 minutes of 'Saving Private Ryan.'''

Nor has the administration fully explained the ramifications of large-scale mobilization of the National Guard and Reserve—especially its effect on police, firefighters, and others, who will be on duty for Iraq but who are needed on the front lines here at home if there is a terrorist attack on the homeland. In Massachusetts, 2,000 citizens have been called to active duty in the Armed Forces. Many of them are police, firefighters, first responders, and other health workers.

Nor has the administration been candid about the humanitarian crisis that could result from war.

Refugee organizations are desperately trying to prepare for a flood of as many as 900,000 refugees. Billions of dollars and years of commitment may well be needed to achieve a peaceful post-war Iraq, but the American people still do not know how that process will unfold and who will pay for it.

No war can be successfully waged if it lacks the strong support of the American people. Before pulling the trigger on war, the Administration must tell the American people the full story about Iraq. So far, it has not.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent to speak in support of the nomination of Miguel Estrada.

The PRESIDING OFFICER. The Senator has that right.

Mr. CHAMBLISS. Mr. President, I recognize that we are now in our ninth day of debate leading up to an ultimate vote on whether or not Miguel Estrada should be confirmed as the nominee of President George W. Bush to the Circuit Court of Appeals for the District of Columbia. As part of the debate on both sides of the aisle, there has been a continual question asked on this side of our friends by the other side who are in opposition to the appointment and confirmation of Mr. Estrada. That question has been: Give us a reason we should not have a vote on whether or not Mr. Estrada should be confirmed.

I have great respect for the Senator from Massachusetts. He has certainly been a part of this institution for a long time. I listened very closely to his comments which I respect. And I respect his opinion and his right to hold his opinion in opposition to Mr. Estrada. But I think what we have just heard for the last 20 minutes is very indicative of what we have heard for the last 9 days. And that is, there is no reason Mr. Estrada should not be confirmed.

There have been reasons put forth from the other side, and every time one of those reasons has been put forth, the chairman of our committee, Senator HATCH, or someone else, has risen to refute that argument. What the other side has now done is, instead of concentrating on the argument in opposition to Mr. Estrada, they have gotten off extensively on to other issues.

I go back to the same question we have asked: Why do we not vote on Mr. Estrada? What is the reason you have that Mr. Estrada should not be confirmed as President Bush's nominee to the Circuit Court for the District of Columbia?

There has been a lot of debate about what was said and the opinion that came out of the conversation between Mr. Estrada and the Hispanic Caucus over on the House side. Let me tell you about some of the folks in the Hispanic community who have come out in support of the nomination of Mr. Estrada: The League of United Latin American Citizens, which is the Nation's oldest and largest Hispanic civil rights organization, has come out in support of the nomination and confirmation of Mr. Estrada; the U.S. Hispanic Chamber of Commerce; the Hispanic National Bar Association; the Hispanic Business Roundtable; the Latino Coalition; the National Association of Small Disadvantaged Businesses; the Mexican American Grocers Association; the Phoenix Construction Services; the Hispanic Chamber of Commerce of Greater Kansas City; the Hispanic Engineers Business Corporation; the Hispano Chamber of Commerce de Las Cruces; Casa Del Sinaloense; the Republican National Hispanic Assembly; Hispanic Contractors of America, Inc., and Charo Community Development Corporation—a long and distinguished list of Hispanic entities that have come out in strong support of the nomination and confirmation of Miguel Estrada.

Let me go further and quote from statements from some individuals who are involved in some of these organizations. The League of United Latin American Citizens, the oldest and largest Hispanic civil rights organization—the president of that organization is a gentleman named Dovalina. Here is what he says about Miguel Estrada:

> On behalf of the League of United Latin American Citizens, the nation's oldest and largest Hispanic civil rights organization, I write to express our strong support for the confirmation of Miguel Estrada. . . .Few Hispanic attorneys have as strong educational credentials as Mr. Estrada, who graduated magna cum laude and Phi Beta Kappa from Columbia and magna cum laude from Harvard Law School, where he was editor of the Harvard Law Review. He also served as a law clerk to the Honorable Anthony M. Kennedy in the United States Supreme Court, making him one of a handful of Hispanic attorneys to have had this opportunity. He is truly one of the rising stars in the Hispanic community and a role model for our youth.

The Latino Coalition, of which the president is, Mr. Robert Deposada—here is what he said about Mr. Estrada:

> To deny Latino's, the nation's largest minority, the opportunity to have one of our own serve on this court in our nation's capital is unforgivable.

The president of the United States Hispanic Chamber of Commerce, Ms. Elizabeth Lisboa-Farrow, stated:

We unanimously endorse this nominee and strongly urge you to move on the confirmation of Miguel Estrada. As a judge, he will be a credit to the federal judiciary, the President, Hispanics, and all Americans.

That emphasizes something I said on the floor a few days ago. There has been a lot of debate about Mr. Estrada being a Latino. Mr. Estrada is a Latino. I am sure he is very proud of that. But the thing I like about Mr. Estrada is that he is qualified to be appointed to the Circuit Court for the DC Circuit. He is qualified because he is an intellectual. He is bright. His record proves that. He is a world class lawyer who happens to be a Latino. This man needs to be appointed and confirmed to the DC Circuit Court of Appeals because he is a good lawyer. Even more than that, he is an outstanding lawyer.

The president of the Hispanic National Bar Association, Mr. Rafael Santiago, stated as follows:

The Hispanic National Bar Association, national voice of over 25,000 Hispanic lawyers in the United States, issues its endorsement. . . .Mr. Estrada's confirmation will break new ground for Hispanics in the judiciary. The time has come to move on Mr. Estrada's nomination. I urge the Senate Committee on the Judiciary to schedule a hearing on Mr. Estrada's nomination and the U.S. Senate to bring this highly qualified nominee to a vote.

Mr. Henry T. Wilfong, Jr., president of the National Association of Small Disadvantaged Businesses, stated as follows, in a letter to Senator LEAHY on July 12, 2001:

The [National Association of Small Disadvantaged Businesses] would like to add our support . . . for Miguel Estrada's nomination as United States Court of Appeals Judge for the District of Columbia Circuit.

Mr. Estrada is a brilliantly talented and accomplished attorney who will make an outstanding addition to the prestigious DC Circuit. . . .While we do not dwell on symbolism, we feel that Mr. Estrada's appointment as the first Hispanic member of the DC Circuit will be of benefit to us in further illustrating the wide range of talent in the minority communities, just wanting to be effectively and fully used.

Well, I could go on quoting comments from other members of the Hispanic organizations around the country. All of the major Hispanic organizations have said this man needs to be confirmed to the DC Circuit Court of Appeals. He needs to be confirmed, yes, because we are proud of him as a Latino, but he needs to be confirmed because he is one of America's outstanding lawyers.

Now, some of the criticism that has been directed at Mr. Estrada has been for totally unfounded reasons. I wish to talk about a couple of those. I wasn't here back in September of 2002, when the hearing of Mr. Estrada was held before the Senate Judiciary Committee. But at that point in time, the Judiciary Committee was controlled by the Democrats. The chairman of that committee was Senator LEAHY, who I have come to know. He is a very fair man. He is a very strong advocate for his beliefs. But I have seen him operate within the Judiciary Committee, and I know him to be a person who is very deliberate in the way he presents himself on that committee. So I have no doubt that at the time of Mr. Estrada's hearing in September of last year, Mr. Estrada was treated very fairly and was given due accord.

One of the criticisms that has been repeated today is the fact Mr. Estrada, during the course of that hearing, in September of last year, was that he was nonresponsive to questions that were presented. Under the leadership of Senator LEAHY, the hearing began at around 10 o'clock in the morning. I am told it lasted until 5:30 in the evening; and although there were few district court nominees who were also testifying at that hearing, the great bulk of the time was given to Mr. Estrada. That is the case, as I have seen it, over the last several weeks since I was elected and sworn in as a Member of this body and appointed to the Judiciary Committee.

After the hearing, every member of the Judiciary Committee was given an opportunity not just to ask every question they wanted to ask, but if they weren't satisfied with the answers they received, whether it was what they wanted to hear or not, they had the opportunity to ask that Mr. Estrada come back for another series of questions. But they did not do so. He was not asked to come back and appear before the Judiciary Committee again.

In addition to that, at every hearing we have on judicial nominees—and I know this to have been the case last year under the direction of Senator LEAHY—every member of the Judiciary Committee has the opportunity to submit written questions to every nominee who has their confirmation hearing before the Judiciary Committee. So if there was any member of that committee who was not satisfied with the answers they received, or wanted a written answer in addition to the verbal answer that was given that day, or if they didn't feel as if the nominee was being totally forthcoming, they could ask the question again and get an answer in writing.

After the hearing of Mr. Estrada before the Judiciary Committee, only two Democratic Senators submitted written questions. Some of those folks who are on the other side of the aisle, over the last 9 days who have been complaining the loudest about not knowing enough about Mr. Estrada, did not submit any written questions at all. Is that fair? Is that reasonable? Is that the way this body ought to function with respect to the confirmation of our judicial nominees? I don't think so. I don't think that is the way our Founding Fathers intended this body to operate.

Let me look at another couple of objections that have been raised by the other side with respect to Mr. Estrada. There has been an issue regarding the fact that he has no judicial experience and, therefore, he should not be confirmed.

Well, let me say that if that were the case, if experience in an area in our line of work, politics, was a requirement to be elected, I never would have been elected to the House of Representatives where I gained experience before I was elected to the Senate. I had never run for political office before. You know what? I brought a lot of assets to the House of Representatives because I was not involved in politics before. I had about 72 other Republican classmates in my class in 1994. Some of them had been involved in politics. The one common thread we all had was that we came from a business background. Most of us have had to meet a payroll, and we knew and understood about business and about balancing budgets. And one of the focuses of the class of 1994 in the House of Representatives was to move forward to balance the budget of this country, which had not been balanced for decades prior to that election. We achieved that. We achieved it because we knew and understood that is what was required of families in America who sit around their kitchen table every single month, and it was only right to ask Congress to do that. That is the kind of lack of political experience that my class had when we were elected in 1994.

For the contention to be made that Mr. Estrada has no judicial experience and that is why he ought not to be confirmed, I think is just ludicrous. I think because he lacks judicial experience, that may be an asset. There have been some pretty significant judges appointed to the bench who did not have judicial experience. Byron White, nominated by President Kennedy, and William Rehnquist, currently Chief Justice of the U.S. Supreme Court, had no judicial experience when they were appointed to the court. Of the eight judges who are today serving as members of the same court to which we seek to have Mr. Estrada nominated, five had no previous judicial experience at the time they were nominated and confirmed by this body. I don't know whether the same objection was raised then or not, but if it was, it has obviously been proven that it was not a valid objection.

There has been an allegation that the administration has refused to produce memoranda that Mr. Estrada wrote as an Assistant to the Solicitor General. Mr. Estrada was Assistant to the Solicitor General both in the Clinton administration as well as in the Bush administration. There is just a wealth of knowledge that he gained by virtue of the fact that he worked for the Government in addition to serving in the private sector as a lawyer.

But while he was in the Solicitor General's Office, sure, he did what his boss told him to do. If it required research and giving his boss a memorandum on a particular issue, he did what he was told to do and, obviously, did it in a very efficient manner, because every single living Solicitor General has come forward, including those

for whom Mr. Estrada worked, and has said that it would be improper for the Justice Department to produce the memoranda that Mr. Estrada worked on and provided to his boss. And also, the Solicitor General for whom he worked, both in the Clinton administration as well as in the Bush administration, have both talked about how highly qualified and how competent this individual is.

For an objection to be made that he failed to produce memoranda that the Justice Department says would not be proper to present, and that Republican and Democratic Solicitor Generals say would not be proper for the Justice Department to present, I think totally negates any argument about the fact that those memoranda have not been produced.

I could go on and on about the issues relative to Mr. Estrada's nomination that had been presented by the other side. I repeat, every time one of those issues has been raised, Chairman HATCH or some other member on this side has totally refuted that argument.

I go back to the point of why are we here? Why are we, 100 Members of this body, here? We are here to do the people's work. We are here to do what is in the best interest, not just of our constituents, but in the case of judges, we are required—and I agree with the Senator from Massachusetts, we ought not be a rubberstamp. But we have a process we go through to nominate and confirm judges. We ought to have full, open, and free debate on each and every one of those nominees, and we have done that.

We are here to do the work of the people of the United States of America. The people of the United States of America elected us to have full, free, and open debate on judges, as well as the many other issues with which we have to deal. We have done that. We have had 9 days of debate on the nomination of Miguel Estrada. It is time now that we do what the people elected us to do, and that is to vote. If a Member thinks he ought not be confirmed, vote against him.

I think he ought to be confirmed because he is well qualified and his time to go to the Federal bench has come. I am going to vote to confirm him. Because we are here as elected officials and because we have a duty to represent not just the people who sent us but the people of America when it comes to the confirmation of judges, we owe those people who sent us here and the people all across America a response to that obligation. We should move this nomination forward to a vote.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I thank the Chair.

Mr. President, I wish to take an opportunity to discuss the appointment of Miguel Estrada to the circuit court and to raise an objection I share with other colleagues on this side of the aisle.

I come out of the business world. I think of how I might react if I were interviewing a senior executive candidate, and if that individual refused to answer relevant questions about his experience or her views, or what kind of a life attitude had developed in that person's mind, I sure would not be putting them on my payroll.

To respond to our colleague from Georgia who raises legitimate questions about why there is opposition on our side, the Senator challenges the fact that Mr. Estrada's lack of experience—I think if I heard him correctly—could even be an asset.

The Senator also alluded to the fact he came here without experience. I certainly did. I came here directly from the business community. I came here without experience. He and I and the occupant of the Chair have a job that is less than permanent. My colleague from Georgia and my colleague in the Chair got here because they terminated someone else's tenure in office. If that was the condition, if we were not talking about a lifetime appointment, we would not be having this debate, in my view. I am sure we would have had a vote and probably approved for Mr. Estrada to assume the appeals court bench.

That is not the case. Nor is it the case that the advise and consent relationship of a recommendation that comes from the President means automatic consent. We are supposed to take these responsibilities seriously. I am not a lawyer, but I feel the full measure of a democracy is the way justice is dispensed. We have a separation of powers to make sure there are checks and balances. That is why we protect the judiciary from being tossed out of office willy-nilly. They are able to exercise their will and exercise it to the best of their ability. But we have an obligation to confirm what the best of their ability is.

I am not happy about entering this discussion like this because I do have respect for colleagues on the other side of the aisle. I think they should have every right to add their views of support, to register those views as diligently and as forcefully as we have seen.

This is a two-way street. When a Democratic President sent up nominations, the delays were interminable. We heard last night about 1,500-day delays without being able to get a hearing. That is over 4 years.

I register my opposition to the confirmation of Mr. Estrada for the Circuit Court of Appeals for the District of Columbia. My opposition stems from several reasons, particularly questions about his unwillingness to come forward to discuss his views, to say to the American people—because they are ultimately the folks who are listening—that he is unwilling to participate in the system as it exists; that he is challenging the advice and consent aspect of the Senate's approval of asserting himself as a viable candidate for the United States Court of Appeals; that he is unwilling to open up his views to the people who are responsible for making the judgment.

Last night, I listened eagerly to the debate that took place. I listened to the distinguished chairman of the Judiciary Committee—a friend, someone I have known for a long time—talk about how unfair we are being to the President of the United States in not giving him full recognition of the fact he is the President and he is entitled to make his recommendation. The Constitution is so clear. The Constitution says the nomination has to come to the Senate for advice and consent. That is the process. We are not violating any rule by raising these questions.

Last night, it was even insinuated there might be some racial issue tied up here, and that borders on the ludicrous. I point out that the Puerto Rican Legal Defense and Education Fund, the Mexican American Legal Defense and Educational Fund, the National Council of La Raza, NAACP, and the Congressional Hispanic Caucus all oppose Mr. Estrada's nomination. These organizations obviously are not prejudiced against Hispanics.

Any illusion, any suggestion, any insinuation that there could be a racial concern here is an outrageous claim.

So we are going to leave those comments behind. They are without merit and without consideration. I have real substantial concerns about this nominee.

His former supervisor at the Justice Department concluded:

> He lacks the judgment and is too much of an ideolog to be an appeals court judge.

We have a right to hear what his views are. It is especially troubling because we are talking about a nominee to the DC Circuit, the most important court outside the Supreme Court in this country. The DC Circuit overseas enforcement of critical environmental, consumer, and worker protection laws. Three sitting U.S. Supreme Court Justices have come from the DC Circuit. It is an enormously important position and it is, once again, a lifetime position.

If we were to do anything except fully exercise our conscience to make sure that we understood as clearly as each one of us has not only the right but the obligation to do to examine what this individual brings to the position, we would be shirking our responsibilities.

Last night we heard talk about the fact that the Mexican American Legal Defense and Educational Fund, and other groups, have raised concerns about Mr. Estrada's view on a subject that I am particularly concerned about: racial profiling. The concern is that Mr. Estrada's support for so-called antiloitering laws were actually a guise for racial profiling.

Racial profiling is a terrible problem. We had a very difficult time in the

State of New Jersey with that issue. I introduced racial profiling prohibition legislation in the Senate, and I am pleased to work with my colleague from Wisconsin, Senator FEINGOLD, on that issue now.

Driving while black, walking while Hispanic—we have heard those phrases—should not be crimes. I think the courts must do all they can to prevent this practice. I am worried that Mr. Estrada's views go in another direction.

Another major problem with this nominee is that he seems to be hiding the ball, not playing the game the way it ought to be, refusing to discuss his basic legal theories and beliefs. The Constitution does not say the President of the United States has a unilateral right to put anybody he wants to on the Federal bench. Presidential appointments require, as I said before, the advice and consent of the Senate, and that certainly does not suggest automatic consent.

We have a constitutional obligation to evaluate the President's choices. As all judicial nominees, Mr. Estrada had his job interview before the Judiciary Committee. At his Judiciary Committee hearings, Mr. Estrada refused to answer important questions. My colleagues who serve on that committee asked the appropriate questions about his judicial philosophy, such as his views on key Supreme Court decisions, but he failed to respond or was unwilling to respond to fundamental and simple questions expected of a nominee before that committee.

I mentioned that before I came to the Senate I ran a pretty good sized company, and when we would interview people for important positions in our company we would expect them to be completely responsive to our inquiries. If someone was evasive, refused to answer reasonable questions, we would not hire them. It would not be fair to our shareholders, our customers, and the other employees of the company to hire someone who refused to answer basic questions about how they would handle the job.

In the case of Miguel Estrada, we have someone who refused to answer questions regarding his nomination for a lifetime position. We, in the Senate, have a constitutional responsibility to review the nominees fully and have our consciences clear when we decide their fate. This nomination should not move forward because Mr. Estrada has left too many questions unanswered. He has kept many of his views on important legal matters a mystery, and that is not how this process should work. That is not how it is going to work.

This has nothing to do with anyone's ethnic background. That is silly. This Democratic caucus is always looking to expand diversity, and everybody knows that. This debate is about a nominee who is not cooperating. If he thinks Roe v. Wade is unsound law, let him say it. If he thinks it is settled law and respects it as a judge, let him say that. I do not think this nominee should move forward until serious questions about his legal philosophy have been answered.

Some of my colleagues on the other side act as if this is unprecedented for a Presidential nominee to not receive a vote, but there were Clinton nominees who could not even receive a hearing, no less a vote. I wish to remind the Senate of some of the names we heard from our Democratic whip the other day, people such as Judith McConnell, John Tait, John Snodgrass, Patrick Toole, Wenona Whitfield, Leland Shurin, John Bingler, Bruce Greer, Sue Ellen Myerscough, Cheryl Wattley, Michael Schattman, James A. Beaty, Jr.; J. Rich Leonard, Anabelle Rodriguez-Rodriguez, Helene White, Jorge Rangel, Jeffrey Coleman, James Klein, Robert Freedberg, Lynette Norton, Robert Raymar, a fellow from New Jersey whose name came up, could not get a hearing, Legrome Davis, Lynne Lasry, Barry Goode, H. Alston Johnson, James Duffy, Elana Kagan, James Wynn, Kathleen McCree-Lewis, Enrique Moreno, James Lyons, Kent Markus, Robert Cindrich, and the list of those who waited for such long periods is rather lengthy. We are talking about 57 nominees who were never allowed votes by the Republican-controlled Senate: 31 circuit and 48 district judges, 57 of those never allowed votes; 31 circuit court nominees, 22 blocked from getting a vote or being confirmed. There is person after person. One person waited more than 1,500 days, Helene White, never to be allowed a hearing or a vote. Richard Paez waited more than 1,500 days, finally confirmed. The list goes on.

So when I hear the complaining about how unfair the Democrats have been, I just say look back over our shoulder not too long ago and see the number of people who waited and waited and could not get any attention at all.

Mr. Estrada is getting attention, a lot of attention, and if he was responsive appropriately, I am positive a vote would have taken place and we would all have registered our opinion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, Senator BYRD wished to come to the floor and speak for about 45 minutes. I spoke to him a few minutes ago. He indicated he would be ready to go at quarter after 5. The Senator from Washington wishes to speak for 10 or 12 minutes. So I do not think it would greatly inconvenience anyone if I ask unanimous consent that the Senator from Washington be recognized for up to 12 minutes, and following her statement that Senator BYRD be recognized for up to 45 minutes.

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

The Senator from Washington.

Mrs. MURRAY. Mr. President, I rise today to discuss the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia. Throughout my service in the Senate, we have struggled with judicial nominations. I know we can make the process work.

In Washington State, I worked with a Republican Senator and a Democratic President to nominate and confirm Federal judges, and today, with a Republican President I am working with my Democratic colleague from Washington State on a bipartisan process to recommend judicial candidates.

I have also seen the process work in the Senate. My Democratic Senate colleagues agreed to confirm 100 Federal judges during the period of the 107th Congress when Democrats were in the majority. That is a great accomplishment for a Democratic Senate and a Republican President.

There were also periods during the Clinton administration where the Republican Senate confirmed significant numbers of judges appointed by a Democratic President. It is important to put this standoff in the proper context. We are considering a nominee to the DC Circuit Court which is widely acknowledged as the second highest court in our country.

This court has jurisdiction over a broad array of critical issues involving workers rights, civil liberties, disabilities, and environmental regulations. Judges at the DC Circuit Court are often given serious consideration for service on the United States Supreme Court. This is a lifetime appointment. Neither the President nor the Senate can revisit this nomination once it has been confirmed.

All of these factors—the importance of the DC Circuit, the potential of consideration for the Supreme Court, and the lifetime appointment—signal Members to proceed with caution. We are not considering a nomination to a commission or an ambassadorship or some other Senate-confirmable position. This is different. This is a lifetime appointment for a Federal judge whose rulings over the next 30 or 40 or more years will have ramifications for every single American.

I respect President Bush's role in nominating Miguel Estrada. I respect the majority's right, working with the President, from the same party, to promptly move judicial appointments. I come to the floor today to ask my colleagues to respect the Senate's constitutional advice and consent responsibilities. As Senators, we are elected to serve our constituents. We are asked to confirm judges whose decisions can change U.S. history and shape the lives of the American people for generations to come. That is a tremendous responsibility. I know all Senators take it very seriously.

Let me say a few words about the nominee now before the Senate. Miguel Estrada, by all accounts, is an accomplished lawyer with a compelling personal history. But I owe it to my constituents to make an informed judgment on his nomination. At this time I

am simply not prepared to move forward with a vote on the nomination of Miguel Estrada because there is too little information for me to make an informed decision. I encourage the majority leader to take this nomination off the floor at this time. We expect Federal judges to provide the proper check in our system of checks and balances outlined in the Constitution. Without it, our system does not function properly.

We must ensure each nominee has sufficient experience to sit in judgment of our fellow citizens, will be fair to all those who come before their court, will be evenhanded in administering justice, and will protect the rights and liberties of all Americans. To determine if a nominee meets those standards, we need to explore their record, ask questions, and weigh their responses. Miguel Estrada and the administration have failed to address these basic issues. And without addressing these basic issues, I cannot assess the nominee's qualifications. From my perspective, the Senate has been asked to confirm a candidate about whom we know very little. I cannot at this time vote to confirm Miguel Estrada for lifetime service on the DC Circuit Court.

As several of my colleagues have done, I need only to invoke the words of the chairman of the Judiciary Committee to describe my hesitancy to move forward with the Estrada nomination. Speaking of President Clinton's judicial nominees and the Senate, Senator HATCH said the Senate will have ''to be more diligent and extensive in its questioning of nominees' jurisprudential views.''

Mr. Estrada and the administration have failed to meet the same standard set out by Senator HATCH. Mr. Estrada has failed to provide through his writing, his experience, or through answers to questions at the Judiciary Committee, any meaningful insight into his likely decisionmaking process as a Federal judge. He has very limited scholarly or judicial experience. He did work in the Solicitor General's Office at the Department of Justice during the 1990s. But, unfortunately, the administration has refused to provide the Senate with or characterize any opinions he wrote or had while at DOJ.

Despite repeated requests from Senators, the nominee and the administration have refused to provide information that can help all Senators determine whether Miguel Estrada is deserving of confirmation to a lifetime appointment to the Federal bench. Allowing Senators to access the memoranda he wrote while at the Solicitor General's office is particularly important.

Unlike most judicial nominees, he has nothing on paper to give us any indication as to how he would rule on the bench. In fact, Mr. Estrada has not had any published legal writings since he was in law school.

Time and again, we are told by the administration that Miguel Estrada is a brilliant lawyer and more than qualified to serve on the D.C. Circuit Court. Yet, all we have to base a decision on his nomination are the endorsements of others. I appreciate these endorsements, but each of us as Senators must reach our own conclusions based on the facts. I am greatly troubled by the silence we have heard from the nominee himself.

The path to confirmation for a judicial nominee is indeed a difficult one. But in the case of Mr. Estrada, the nominee and the administration went beyond anything we are accustomed to and brought great difficulty upon themselves. At his confirmation hearing before the Judiciary Committee, Mr. Estrada refused to give Senators straight answers to most of their questions.

Many of our Judiciary Committee colleagues have discussed this nomination at great length here on the floor. I have listened to the statements from both Democrats and Republicans on the Judiciary Committee.

The words of Senator FEINSTEIN stands out as I look at this nomination. Let me share them again with the Senate.

Senator FEINSTEIN said:

> I have been reviewing background materials about Miguel Estrada, talking to those who have concerns about him, and I have reread the transcript from Mr. Estrada's hearing.
>
> I must say that throughout this process, I have been struck by the truly unique lack of information we have about this nominee, and the lack of answers he has given to the many questions raised by Members of this Committee.
>
> He, essentially, is a blank slate. And, if confirmed, he could serve for 30, 40, or even 50 years on one of the highest courts in the Nation. We has better be right about this decision.

Mr. President, I agree with that assessment. The Senate must be right about this decision. That is why so many on this side of the aisle have asked the majority leader to help us be right about the Miguel Estrada nomination.

At a minimum, Mr. Estrada should be sent back to the Judiciary Committee for more questioning. In the Committee, he should be more forward in answering the questions of Senators. He should be more willing to release information regarding his opinions about important judicial matters.

Mr. Estrada was asked to name any case in the history of the Supreme Court with which he disagreed. Surely, Mr. Estrada—who served as the editor of the Harvard Law Review—can cite a case that he disagrees with. At his original confirmation hearing, Mr. Estrada could not cite a single case before the Supreme Court he disagreed with. The Senate should give Mr. Estrada another opportunity to answer this question before the Judiciary Committee.

Mr. Estrada was asked to name a Supreme Court judge that he admired. When he refused to answer this question, Mr. Estrada was asked to name any Federal judge that he admired. Again, Mr. Estrada refused. The Senate should give Mr. Estrada another opportunity to answer this question before the Judiciary Committee.

Unless the Senate is able to learn more about Miguel Estrada, I am left to conclude that this nominee has no judge he would try to emulate, no judicial philosophy he follows, and no opinion on any important case that has ever come before the Supreme Court.

Without so little information to determine how Mr. Estrada will rule as a Federal judge on important matters of labor rights, rights of privacy, civil rights and environmental regulation, I cannot consent to considering his nomination at this time.

I strongly encourage the majority leader to withdraw this nomination and send it back to the Judiciary Committee. I encourage the President and the nominee to address the many issues raised by Senators.

The ultimate fate of the Miguel Estrada nomination—was well as the Senate's ability to move forward with bipartisan support for judicial nominees—rests with the majority leader and the President of the United States.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the distinguished Senator from West Virginia, who is to be recognized following the statement of the Senator from Washington, has agreed the Senator from Arkansas could speak for up to 6 minutes prior to his speech. There is no one here on that side, so I don't think it inconveniences anyone.

I ask unanimous consent that the order now in effect be changed to allow her to speak for up to 6 minutes before Senator BYRD speaks.

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

The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, I certainly thank my colleague from West Virginia for his courtesy and kindness in letting me go forward. I appreciate it.

Mr. President, I come to the floor today to express my frustration with the nomination of Miguel Estrada to the Court of Appeals for the DC Circuit. I have never before opposed a judicial nominee, but after much prayer and reflection I cannot support this nominee until he is able and willing to cooperate with the Senate in its Constitutional responsibility to advise and consent. I believe all executive and judicial nominations that come before the U.S. Senate are entitled to courtesy and respect. I also believe the U.S. Senate's role of advise and consent is an important check and balance that our forefathers instituted, and it is an obligation that I do not take lightly. I know our forefathers put it there for a good reason. Each nominee is entitled to a thorough and fair hearing, and I have fully evaluated each of President Bush's nominees as the Constitution

mandates. In every case before us, I have supported President Bush's nominees. Yet I can not in good conscience support this nominee at this time based on the lack of information that has been made available and the manner in which this nomination has been presented. Is it too much to ask of a person who is being offered a lifetime position to simply answer a few questions?

As a nominee seeking Senate confirmation, Mr. Estrada has the burden of proof to demonstrate his fitness for the high office he seeks. During the confirmation process, a nominee can meet this burden in many ways depending in part on the background and experience of an individual at the time of appointment. Another consideration is the level of scrutiny warranted for a life-time appointment to an important judgeship. Finally, one critical element I look for in all nominees is a willingness to cooperate with the Senate and show deference and respect for the process we engage in here in the Senate.

As many of my colleagues have already established, Mr. Estrada comes to the Senate with a very limited written record upon which to make an informed judgment. To make our job even more difficult, the administration has refused to release relevant information that would shed much needed light on this nominee's judicial philosophy and reasoning. Moreover, Mr. Estrada seemed determined to be evasive and unresponsive to questions put to him during his confirmation hearing.

After weighing these factors, reviewing the committee record, meeting personally with Mr. Estrada, and considering the views of hundreds of constituents and interested organizations, I am not satisfied that Mr. Estrada has met the burden required for confirmation to such an important position.

Even though Mr. Estrada is reluctant or unwilling to say so, I assume Mr. Estrada has a conservative ideology and that he and I would disagree on many issues. But after voting for every judicial nominee to come before the Senate since I took office, I can say with credibility that Mr. Estrada's ideology doesn't prevent me from supporting his nomination. A nominee's particular views or political beliefs don't bother me, so long as I am confident that nominee can separate his personal beliefs and opinions from his duty as a Federal judge to follow established precedent and interpret the law and Constitution fairly and without political bias.

What concerns me a good deal, however, is the unwillingness of the administration and Mr. Estrada to respond directly to reasonable requests for legitimate information. How hard is it to answer questions about Supreme Court cases that have been on the books for years? Why is the administration so unwilling to allow U.S. Senators to review written material that would help us discharge our duty under the Constitution?

I believe having judges from different backgrounds is important, and I salute President Bush for nominating an Hispanic to serve on this court. I fully support efforts to diversity the Federal judiciary so that it is more representative of our society. But I cannot support Mr. Estrada simply because he is Hispanic.

Charges of racial insensitivity have no place in this debate. This Senate has already confirmed unanimously seven of President Bush's Hispanic judicial nominees.

Like all nominees that come before the Senate, Mr. Estrada must answer questions put before him. I want to make clear that the questions Democrats asked of Mr. Estrada are no different than the questions Republicans have asked of nominees. In fact, when the current Attorney General served on the Senate Judiciary Committee, he asked a judicial nominee the same question that Mr. Estrada refused to answer. The question was: ''Which judge has served as a model for the way you would conduct yourself as a judge and why?'' Mr. Estrada was asked and refused to answer a similar question.

When I let my boys off at school this morning—they are 6 years old and in the first grade—they were having problems with a buddy at school, in their class. They were saying: What do we do with this, Mom? How do we handle it?

Do you know what I said to them? I said: Work with him. Figure it out. Work with him.

That is simple, and it is simply what Democrats have told Mr. Estrada: Work with us. We are trying to do our job, to satisfy our constitutional responsibility, in good conscience, to meet the job we are sent here to do by the constituents who believe in us. If that means reviewing oral arguments and briefs of a few cases so that Mr. Estrada can state an opinion on at least one case decided by the Supreme Court in the last 40 years, why not do it? No one disagrees that Mr. Estrada has a distinguished academic and professional background. He is a very nice man. I met with him. My responsibility is not just to put nice people into judgeships.

He graduated magna cum laude from Columbia and magna cum laude from Harvard Law School, served as editor for Harvard Law Review, and clerked for a Supreme Court Justice. It should not take him more than an afternoon, or less, to do a little research so that he could answer the questions that members of the Judiciary Committee have put before him.

I call on the administration to let Mr. Estrada answer the questions the Senate has put before him, in good faith, so that the Senate can vote on Mr. Estrada. Is it really too much to ask, to simply say we need more information to make an important judgment on a very important, lifetime nomination? Please, give us the ability to execute our responsibilities under the Constitution. Is it too much to ask of one man, who is before us, who has the burden of proof, to show us his capabilities? Is it too much to ask, to simply say let's spend a couple of more hours, answer a few questions, and move forward? Because this Nation has a great deal to deal with. We have many issues on our plates and many things we need to address immediately. I simply say to my colleagues, is it too much to ask, to simply answer a few questions?

Mr. President, I especially thank my colleague from West Virginia for his yielding to me and allowing me to move forward.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, may I say to the distinguished Senator from Arkansas, my favorite Supreme Court Justice was John Marshall. It is not a very hard question to answer.

U.S. RHETORIC GOES OVER THE TOP

Mr. BYRD. Mr. President, the language of diplomacy is imbued with courtesy and discretion. Diplomats the world over can be counted on to choose each word of every public statement with precision, for an ill-received demarche could turn allies into adversaries or cooperation into confrontation.

Like most professions, diplomacy has its own lexicon. As John Kenneth Galbraith wrote in 1969, ''There are few ironclad rules of diplomacy but to one there is no exception: when an official reports that talks were useful, it can safely be concluded that nothing was accomplished.'' And when we hear a seasoned envoy refer to a ''frank and open discussion,'' we know that he is actually talking about a knock-down, drag-out fight behind closed doors. While negotiation can steer great powers away from a course that would lead to war, we can usually count on public statements about diplomacy to be underwhelming—not overwhelming but underwhelming.

There have been exceptional times when bold statements have energized world opinion. When President Reagan stood on the Berlin Wall in 1987 and proclaimed, ''Mr. Gorbachev, tear down this wall,'' he spoke to millions of Germans who longed to be freed from oppression. While I would not go so far as to credit a single phrase with hastening the fall of the Eastern Bloc, certainly President Reagan's statement reflected the resolve of the West to oppose communism.

There have also been a fair number of bold statements to the world that have backfired. For example, Nikita Khrushchev squandered whatever credit he might have gained through a goodwill tour of the United States in 1959, when he visited the United Nations the next year. The Soviet Premier famously exclaimed to the West, ''We will bury

you,'' while slamming his shoe on the table in front of him. This ill-advised outburst was a vivid depiction of an irrational and out-of-control superpower.

Fortunately, the United States has a tradition in foreign policy of being slow to anger. We have nurtured a reputation of being rational and deliberate. I doubt that Americans would have much tolerance for a president who used the United Nations as a forum for testing the construction of his footwear on the nearest table. It would be a great departure for the United States to use its foreign policy organs as a means to spread divisive rhetoric.

Unfortunately, the tone of our foreign policy in recent months has been in a steady decline. To some of our allies, the United States, through its words and its actions on the crisis in Iraq, is beginning to look more like a rogue superpower than the leader of the free world. Many newspapers in European capitals criticize U.S. policy toward Iraq. Moderate Muslim nations, such as Jordan and Turkey, are growing progressively suspicious of American motives in the war against terrorism. An increasing number of people in Arab countries are coalescing around an outright hatred of the United States.

Let us remember that President Bush came to office promising to change the tone in Washington. I wonder if the current tone of American foreign policy is what he had in mind? One source of alarm is the tone of the National Security Strategy released by the White House in September 2002. In broad strokes, the strategy argues that the United States should use its overwhelming military power to engage in preemptive strikes to prevent others from ever developing the means to threaten our country. The strategy notes a preference for working with allies to keep the peace, but underscores the willingness of the United States to act unilaterally.

The content and the tone of these important pronouncements in the National Security Strategy sparked outcry, in the United States and around the world. The report gave critics plenty of ammunition to make their case that the United States is a 400 pound gorilla that will stop at nothing to get its way. Our strategy leaves much of the world the impression that Americans agree with the quotation of the late Chinese leader, Zhou Enlai, which turned the axiom uttered by the military strategist Carl von Clausewitz on his head: ''All diplomacy is a continuation of war by other means.''

There are many examples of provocative rhetoric that have escalated the stakes of our standoff with Iraq. In his 2002 State of the Union Address, the President coined an ''Axis of Evil,'' comprised of Iran, Iraq, and North Korea. In October 2002, the White House press secretary suggested that regime change in Iraq could be accomplished with ''the cost of one bullet.'' On December 30, 2002, President Bush said that Saddam's ''day of reckoning is coming.'' The next day, he chided a reporter who asked about the prospect of war in Iraq by saying, ''I'm the person who gets to decide, not you.'' The President's coarse words did nothing to ease criticism of American unilateralism.

Several members of the President's national security team warned Iraq in January 2003 that ''time is running out'' for Iraq, and that such time was measured in weeks, not months. On Sunday talk show interviews on January 29, the White House Chief of Staff refused to rule out the use of nuclear weapons in a war against Iraq. On February 6, President Bush ominously declared that ''the game is over.'' With each of these statements, the chances of war appeared to grow.

To be fair, the President and his advisors have repeatedly stated a preference for the peaceful disarmament of Iraq. But as I speak right now, many Americans believe that war is inevitable. Through words and through action, the United States appears to be on a collision course with war in the Persian Gulf. Stating a preference for a peaceful solution is not enough to alter the heading of our great ship of state.

If our rhetoric toward Iraq is not alarming enough, the last weeks have seen an appalling increase in criticism of our allies and the United Nations.

On September 12, 2002, President Bush delivered a strong and effective speech that urged the United Nations to take action to disarm Iraq. The President said: ''All the world now faces a test, and the United Nations [faces] a difficult and defining moment. Are Security Council resolutions to be honored and enforced, or cast aside without consequence? Will the United Nations serve the purpose of its founding, or will it be irrelevant?''

The President threw down the gauntlet, and the United Nations acted. Inspectors have returned to Iraq, and they are doing their job. The inspectors have asked for more time, but the President has now challenged the U.N. to authorize the use of force, or again face irrelevance.

And so, the world is now wondering, which is the greater threat to the relevance of the U.N.: a rogue nation that flaunts the will of the international community; or a permanent member of the Security Council that views the institution as useless unless the institution submits to its will? This hand has been overplayed. More threats of U.N. irrelevance will only portray the United States as a bully superpower.

European allies who do not share our view on the crisis in Iraq have recently been in the cross hairs for verbal bombardment. Secretary of Defense Rumsfeld has lumped Germany in with Libya and Cuba as the principal opponents of war in Iraq. He also characterized Germany and France as being ''Old Europe,'' as if their economic and political power does not matter as compared to the number of Eastern countries that comprise New Europe.

Richard Perle, a senior advisor to the Department of Defense, has also had choice words about our European allies. In October 2002, Mr. Perle recommended that German Chancellor Schroeder resign in order to improve relations between our two countries. On January 30, Mr. Perle followed up this charge by saying: ''Germany has become irrelevant. And it is not easy for a German chancellor to lead his country into irrelevance.'' Spreading his criticism around, Mr. Perle stated that ''France is no longer the ally that it once was.'' So far as I can tell from press reports, Mr. Perle, who is the Chairman of the Defense Policy Board, has not been admonished for his inflammatory statements.

Such vindictive criticism of our European allies has had repercussions. According to a new poll, published in the Financial Times Deutchland on February 10, 57 percent of Germans agree with the statement, ''The United States is a nation of warmongers.'' And now we find ourselves in a pointless stalemate with our NATO partners over military assistance to Turkey. If we had been more temperate in our rhetoric, perhaps we could have worked through the anti-American tone of the recent elections in Germany. Instead, we find ourselves escalating a war of words against two great European powers, who were powers—and who were great powers—before ours became a republic.

And so, Mr. President, how we communicate our foreign policy makes a difference. We expect North Korea or Iraq to use inflammatory propaganda to speak to the world, but we are a more dignified nation. There are ways for our country to indicate resolve without resorting to bellicosity. The subtext to nearly every new White House statement on Iraq is that the United States has run out of patience. The administration is signaling its willingness to use an extreme amount of military force against Iraq when many still question the need to do so, when many in our own country still question the need to do so, when some in this Senate still question the need to do so at this time. We need to change our tone.

Impetuous rhetoric has added fuel to the crisis with Iraq and strained our alliances. Before committing our Nation to war with Iraq and the years of occupation that will surely follow, we should repair the damage to our relations with our allies. I urge the President, and the administration, to change the tone of our foreign policy—to turn away from threatening Iraq with war, to turn away from insulting our friends and allies, to turn away from threatening the United Nations with irrelevance. Our rhetoric has gone awry, our rhetoric has gone over the top, from giving an indication of our strength to giving an indication of our recklessness.

I have learned from 50 years in Congress that it is unwise to insult one's adversaries, for tomorrow you may be in need of an ally. I have found in my 56 years in politics that today's opponent may be tomorrow's friend. There will come the day when we will seek the assistance of those same European allies with which we are now feuding. But serious rifts are threatening our close relationship with some of the great powers—the truly great powers of history—some of the great powers of Western Europe. The Secretary of State said yesterday that NATO is at risk of breaking up. Mr. President, it is time that we pause. It is time that we take a look at ourselves. It is time to put our bluster and swagger away for the time being. I urge the President to calm his rhetoric, repair our alliances, and slow down in the charge to war.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. CANTWELL. Mr. President, last night I sat in my office listening to my colleagues, most on the other side of the aisle, debating the issue of Miguel Estrada's nomination to the second most powerful court in the country, the District of Columbia Circuit Court of Appeals. Even after all of the debate, some people may not realize that the D.C. Circuit Court is the overseer of all Federal agencies. It is the court that is most likely to make decisions about whether Federal regulations will be upheld or overturned, whether reproductive rights will be retained or lost, or whether intrusive Government actions will be allowed or curtailed.

I understand why some of my colleagues last night may have become heated with the determination of our side of the aisle to filibuster this nomination. Many of my colleagues wanted to know why we believed we had no other choice but to filibuster the nomination.

It is time we quit dancing around the issue. The question that has gotten so many of us concerned is whether this body is going to approve Bush administration nominees to the court of appeals who are out of step with the mainstream views of America.

Someone said last night: Maybe that side of the aisle doesn't want to appoint conservatives.

That is not the issue. What is at issue is we don't want to appoint someone who clearly refuses to answer questions on key issues of the constitutional right to privacy, only later to find out they will not uphold current law on protecting a woman's right to choose!

Upholding a woman's right to choose is an important issue of privacy and something about which we should all be concerned, It is an issue on which we have 30 years of settled law, and women across America count on that right.

But there are other stories and other issues of privacy we should also be concerned about. We are at a unique time in our country's history, a time when U.S. citizens have been treated as enemy combatants and imprisoned without access to counsel or trial by jury. We are at the tip of the iceberg of the information age where businesses may have access to personal information and exploit that information. Where health care industry people might have access to your most personal medical information. Where the Government has established a process of eavesdropping on and tracking U.S. citizens without probable cause. Where the Government has the ability to use and develop software that can track one's use of web sites and information on their personal computer without their consent or knowledge.

These are all important privacy questions that deserve to have the attention of any nominee to the Circuit Court of Appeals. When Miguel Estrada refused to answer the questions my colleagues on the Judiciary Committee posed to him about the issue of privacy, and if he in fact believed in a constitutional rights to privacy, it was troubling to me and to my colleagues who are opposing this nomination. We need to have answers to these questions before Miguel Estrada can be confirmed.

Make no mistake—the public is hearing a lot of bickering in the Chamber about numbers. How many nominees on this side have we pushed through, how many nominees have they pushed through, when a particular party was in charge. I am not sure the public wants to follow that debate.

But one debate I am sure they want to follow is the failure of Miguel Estrada to tell us what he believes. A 2001 poll shows that seventy four percent of the American public believes the question of judicial philosophy should be asked of nominees to the appellate court and that answers should be given. Over 50 percent of Americans, in a survey done in 2001, believe Members should not vote to confirm otherwise qualified nominees if they think their views on important issues are wrong.

Of course we cannot even make that judgement and we aren't left with a lot of options, when Miguel Estrada won't specifically answer the questions.

Some have said that the issue is simply that we don't like his answers to the questions. I do believe that it is important to view this debate in a larger context. This debate is about what this Administration means when it says we should appoint people to the court and who have a strict constructionist view of the Constitution. Like most Americans, I was not entirely sure what that phrase means. So I looked for further clarification. I found some that was very interesting. In January 2000, the President appeared on one of the Sunday talk shows. And he was asked about strict constructionism. He was asked the following:

With regard to strict construction, we will put up on our screens some words from Justice Scalia pertaining to abortion.

[Justice Scalia] said: ''There is no constitutional right to abortion. I reach that conclusion because of two simple facts: One, the Constitution says absolutely nothing about it and, two, the longstanding traditions of American society have permitted it to be legally proscribed.''

The host then asked the President, ''Would you ask a nominee that question? Do you agree with that?''

The President responded:

I guess you would have to say that is my idea of a strict constructionist.

So when people talk about a strict constructionist, very often they are talking about someone who doesn't believe in the constitutionality of a woman's right to choose.

An editorial in the Atlanta Journal Constitution makes the point as well when they wrote:

The same spirit of deception is apparent when the topic turns to abortion. Bush is committed to overturning the U.S. Supreme Court decision legalizing early term abortion; but in most settings, he dares not mention the truth because he understands how unpopular it would be. So instead of being frank about his stance, he talks in code of appointing judges who believe in strict construction of the U.S. Constitution.

Mr. President, I don't think that is what this body should support. And in this context I do not think we should approve nominees who will not answer questions about their view on whether the right to privacy is guaranteed in our Constitution.

Make no mistake about it. This is not about someone's political views, this is about each nominees' judicial philosophy. We had a very interesting debate before the Senate Judiciary Committee on a nominee to the Tenth Circuit, Michael McConnell. A man who in private practice and as a law professor had espoused many views in opposition to abortion rights and was very critical of the decision in Roe v. Wade. I do not agree with probably any of the political views of Michael McConnell. Yet he came before our committee and, for hours, outlined his judicial philosophy, his understanding of stare decisis, his view on where the right to privacy exists within the Constitution and how it evolved. He was very specific in saying he thought the issue had been settled. In just one of the many, many answers he gave on privacy he said:

I think most scholars would agree. In Roe, the Court canvassed several different possible textural bases and said it didn't matter which one of the bases. It was only in Planned Parenthood v. Casey that the Court finally came down to a single methodology and identified the privacy right as rooted in the substantive due process of the 14th amendment.

Mr. McConnell went on:

> Not only was Roe v. Wade decided by the Supreme Court, but a lot has happened in the 26 to 27 years, or however many it has been, since Roe v. Wade. That decision has now been considered. It has been reconsidered and reaffirmed by justices appointed by Presidents Nixon, Ford, Reagan, Bush, and Clinton after serious re-argument. At the time when Roe v. Wade came down, it was striking down State statutes of 45 of the 50 States of the Union. Today it is much more reflective of the consensus of the American people on the subject.

I offer this as an example of a nominee who was confirmed! Approved with bipartisan support. Was it because we agreed with his political views on abortion? No. It was because he came before the Senate and answered the question about the constitutionality of people's right to choose.

Now, some may say, well, this particular nominee, Miguel Estrada doesn't want to be that specific. We have all heard about this particular court, the District of Columbia, and how important it is to our country—the second highest court in the land—and the particulars of why this particular nominee may be so important. But again we also have to look at this nominee in context. This is not the first troubling nominee this administration has supported. They have put before us other individuals who, I believe, have been judicial activists in their role on various courts. We have been successful in defeating their nomination. Although we may be going to see them sometime in the future.

Several months ago, the President nominated Priscilla Owen to the Fifth Circuit. In a series of cases interpreting a new Texas law on parental consent, Owen suggested that a minor, even in the case of rape and incest, should be required to demonstrate that she had received religious counseling before receiving medical care.

She insisted that her holding followed Supreme Court precedent, yet she was unable to demonstrate where in the Supreme Court precedent the requirement on religious counseling existed. That is because it doesn't. Our law does not require those seeking abortion to have religious counseling. Her dissent in a similar case was called an ''unconscionable act of judicial activism,'' by White House Counsel, Alberto Gonzales.

Another Bush nominee, Charles Pickering, received an unfavorable vote from the Senate Judiciary Committee last year after it became clear he had intervened on behalf of a convicted cross burner, calling prosecutors, including high-level officials in the Department of Justice, in an effort to lower the sentence of the convicted cross burner. The victim in this case said, after learning for the first time about the role that was played by Judge Pickering, that her ''faith in the judicial system had been destroyed.''

This is the context in which we view the nomination of Miguel Estrada. It is not clear where Miguel Estrada stands on the issues. He doesn't have a record like Priscilla Owen, or like Judge Pickering, about which we can ask questions. So the fact that he refuses to answer those questions, and the fact that the administration has proclaimed that they are very interested in nominating people with ''strict constructionist'' views about the Constitution, has left us very concerned about this particular nominee.

Let me be clear. The public doesn't care about our bickering on numbers, but they do care about us doing our job and asking questions about the nominee's views on important issues.

Another survey that was done last year asked whether individuals thought the views of nominees on specific issues should be taken into account, that Senators are expected to have a viewpoint by the people who elect them and not simply rubberstamp the nominees the President sends to the Senate. And 77 percent found that to be the persuasive argument to which they agreed.

The public was also asked whether the views of nominees on specific issues should be taken into account since Federal judges serve for life and are not elected by the people, and no one should be put on the bench if that person holds a position on an important issue that Senators think is simply wrong. Again, 77 percent of the public believed that was a persuasive argument and correct.

The issue is that the public does want us to do our job. They want us to find out the positions of these nominees.

It was not that long ago we had another issue before this body, a nomination to the Supreme Court of Justice Clarence Thomas. At that time, Judge Thomas refused to answer questions on the right to privacy, saying he thought there had been too much controversy on the issue and he did not have a personal view on whether Roe v. Wade had been rightly decided. But then, only one year later, he dissented in Planned Parenthood v. Casey stating that Roe v. Wade should be overturned!

This debate is very alarming to Americans. It is alarming because they want to know that their judiciary represents the views of the mainstream public; they want to know that the judiciary will uphold current law; that they will follow stare decisis. They want to know that the right of privacy, as it has been recognized in the Constitution, will be upheld.

We have to go back and do our homework on this particular nominee. I think most people in America understand if you go to take a pass-fail test and you do not answer the questions, it is very hard for you to pass. We have all heard of oral exams where you have to show and understand the material you have been studying for years. If you do not show the comprehension of that material, you do not pass. I think people here understand that if you come before the Senate Judiciary Committee and fail to answer the questions, you do not pass as well.

Maybe we will not agree on the types of positions this side of the aisle would support for a nominee. Maybe that side of the aisle does support people of strict constructionist views who do believe that Roe v. Wade should be overturned, but let's not put forth and continue to pursue a nominee who refuses to answer the questions. These are questions that deserve an answer. These are questions about which this body should hold its head up high and say, as we continue in an age where privacy is going to become more important, we will continue to fight for the rights of the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I haven't had the opportunity in the last couple of days to have my say on Mr. Estrada. I thought I would take the time now to talk a little bit about the nomination of Miguel Estrada for the D.C. circuit court.

I have to say that there has been a lot of nonsense bandied about in the Chamber on the nomination and the idea of whether we are holding something up. Facts are bothersome things, as they say. What some people say in the past may come back to haunt them in the future.

It was Mo Udall, former Congressman, who coined the wonderful phrase. He always said: O Lord, let me always utter kind and humble words for tomorrow morning I may have to eat them.

I was looking back through the record. The current chairman of the Judiciary Committee in 1997 addressed the Utah chapter of the Federalist Society. This is what the current chairman of the Judiciary Committee said:

> The Senate can and should do what it can to ascertain the jurisprudential views a nominee will bring to the bench in order to prevent the confirmation of those who are likely to be judicial activists. Determining who will become activist is not easy since many of President Clinton's nominees tend to have limited paper trails. Determining which of President Clinton's nominees would become activist is complicated and would require the Senate to be more diligent and extensive in its questioning of nominees' jurisprudential views.

That is interesting because when Mr. Estrada refused to answer even the most simple, straightforward questions, that sure doesn't help us in questioning his jurisprudential views. There is no doubt in anyone's mind that Mr. Estrada is a movement person. He will be a movement judge, one who will try to move the court in a certain ideological direction.

What also concerned me was something my colleague Senator HATCH from Utah said the other day. He said:

> An up or down vote, that is all we ask. If the Democrats have enough votes to defeat Miguel Estrada, I will not complain about it. I might feel badly about it and I might say it was the wrong thing to do, but they have

a right to do it. If my colleagues who disagree do not like this, they can speak out. They can give their reason. They can vote no. Politics ought to be left out of it.

That is what the Senator from Utah said last night. Unfortunately, I am sorry that his sentiments didn't exist when President Clinton's nominees came up for confirmation. I recall saying just about the same thing over and over again on the nomination of Bonnie Campbell to serve on the Eighth Circuit. She received her hearing in May of 2000 and then her nomination was stopped cold. Despite the fact she had the ABA stamp of approval, a long and distinguished history in the field of law, including her work as Iowa's attorney general. Members on both sides of the aisle supported her nomination. On September 21 and October 3, I tried to bring it up. Then during the month of October I brought up Bonnie Campbell's nomination seven times and seven times the Republican majority objected.

The Senator from Utah kept talking last night about the Democrats' double standard. My first instinct is to call that claim laughable. But in reality, it is outrageous and duplicitous to us because so many extremely well-qualified nominees never got an up-or-down vote on the floor, never got a vote in committee, and many never even got a hearing.

Bonnie Campbell had a hearing, but then they stopped her cold. Senator HATCH suggested Bonnie Campbell's nomination came too late in the last year of the last administration. I know for a fact that two of Senator KYL's district court judges were nominated after Bonnie Campbell was, and they were confirmed on October 3, 2000.

And now back to Mr. Estrada. We're not holding Mr. Estrada up because we feel like spending all of our time through the wee hours of the night talking about him. We're holding up because he hasn't told us anything. He hasn't answered the soft ball questions that nearly all judicial nominees have more than willingly answered. What's he got to hide?

I don't know Mr. Estrada. To the best of my knowledge, I never met him. But I do know we have heard from people who do know him, who have associated with him, some of whom have termed him ''scary'' in his outlook, scary in what he might do as a judge. I don't know if he is or not, but I know the people who have associated with him have called him that. They think he is some kind of a rightwing kook. I don't know if he is or not. How do we know? Well, the stealth candidate hasn't helped when he won't even answer the most simple, straightforward questions. So we have no way of knowing one way or the other.

It is our job as Senators to examine nominees, their background, their way of thinking to determine what kind of judges they would be and whether or not they can fairly and impartially administer the law. And as far as this Senator is concerned, I keep coming back to the same conclusion: we don't know enough about him to make an informed decision on his nomination to a lifelong appointment to the second most important and influential court of the land.

Even after I find out more about him, I may vote against him, but I don't think we even have to bring him up for a vote until we know more about Mr. Estrada. Is he a rightwing kook? I don't know. Some people say he is. Some people say he is scary. We have no way of knowing at this point in time. That is why we should not bring his name up. We should not move forward on this until we find out more—unlike Bonnie Campbell, who answered all the questions and gave all the documents they ever asked of her. Yet, they would not even bring her name to the floor.

So to my friend from Utah who says there is a double standard, I say look in the mirror.

Mr. President, with that, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, if my friend will yield.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I thank the Chair. The two managers of the bill—which we hope will be on the Senate floor before long—will return before long, just so the distinguished Senator from Utah is aware of that.

Mr. HATCH. On the appropriations bill.

Mr. REID. Yes.

Mr. HATCH. I will be happy to yield at any time to them.

Mr. President, before I came to the floor, I understand the distinguished Senator from Iowa criticized me for having a double standard. If I recall correctly, he said, I believe, I should look in the mirror when I talk about double standards.

Also, during last night's debate, several of my Democratic colleagues attacked my record on moving Clinton nominees. I heard some of these attacks repeated this morning by the Senators from California. This surprised me and it very much disappointed me since I worked hard to get not only Judge Paez but also Marsha Berzon, now Judge Berzon, confirmed, despite the opposition to their nominations, and there was serious opposition. That is one reason it took so long for Judge Paez, and there were some very serious allegations. But I was able to fight through those, and I can guarantee this body that neither of those judges would have gone through had it not been for my work.

I might add, neither would have a whole bunch of the 377 Clinton judges who did get through—the second highest total of confirmed judges in the history of the country—had it not been for what I was trying to do to help my colleagues on the other side.

I understand my dear friend from Iowa is very bitter about what happened to one of his judicial nominees. I do not blame him for that. He has always been a friend. I am disappointed that he would attack me on the floor and accuse me of a double standard because he knows better, and if he does not know better, he ought to know better.

I was unable to get his nominee through for a variety of reasons. I do not want to go into them here. I feel badly because of that. I personally liked his nominee, but there were things I was able to do as chairman and there were things I was unable to do. The one point nobody can rebut is that President Clinton was treated very fairly in getting the second highest total of Federal judges through in the history of the country of any President. President Reagan got 382 judges through, 5 more than President Clinton. With regard to those 382 judges, President Reagan had 6 years of a Republican—his own party—Senate to help him.

President Clinton had 6 years of the Republican Party in charge of the Judiciary Committee, and I was chairman during those 6 years.

I think he would be the first to say that I helped him, or he would be a baldfaced liar. I know he is not that. So I would presume that he would be willing to admit, as a decent honorable person, that Senator HATCH worked closely with him in trying to get those 377 judges through.

Unfortunately, I was not able to get some through some nominees about which some of my colleagues on the other side of the aisle feel very bitter. I apologize to them. I feel badly about that because there are things I could do and things I just could not do. There were a lot of things people did not think I could do that I did do. I am not perfect any more than anybody else, but I can say this: I do not think any other Senator could have gotten done what I got done with regard to fairness for the Clinton nominees.

In contrast, I do not think what is happening to President Bush's nominees is fair at all. In fact, here we are in a filibuster for the first time in history against a Hispanic judge who has risen to the top of his profession, even though he has a disability. That bothers me a lot, to be honest with you.

I did work hard to get Judge Paez and Judge Berzon through and confirmed, despite the opposition to their nominations, which opposition was not without merit. There were some legitimate concerns on the part of some of the Senators on this side of the floor.

The fact remains that I lobbied for cloture on those two nominees, and

they were afforded an up-or-down vote, something Miguel Estrada is not being afforded. They were afforded an up-or-down vote as a result of my efforts. They were both confirmed and both sit today on the Ninth Circuit Court of Appeals, a very prestigious circuit court.

Let me say this. I will stay here all day and all night, if I have to, to defend my record on Clinton judges because it is very unfair for anybody who looks at the record to say I personally did not treat him well.

With regard to my friend from Iowa, I am disappointed he would attack me on the floor of the Senate, but I will say to him, I understand his feelings, his very deep feelings, and he felt very bitter that his nominee did not get through, a personal friend and somebody whom I personally liked.

With my Democratic friends complaining so vociferously about the Republican treatment of Clinton nominees, which is totally unjustified, in my opinion, it leads me to believe that this shabby treatment of Miguel Estrada is driven in large part by a Democratic goal of retribution. That is all we heard last night in the questions from the Democratic side: Why didn't you do this? Why didn't you do that?

If that is the way we play the game, my gosh, I can give 100 cases where this side ought to have some retribution against them. I, frankly, do not believe in that. Call it tit for tat if you want to, call it payback, call it what you will, but I, for one, am becoming more and more convinced with each Democrat who takes the floor to complain about the Republican treatment of Clinton nominees that their opposition to Miguel Estrada is more about revenge than it is about Mr. Estrada. That bothers me a lot, to be frank.

Mr. President, I also understand the distinguished Senator from Iowa said that people who know Mr. Estrada have called him a right-wing kook. I do not know anybody who has called him a right-wing kook, not anybody on the face of the Earth. The only persons who would do that are those who act irresponsibly, and I have not even heard any irresponsible people do that. So there is little or no reason for anybody on the floor of this Senate to demean Miguel Estrada, and that is what this debate has devolved to, and it bothers me.

I caution my colleague from Iowa to respect other people. We all make mistakes, and we all say things that perhaps we should not say, and I will treat it that way this one time. But I do not want ever again to hear anybody on this floor call Miguel Estrada a right-wing kook or any other nomination by President Bush, any more than we should have called some of the far-left judges who were nominated by President Clinton left-wing kooks.

We never did that, or at least I do not ever recall doing that. I certainly did not, and I do not recall anybody else doing it on our side.

I just wonder who those mystery people are who called Mr. Estrada a right-wing kook. The only person I know of who has gone on record saying anything negative about Mr. Estrada, out of all the persons who have worked with him, is Mr. Bender, who has been more than, I think, rebutted, both in committee and on this floor, by his own performance reviews of Miguel Estrada that could not have been more glowing. And then when he has a chance to say something nasty because Miguel Estrada is now nominated to the circuit court of appeals, he chooses to do so. It is beneath the dignity of a law professor to do that, especially after giving those glowing performance reviews, even though he says everybody got those. Everybody knows that is not true.

If it is true, then it is a sad commentary for our Government. But then again, even though he admits everybody got those glowing performance reviews, he claims the reason for that is because these are the best lawyers in the country. Reading between the lines of his letter, that is what he basically said. That is as much as saying Miguel Estrada is one of the best lawyers in the country.

How can he be so inconsistent? He is the only one I know, and even he, as low as his comments are, did not call Miguel Estrada a ''right-wing kook.''

He has no credibility. I am just sorry in some ways for the law students who have to take his classes. I would prefer law professors—I do not care if they are liberal or conservative. Most of them are liberal, but I would prefer them to be honest people. I prefer them to have some dignity about their comments. I prefer them to be decent people teaching our young adults.

It is a pathetic thing that almost every law school in this country has a whole raft of left-wing professors who, if they had to, probably could not make a living at the practice of law. Maybe they could make a living, but they could not stand the rigors and the difficulties of practicing law. It is a lot easier to teach two classes a week and pontificate from their high perches as liberal law professors to the detriment of some of these law students. It is a pathetic thing. Anybody who has gone to law school knows how far left an awful lot of those professors are.

Are they bad people because they are far left? No. Some of them are terrific teachers and terrific people. Most of them are honest, which is something I cannot say for Mr. Bender with the way he has approached this thing.

I remind my friend from Iowa that we have a standard in the Senate against relying on anonymous allegations, even though I have seen people on that side bring up anonymous allegations where Mr. Estrada could not even confront those making the allegations. That is just hitting below the belt. Senator BIDEN made it clear that should never happen, and yet it has happened in this Chamber and it has happened in committee. I, for one, am fed up with that kind of inappropriate behavior by Senators. It is beneath the dignity of these Senators to do something like that. Senator BIDEN's policy was: if they are not willing to face the person they are accusing, then they are not worthy of being listened to. I agree with him, and I intend to stick to that very same policy.

I am going to forget these derogatory comments by the distinguished Senator from Iowa. I have never held a grudge. It is one of my weaknesses as a Senator. I just plain cannot hold a grudge against my colleagues. I have had some of my colleagues come up to me and say, boy, you ought to have a grudge against that guy. I just cannot do it.

Personally, I love everybody in this body. And I think everybody knows that. It is against everything I believe to hold a grudge. So I am not going to do that and I am going to forget what was said today, but I do not want it ever said again. Nor do I want to have some stupid staffer putting words in the mouth of another Senator. That happens every once in a while. We should not allow staffers, no matter how bright they are or how stupid they are, to cause us to do things that are inappropriate on the floor of the Senate and to make accusations that are not justified against somebody who worked his guts out to try and help President Clinton get his judges through, because I believe the President of the United States has a right to have his judges voted on up or down.

I have made that clear throughout my tenure as chairman, and everybody knows it. I have had countless Democrat Senators say they know I am not responsible for some of the problems that happened. Then again how many are responsible over on my side, because 377 Clinton judges went through?

We were the opposition party putting them through. And they are complaining? We are in the second month of a brand new session of Congress and we cannot even get the first circuit court of appeals nominee, the first Hispanic nominated to the Circuit Court of Appeals for the District of Columbia, we cannot even get him a vote up or down because for the first time in history a true filibuster is being conducted against this Hispanic nominee. Now, that is a real double standard, not the one the distinguished Senator from Iowa is talking about.

People get emotional sometimes. I may be a little bit myself right now. I think I am somewhat justified under the circumstances, and I make allowances for that. I hope my colleagues will make allowances for me right now.

I keep hearing that Miguel Estrada has no record. That is a slander. And for those who have written it, it is a libel. The Judiciary Committee has confirmed numerous Clinton court nominees who, like Miguel Estrada, had no prior judicial experience. What a ridiculous argument, that a person

should not be on the bench because he has no prior judicial experience. Where would all those Clinton judges be? They would not be on the bench today if we had that as a rule, and neither would many of the top Supreme Court Justices in history, including Thurgood Marshall, whom nobody in this body would be against today—bless his departed soul. He, of course, had no prior judicial experience when he was nominated to the federal appellate bench.

A number of Clinton nominees worked in the Justice Department or other branches of the Federal Government, like Miguel Estrada, but Senate Democrats made no demands for their internal memoranda or privileged work product and, I might add, neither did we Republicans. We did not make those demands. We knew that would be a red herring to slow down the nominee.

We know this is a fishing expedition, and nobody in their right mind who understands government, who understands the separation of powers, who understands privilege, and who understands the right of the Solicitor General's Office to keep its own memoranda of recommendations on appeals, on certiorari, and on amicus briefs confidential would make this demand. It is one of the most ridiculous assertions I have seen, and yet that is the basis on which they are hanging this filibuster. There is nobody in any administration who would allow the Senate to muddle around and make public and politicize legal memoranda and recommendations, in those three areas at least—in other areas as well, but especially those three areas—appeal, certiorari, and amicus curiae recommendations.

Democrats are saying Miguel Estrada has no judicial experience, and therefore he should not be on the bench. What about Merrick Garland? I personally pushed Merrick Garland through. There were those who did not want to push him through, but before the end they all realized he was an exceptional man, a very good person, no more than Miguel Estrada is, but pretty darn exceptional, and he still is. He is a good judge. He was confirmed as a judge for the DC Circuit in 1997. He had never been a judge before. He had held several positions in the Department of Justice. Like Mr. Estrada, he was a partner in a prestigious DC law firm. But did anyone seek confidential memoranda from his time at the Justice Department? Absolutely not. We would not have stooped that low. To use it as a red herring so they could justify a filibuster, that is even stooping lower.

William Bryson is another one who was confirmed as a judge on the Federal Circuit in 1994. He had never been a judge. He held several positions at the Department of Justice and was an associate at a prestigious firm in town. Senate Democrats never asked for the confidential memoranda he wrote during his time at Justice. The list goes on.

Blane Michael was confirmed as a judge on the Fourth Circuit in 1993, his first judgeship, never having been a judge before. Why is it that he can be a judge and we should work to get him on the bench but Miguel Estrada should not be a judge because he had no prior judicial experience? Well, neither did Blane Michael, but he is sitting on the Fourth Circuit Court of Appeals, his first judgeship. He had been a Federal district court clerk and served as a Federal prosecutor in New York and West Virginia before becoming a partner in a law firm. He had virtually no published writings, just like Miguel Estrada. Again, however, no one tried to gain his confidential privileged memoranda from his time as a Federal prosecutor before confirming him, and we would not.

Arthur Gajarsa was confirmed to the Federal Circuit in 1997. He was a clerk to a Federal district judge, then worked as an in-house counsel at an insurance company and later as a special counsel at the Department of Interior before joining a law firm. Did Democrats demand his internal memoranda? After all, he, like everyone else mentioned, had never been a judge. But, no, he was confirmed like the rest without anyone reviewing his confidential work product.

Then there is Eric Clay, confirmed to the Sixth Circuit in 1997. He never had been a judge before. He was a law clerk to a Federal district court judge, and worked in a law firm. What did we know about him that we do not know about Mr. Estrada? Absolutely nothing. We did not seek his confidential memoranda. We confirmed him anyway. We did what was right.

Another was John Kelly, whom we confirmed for the Eighth Circuit in 1998, yet another Clinton nominee to the circuit court who had never been a judge. He had worked in the Office of General Counsel for the Secretary of the Air Force before going into private practice. But Republicans never sought his internal memoranda, and he had very few published writings.

What about Sid Thomas? He was confirmed to the Ninth Circuit Court of Appeals in 1996 and had never been a judge. In fact, he had not even had a clerkship. He also had very few published writings. Democrats, however, did not cry out about his lack of a record. The entire transcript of his hearings takes up less than 2 pages in the RECORD. Why is it that he was treated differently than Miguel Estrada? I suspect it is because we gave President Clinton's nominees the benefit of the doubt in almost all cases. But this crew on the other side is not giving this President the same fair treatment that we gave to President Clinton.

I could go on and on but I think I made the case. Democrats opposing Miguel Estrada consistently failed to seek internal memoranda for Clinton nominees who had no prior judicial experience and little in the way of publications. The Democrats' claim that they have to do so now for Miguel Estrada simply does not hold water.

Now, naturally, I guess they wouldn't want to get internal memoranda to use against their own president's nominees. They wouldn't want to go on a fishing expedition that might hurt their own nominees, but neither did we. Now why are we using this red herring to justify a filibuster against one of the finest nominees I have seen in 27 years on the Senate Judiciary Committee—Miguel Estrada?

Let me address, once again, the Democrat demand to hold Mr. Estrada's nomination hostage for confidential internal memoranda. The Department of Justice historically has not disclosed confidential, deliberative documents from career lawyers in the Solicitor General's Office in connection with a judicial nomination. The Senate historically has not even asked the Department to do so.

My Democratic colleagues are creating a new double standard that applies only to the nomination of Miguel Estrada. A double standard, why is that? I ask the people out there who are watching C-SPAN, why is it that all of a sudden they are asking for all these things from the only Hispanic nominee in the history of the Circuit Court of Appeals for the District of Columbia? I think everyone out there must know by now. I don't think I even have to spell it out, but maybe I should spell it out a little bit.

Every living former Solicitor General has denounced the Democrats' demands. Every one of them, four of whom are eminent Democrat former Solicitors General. I have said this before but I think it is worth repeating. That letter was signed by Democrats Seth Waxman, Clinton's Solicitor General; Walter Dellinger, one of Clinton's top people in the White House; Drew Days, and Archibald Cox; and by Republicans Ken Starr, Charles Fried, and Robert Bork.

All seven have said, in essence, that this is ridiculous, that the Justice Department should not turn over confidential recommendations on appeals, certiorari petitions, and amicus curiae petitions.

The Solicitors General explained that the frank exchange of ideas on which their office depends ''simply cannot take place if attorneys have reason to fear their private recommendations are not private at all but vulnerable to public disclosure.''

The letter concludes that:

> [A]ny attempt to intrude into the Office's highly privileged deliberations would come at a cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself.

Now, longstanding historical practice confirms that deliberative memoranda are off limits during confirmation hearings. Since the Carter administration, the Senate has confirmed former Justice Department employees—even those with no prior judicial experience, as I have already explained—without demanding to see their confidential

memoranda. It should not adopt a new double standard for Mr. Estrada's nomination.

Since 1997, the Senate has approved 67 appellate nominees who previously worked at the Justice Department, including 38 with no prior judicial experience. The Department did not disclose deliberative memoranda for any of those nominations. In fact, the Senate did not even request such documents. Seven of the 67 were in the same position as Mr. Estrada. They had worked for the Solicitor General and had not been judges previously. These seven nominees were nominated by Presidents of both parties and were confirmed by Senates controlled by both parties. Again, the Justice Department did not disclose deliberative memoranda in any of these nominations. The Senate did not even request such a disclosure for good reason, because we knew it was improper.

None of the so-called disclosures cited by the Democrats are precedent for the sweeping demands they are making regarding Mr. Estrada. In fact, only two of their purported ''precedents'' have even involved lawyers who worked in the Solicitor General's Office. And the Democrats' examples did not involve turning over what the then-chairman of the committee, Senator LEAHY of Vermont, demanded—amicus, certiorari, and appeal recommendations.

Let me address some of the specific examples my Democratic colleagues have represented as pressing for their demand. One is Frank Easterbrook, who is a judge on the Seventh Circuit. The Democrats' mere possession of a single memoranda, a 2-page amicus recommendation that Mr. Easterbrook wrote as an Assistant to the Solicitor General, does not suggest that the Justice Department waived any privileges or authorized it to be disclosed. The official record of the Easterbrook confirmation hearing contains no references to this document.

After comprehensively reviewing its files, the Justice Department concluded that it never authorized the release of the documents. It was probably leaked by some Democrat in the Justice Department. That makes it wrong. Yet it is being used as an example on the floor.

Last fall I sent a letter to Senator SCHUMER, then to Senator LEAHY, specifically asking for information about how the Democrats obtained this memorandum. To this day I have received absolutely no response to my question. I think there is good reason for that—because the document should never have been leaked to begin with.

This single document provides no precedent for the Democrats' sweeping request for every document Mr. Estrada ever prepared, which is what they have asked.

Mr. President, I ask unanimous consent that the letters I wrote to Senator SCHUMER of New York and Senator LEAHY of Vermont, inquiring about the source of the Easterbrook memos, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 1, 2002.

Hon. CHARLES E. SCHUMER,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR SCHUMER: Thank you for chairing last Thursday's hearing on the nomination of Miguel Estrada to the United States Court of Appeals for the District of Columbia Circuit. I write to seek your clarification on a matter which you raised at the hearing.

You reiterated your belief that the Department of Justice should turn over certain appeal, certiorari and amicus recommendations that Mr. Estrada authored when he served as an Assistant to the Solicitor General. As precedent for this request, you noted that during the nomination of Judge Frank Easterbrook to the Seventh Circuit Court of Appeals, similar memos were turned over to the Committee. You produced those documents and placed them into the hearing record. When Republican staff requested copies of the documents, only one of the three documents we received appeared to pertain to Judge Easterbrook. That document consists of a two-page memorandum referencing another memorandum prepared by someone else.

At the hearing, you did not explain whether the Committee had ever formally requested this document, or the other two documents, from the Department of Justice, or whether the Department of Justice consented to their disclosure. The written record of Judge Easterbrook's hearing contains no such documents, or even a mention of them. So that the record of Mr. Estrada's hearing is as complete as possible, please advise whether you have any information that the Committee requested these documents from the Department of Justice and whether the Department consented to their disclosure to the Committee. If the documents were neither requested of nor produced by the Department of Justice, please indicate the manner in which the Committee came to possess them.

Thank you for your prompt attention to this matter. I look forward to your response.

Sincerely,

ORRIN G. HATCH,
Ranking Republican Member.

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 10, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: On October 1, I sent a letter to Senator Schumer seeking clarification of questions about certain documents that he submitted for the record at Miguel Estrada's confirmation hearing. These documents consisted of memoranda that Senator Schumer stated were provided to the Committee by the Department of Justice during the nomination of Judge Frank Easterbrook to the Seventh Circuit. Senator Schumer cited these documents as precedent for your request that the Department release to the Committee appeal, certiorari and amicus recommendations that Mr. Estrada authored when he served as an Assistant to the Solicitor General.

When Republican staff requested copies of these documents, however, only one of the three documents provided appeared to pertain to Judge Easterbrook. That document consists of a two-page memorandum referencing another memorandum prepared by someone else. The written record of Judge Easterbrook's hearing contains none of the three documents, or even a reference to them.

Enclosed is a copy of my letter to Senator Schumer, which seeks clarification of whether the Committee requested these documents from the Department of Justice in connection with Judge Easterbrook's confirmation and whether the Department consented to their disclosure to the Committee. It also asks for an explanation of the manner in which the Committee came to possess the documents in the event that they were neither requested of nor produced by the Department of Justice.

Yesterday, Senator Schumer's office advised my staff that the full Committee provided him with the documents at issue and, for this reason, he is deferring to you for a response to my letter. I look forward to hearing from you, particularly in light of the October 8 letter of Assistant Attorney General Dan Bryant, which stated the Department's conclusion that it did not authorize the release of the Easterbrook memorandum.

Sincerely,

ORRIN G. HATCH,
Ranking Republican Member.

Mr. HATCH. Let's take a closer look at another one of the Democrats' alleged examples. William Rehnquist, the current Chief Justice, during his hearings to be Associate Justice, refused to reveal the private advice he had given to other Justice Department officials while he was Assistant Attorney General for Legal Counsel.

He stated:

[I]nsofar as I may have been asked for advice in the process of making administration policy decisions upon which the administration has not taken a public position, there, I think, the lawyer-client privilege very definitely obtains.

By the way, he was confirmed as a Justice on the Supreme Court.

Furthermore, on November 5, 1971, the Attorney General specifically refused to waive the attorney-client privilege after a Senator asked him to do so, stating:

I can well appreciate your personal, intense interest in probing into all aspects of Mr. Rehnquist's work while at the Department of Justice. I am sure you appreciate, however, that it is essential to the fulfillment of my duties and obligations that I have the candid advice and opinions of all members of the Department. Further, I am sure you realize that if I should consent to your request or other requests to inquire into the basis and background of advice and opinions that I receive from the members of my staff, it would be difficult to obtain the necessary free exchange of ideas and thoughts so essential to the proper and judicious discharge of my duties.

The Rehnquist example is irrelevant for the additional reason that none of the information sought related to amicus, certiorari, and appeal recommendations. Indeed, Chief Justice Rehnquist never served in the Solicitor General's Office.

Let's look at a third example that my Democratic friends claim justifies the release of confidential Solicitor General Office memos—Benjamin Civiletti. During his 1979 confirmation hearings to be Attorney General—and I

was there in the Senate Judiciary Committee at the time—the Senate did not request materials that he had prepared previously as a Department of Justice official. Rather, it simply sought assurances that Civiletti would cooperate with the Senate's oversight of the Justice Department in the future. Mr. Civiletti never specified which documents he would be willing to turn over or which documents would be privileged.

During his 1978 hearings to be Deputy Attorney General, the Senate obtained documents related to allegations that Mr. Civiletti had interfered with an investigation of an alleged kickback scheme involving Members of Congress. The documents related to specific charges of misconduct. Unlike during Mr. Civiletti's confirmation, there have been no allegations that Mr. Estrada engaged in any improper behavior or otherwise failed to discharge his duties.

As I recall it, Mr. Civiletti was not found to be wanting in that area either. None of the Civiletti materials were amicus, certiorari, or appeal recommendations. Indeed, Mr. Civiletti never served in the Solicitor General's Office.

Now let's turn to Brad Reynolds. The Senate sought and received materials in the course of pursuing specific allegations that Mr. Reynolds, while Assistant Attorney General for Civil Rights, failed to enforce the Voting Rights Act and the Civil Rights Act. As with Mr. Civiletti, the Department's disclosure was limited to specific cases of alleged misconduct. There have been no allegations that Mr. Estrada engaged in any improper behavior or failed to discharge his duties while working at the Solicitor General's Office. Significantly, although Mr. Reynolds had previously served as assistant to the Solicitor General, and it was a very-hard fought confirmation, the Senate never suggested that his appeal, certiorari, or amicus recommendations should be divulged—never. Nobody would have stooped to that level at the time.

Another alleged example that our friends have brought up is Jeffrey Holmstead. In 2001, the Senate requested 41 files that Mr. Holmstead created during his service as Associate Counsel to the first President Bush. The White House declined. After Mr. Holmstead's hearing, the Senate, based on its particularized concerns about one specific subject, requested documents related only to that matter. Because of the specificity of the Senate's concerns, the White House accommodated the committee by permitting review of documents related to that one subject matter while expressly preserving all privileges. Mr. Holmstead is no precedent for the current set of sweeping requests for every appeal, certiorari, or amicus recommendation that Estrada prepared during his years in the Solicitor General's Office.

The criticism that Miguel Estrada is refusing to provide the Senate with insight into his personal views does create a double standard. My Democratic colleagues did not require nominees of President Clinton to answer questions of this sort. In fact, many Clinton circuit court nominees refused to answer such questions. President Clinton's appeals court nominees routinely testified as to their judicial approach without discussing specific issues or cases that could come before them as a judge. A few examples illustrate the point.

Each of the nominees I am talking about was confirmed to one of the circuit courts of appeals.

First we have Merrick Garland. In the nomination of Merrick Garland to the DC Circuit, Senator SPECTER asked him:

> Do you favor, as a personal matter, capital punishment?

Judge Garland replied only that he would follow Supreme Court precedent:

> This is really a matter of settled law now. The Court has held that capital punishment is constitutional and lower courts are to follow that rule.

Senator SPECTER also asked him about his views of the independent counsel statute's constitutionality, and Judge Garland responded:

> Well, that, too, the Supreme Court in Morrison v. Olsen upheld as constitutional, and, of course, I would follow that ruling.

Another example is Judith Rogers. In the hearings on Judge Rogers' nomination to the DC Circuit, she was asked by Senator Cohen about the debate over the evolving Constitution. Judge Rogers responded:

> My obligation as an appellate judge is to apply precedent. Some of the debates which I have heard and to which I think you may be alluding are interesting, but as an appellate judge, my obligation is to apply precedent. And so the interpretations of the Constitution by the U.S. Supreme Court would be binding on me.

My gosh, where is that any different from Miguel Estrada's answers? They are the same. Why the double standard? Why are we now demanding of Miguel Estrada something we didn't demand of the Clinton nominees?

She then was asked how she would rule in the absence of precedent and responded this way:

> When I was getting my master's in judicial process at the University of Virginia Law School, one of the points emphasized was the growth of our common law system based on the English common law judge system. And my opinions, I think if you look at them, reflect that where I am presented with a question of first impression, that I look to the language of whatever provision we are addressing, that I look to the interpretations of other State courts, and it may be necessary, as well, to look to the interpretations suggested by commentators. And within that framework, which I consider to be a discipline, that I would reach a view in a case of first impression.

Where is that different from Miguel Estrada's answers? Miguel Estrada answered basically the same way.

Judge Rogers also was asked her view of mandatory minimums and stated:

> I am aware, Senator, of some of the debate on the pros and cons, and certainly before I was a judge I was engaged in comment on them. But as a judge, I have been dealing with them strictly from the point of view of legal challenges to them. I have sat on a case where a mandatory minimum sentence was challenged, and we upheld it.

Finally, she was asked her view of the three-strikes law and stated:

> As an appellate judge, my obligation is to enforce the laws that Congress passes or, where I am now, that the District of Columbia Council passes.

Why is there a different standard for Miguel Estrada? Those are the same answers, basically, that Miguel Estrada gave to these similar types of questions.

Let's take another example: Kim Wardlaw. In the hearing on Judge Wardlaw's nomination to the Ninth Circuit, she was asked about the constitutionality of affirmative action. She stated, in an answer similar to Miguel Estrada's answer to the same question:

> The Supreme Court has held that racial classifications are unconstitutional unless they are narrowly tailored to meet a compelling governmental interest.

Why is there a double standard with regard to this Hispanic nominee when it was not utilized against these other nominees? These answers were perfectly all right and acceptable for these other nominees.

Now let's turn to Marsha Berzon and Robert Katzmann. In a hearing on their nominations to the Ninth and Second Circuits, Senator SMITH asked each whether legislation to prohibit partial-birth abortion was unconstitutional. Judge Katzmann responded as follows:

> I would say that that is an issue that—Senator—that is a very important issue, and that as a judge, I would really have to evaluate that issue in the context of a law that is actually passed, and then in terms of a case or controversy. In terms of adjudication, there are restrictions on judges rendering advisory opinions on particular pieces of legislation in the advance of passage. And then even after passage, I think what a judge has to do is to evaluate the case in the context of a real case or controversy.

Judge Berzon responded with the following:

> And I essentially agree with that answer. . . . .It would obviously be inappropriate to say anything further on that precisely because the issue might come before a court on which Mr. Katzmann or I could be sitting.

Why the double standard? Why aren't the answers Mr. Miguel Estrada gave given the same credibility as the answers of these two Clinton judges? Why is there a double standard? Why is he being treated differently?

I have heard countless colleagues get up over here and complain and moan and groan and try to come up with excuses for their vote against Miguel Estrada and for their filibustering for the first time in history a Hispanic judge, the first ever nominated to the Circuit Court of Appeals for the District of Columbia.

I have heard a lot of complaining. But there has not been one statement

of substance. Why is he being treated differently? Why should a Hispanic judicial nominee be treated differently than all these other non-Hispanic judges? It seems to me that he ought to be treated similarly, afforded respect. This is a man who has fulfilled the American dream as an example to countless Hispanic young people that you can make it in this society. But can a Hispanic who is deemed to be not only a Republican but a conservative—can that type of Hispanic make it? Well, I sure hope so.

Now, back to this Berzon and Katzmann matter, I interrupted Senator SMITH's questioning on partial-birth abortion and noted to Senator SMITH:

Well, Senator, if I could interrupt, you have asked some very appropriate and good questions. . . Both of them have said, in my opinion that they are not sure how they would decide the case, and that they wouldn't want to give the opinion that they have now without hearing all the facts and evidence. . . . But they both say that that could likely come before them and that they are going to have to decide it at that time.

Now, those two Clinton judicial nominees, Judge Berzon and Judge Katzmann. Some might say that they provided nonanswers to important questions they were asked. But I think they provided legitimate answers for the important reason that those questions might come before them someday in the event of their confirmation.

Why should Miguel Estrada be treated any differently by my colleagues on their side when I personally counseled one senator on my side that the answers of these Clinton judges were sufficient?

They were appropriate answers that they gave because they shouldn't have been talking about cases that could possibly come before them.

Let me go to Judge Maryanne Trump Barry.

I am now talking about circuit judges who made it through the system without any of this rig marole that has surrounded trying to defeat Miguel Estrada.

In the hearing on Judge Barry's nomination to the Third Circuit, Senator SMITH asked whether ''an unborn child at any stage of pregnancy is a human being.''

Senator SMITH is not an attorney. But anybody on the committee can ask any question they want to ask. He asked whether ''an unborn child at any stage of pregnancy is a human being.''

That was a loaded question—no question about it.

Judge Barry responded:

Casey is the law that I would look at. If I had a personal opinion—and I am not suggesting that I do—it is irrelevant because I must look to the law which binds me.

My goodness. Why is Miguel Estrada being treated differently than Judge Barry, or any of these other circuit court of appeals judges who were not Hispanic? Why is he being treated differently? Why isn't he accorded the same respect? Why is he expected to do more? Why is it that it is tough for him? Why is it that my friends on the other side of the aisle who claim to be for civil rights and who claim to be for equal rights and who claim to be helpers to minorities are treating this man this way?

I hope everybody in America is asking that question—because I don't think they can answer it. I have to say that a lot of political things are done for political reasons. We are fighting for a Hispanic nominee to the circuit court of appeals. And you saw virtually every Republican in the Chamber last night fighting for Miguel Estrada.

Where were the Democrats? Backbiting, raising false issues, raising lousy issues, raising I think sometimes immature issues, raising irrelevant issues, raising red-herring issues, treating him totally different from the way they wanted their caucasian nominees to be treated.

Why is this different? Is it because Mr. Estrada is Hispanic? I don't believe that. I don't believe my colleagues are prejudiced against Hispanics. But I believe they don't want a Republican Hispanic to serve on the Circuit Court of Appeals for the District of Columbia no matter who is President, but especially when there is a Republican President. I don't think you can conclude anything else.

After watching these proceedings and after listening to these statements, where is one point of substance against that nominee? In all of this debate, where is it? It isn't there.

Why do they think his answers are insufficient when they are virtually identical to their non-Hispanic nominees' answers? Is it because they are trying to do a better job for the judiciary than the Republicans were trying to do? I don't think so—no better than this Republican was trying to do, I will tell you that. I was in a position to do a lot.

How about Raymond Fisher? In the hearing on Judge Raymond Fisher's nomination to the Ninth Circuit, Senator SESSIONS asked about Judge Fisher's own personal views on whether the death penalty was constitutional.

He had a right to do that. But Judge Fisher also had a right to respond. He responded:

My view, Senator, is that, as you indicated, the Supreme Court has ruled that the death penalty is constitutional. As a lower appellate court judge, that is the law that I am governed by. I don't want in my judicial career, should I be fortunate enough to have one, to inject my personal opinions into whether or not to follow the law. I believe that the precedent of the Supreme Court is binding and that is what my function is.

That is exactly, in essence, the language that Miguel Estrada used. Yet he is being criticized. Why? Is it because, as some of the Hispanic Caucus in the House said, he is just not Hispanic enough; or that he hasn't done enough for the Hispanic community? What more can a young man do than to rise to the top of his profession as a Hispanic and as an example to every young Hispanic in this country—man and woman?

They are telling us what a Hispanic has to do to be accepted by the Democratic Hispanic Caucus in the House which is so partisan that they are undermining the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia. I think they should be ashamed.

As for Congressman MENENDEZ asking me for an apology—is he kidding? I think the apology is owed to the whole Hispanic community by the Democrat Hispanic Caucus over in the House which is undermining every Hispanic judicial nominee in the future, if they are saying—if they did, if I recall it correctly—because he has no judicial experience he should not have the privilege of sitting on the Circuit Court of Appeals for the District of Columbia.

I have previously gone through more than two dozen Clinton nominees who had no prior judicial experience and who are now sitting on the circuit court of appeals.

In the joint hearing on Judge Fisher and Judge Barry, Senator SMITH asked whether the nominees would have believed that there was a constitutional right to abortion without the Roe v. Wade precedent.

This is very similar to questions that Senator SCHUMER of New York asked certain nominees.

But I interrupted Senator SMITH to say—to my own colleague on my own side, one of my close friends in the Senate—as chairman, I said: ''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.''

Think about that. I basically told my own colleague that he was out of line in asking that question, even though he had a right to do it.

Everybody knows I am pro-life. Nobody doubts that. I have stood up for that, and I will always stand up for it because it is the right thing to do. It is the moral, upright thing to do as well. To have 39 million abortions in this society and millions more around the world primarily because of Roe v. Wade is something that every American ought to be analyzing and asking, What is going on here?

When we find that so many on the other side of the aisle support even partial-birth abortion where a full-of-life baby capable of being born outside of the mother's womb and living is basically killed by a doctor by ramming scissors into the back of its skull before that baby is pulled out so they can suck the brains out—and then say that is not a human being?

I don't see how anybody can stand up with that kind of barbaric practice, but it has been done.

Every time I think of one of these judges and how well we treated them

and how fairly we treated them, and then I see the contrast of how they are treating Miguel Estrada, I want the American people to know this. This is pure bunk on their side. Where is the substance? Why would they be filibustering for the first time in history and establishing this dangerous precedent where both sides can require 60 votes for anybody to become a judge in this country? And the Presidents will no longer control this process. Presidents will have to succumb to the almighty Senate if that becomes the rule.

That is what they are playing with over there. It is unbelievable. Presidents will no longer control the nomination process in any respect. They will have to do whatever the Senate says.

I cannot think of a worse thing that could happen to this country, because the judiciary is one-third of the separated federal powers in this country.

My gosh, let me go to Richard Tallman, since we are going through to show how they treated their nominees a lot differently than they are treating this Hispanic nominee.

I hope every Hispanic in this country is listening because it affects every Hispanic in the country, Democrat, Independent, and Republican.

Richard Tallman. In followup questions to his hearing on his nomination to the Ninth Circuit, Senator SMITH asked Judge Tallman whether ''there are any questions that you feel are off limits for a Senator to ask?''

Judge Tallman's response:

A Senator may ask any question he or she wishes. Judicial nominees are limited by judicial ethical considerations from answering any question in a manner that would call for an ''advisory opinion'' as the courts have defined that or that in effect would ask a nominee to suggest how he or she would rule on an issue that could foreseeably require his or her attention in a future case or controversy after confirmation.

Senator SMITH also asked Judge Tallman several questions regarding how he would have decided certain Supreme Court cases, including Brown v. Board of Education and Roe v. Wade. Judge Tallman's answer to the Roe question was as follows. His answer to the other question was the same:

It is entirely conjectural as to what I would have done without having the opportunity to thoroughly review the record presented on appeal, the briefs and arguments of counsel, and the supporting legal authorities that were applicable at that time. I would note that the Supreme Court has since modified Roe v. Wade, in Planned Parenthood v. Casey.

Look, that is an answer no different than the answers for which they are criticizing Miguel Estrada. Why is that? Why is it they are not being fair to this Hispanic nominee? Why is it they do not care about fairness? Why is it they are not being fair to the nominees of the President of the United States? Why is it they are not observing the Senate practice of not filibustering nominees to the Federal courts of this country? Why is it Miguel Estrada's answers, which were basically the same as these answers, are considered nonanswers when these were considered substantive answers? Why is there a double standard? I do not understand this. Why is there a double standard?

I got off on this because of the comments of the distinguished Senator from Iowa that I have set a double standard. I defy him to show where I have, because I have been fair. Again, I will repeat, the all-time confirmation champion was Ronald Reagan, with 382 confirmed Federal judges. That was amazing. Everybody thought that was amazing. Democrats have been mad ever since, that we could have confirmed 382 Reagan nominees to the Federal bench, almost all of whom have served with distinction in the best interest of this country, working with Democrat judges as well.

Reagan had 6 years of a Republican Senate to help him get those 382 through. President Clinton got virtually the same number, and he had 6 years of an opposition party in control of the Senate. He did not have 6 years of his own party helping him. He actually had 6 years of an opposition party. I was chairman, and he got virtually the same number—astounding. He was treated fairly.

And for anybody to walk on this floor and criticize me because we were unable to get through some of the judges at the end of the session is disingenuous. There were much fewer left over at the end of President Clinton's tenure than there were at the end of Bush 1. We did not complain that there were 54 judges left over at the end of Bush 1 and, in essence, only 42 left over at the end of Clinton.

But I do bitterly resent anybody coming in here and saying I had a double standard, when I worked so hard, and had to overrule a number of my colleagues—not a big number, but a small number of colleagues—who wanted, yes, some of them wanted to filibuster, and I helped to overrule that. And they all realize today why they should have never even contemplated that. And this has helped to bring it into even greater focus.

I am calling on my colleagues on the other side to bring it into focus and realize this is dangerous stuff they are playing with here. It is dangerous. It could cost this country and all future Presidents control of the nominations process.

Now, they do not control it completely. We have an obligation, too. Our obligation is to advise and consent. Now, advise and consent does not mean advise and filibuster. It does not mean advise and obstruct. It does not mean advise and help some people but treat others with a different standard, like Miguel Estrada is being treated here. It does not mean that. And advise and consent does not mean advise and filibuster, to go back to that point.

If they succeed in this, they will have established, I believe, an unconstitutional precedent I am not sure we can get rid of afterwards. And I believe you are talking about upwards of 60 votes needed for every future judge of any quality and, I have to say, taking away a great deal of the President's power to nominate these judges, to select these judges, because no President would be able to have the right to select judges, not without the absolute blessing of the Senators. It is almost that bad now anyway.

Well, Mr. President, I think I have more than made a case that there is a double standard here. I think I have more than made the case that a lot of these Democrat judges have been treated differently from the way Miguel Estrada is being treated, and that is even not considering the filibuster.

When you consider the filibuster, that is like throwing nuclear waste all over the judiciary process, because that really is going to cause problems around here like we have never even dreamed of before.

It is inadvisable, it is wrong, it is constitutionally unsound. And it is a travesty. And it is—to use a very important word—unfair, unfair to Miguel Estrada, unfair to the President, who has nominated him, unfair to this process, unfair to Republicans on this side who treated Clinton judges fairly and well. It is unfair to our procedures around here.

With that, I yield the floor.

Mr. LEAHY. Mr. President, last night, White House Counsel Alberto Gonzales responded to the letter that Senator DASCHLE and I sent to the President this week, renewing the request that the Judiciary Committee made for the Justice Department work records of Mr. Estrada. This is a request that the Judiciary Committee first made nearly a year ago, and it is a request that has been made repeatedly since then.

I regret that, at this point, the White House remains recalcitrant and continues to stand in the way of a solution to this impasse.

For an administration that engages in lawyer-bashing at every turn, there is some irony in the fact that the White House has put a bevy of lawyers to work to compose a lawyer's brief rather than a straightforward response to Senator DASCHLE's good-faith effort to resolve this standoff.

But the letter from Mr. Gonzales does provide some new information that is quite interesting in one respect, at least. Buried within the 15-page letter is a new admission that the Justice Department and Senate Republicans had previously refused to make. The administration has finally acknowledged that there is precedent for providing the very types of documents the Judiciary Committee requested almost a year ago in connection with Mr. Estrada's nomination.

Interestingly, the administration in this letter makes no claim of legal privilege or executive privilege to withhold these documents from the

Senate. Instead, the White House Counsel's Office insists on substituting its judgment for the Senate's and tells the Senate that we already have sufficient information about this nominee.

We on this side of the aisle are making the simple request that judicial nominees for these lifetime positions fully and forthrightly answer legitimate questions so the Senate can make informed decisions. Even more important than this or any other nomination itself is the straightforward principle that no nominee should be rewarded with a lifetime appointment to the second highest court in the land for stonewalling the Senate and the American people. Getting a lifetime post on the Federal courts is a privilege, not a right.

I have voted for many, many judges whose judicial philosophy I disagreed with, but at least I knew what their judicial philosophies were. In fact the Democratic Senate confirmed 100 of President Bush's judicial nominees by the end of last year, and I voted for nearly all of them. The same can be said for each and every Senator on this side of the aisle.

I hope that after getting this letter off its chest, the administration will now begin to work with us. If they did we could end the stalemate they have created.

Those of us who want to resolve this in a way that upholds the principle of the Senate being able to make an informed judgment on this and on any judicial nominees welcomed the constructive discussion on the floor yesterday that Senator BENNETT initiated, about the potential for reaching agreement on making the Justice Department documents available to the Senate. I hope this is a signal that there is at least a chance that the administration will yet comply with our request, so that this standoff can be resolved.

With the White House, the House and the Senate now all controlled by one party, we are already seeing an erosion of accountability. Democratic members of the Senate are standing up for the Senate's constitutional role in the installation of judges on the Federal courts.

Beyond the difficulties we have encountered in obtaining straightforward answers from Mr. Estrada and in obtaining his work documents, in recent weeks the overall process of evaluating judicial candidates has begun to resemble a conveyor belt for rubber stamping nominees. The conveyor belt has been going faster and faster—so fast that the nominations have begun piling up at the end of the belt. We should be trying to minimize and not maximize those kinds of ''I Love Lucy'' moments. We have had an unprecedented hearing in which not one but three controversial circuit court nominees were considered, en bloc.

In the 107th Congress, the Democratic Senate confirmed 100 of President Bush's nominees, and we did so in an orderly process and with a steady pace of hearings every single month that greatly improved on the slow and halting pace set by the previous Republican Senate in the handling of President Clinton's judicial nominees. The choice does not have to be between the slow pace of the earlier Republican Senate in the handling of President Clinton's nominees and the frenetic pace of the new Republican Senate in the handling of President Bush's nominees. We can and should find a responsible pace somewhere between those extremes.

The court to which Mr. Estrada has been nominated, the Circuit Court of Appeals for the District of Columbia, has been called the second most powerful court in the land, and for good reason. This court, in particular, affects every single American in many ways, in its decisions on everything from clean air and water issues to the voting rights of Latinos and other minorities to the health and employment rights of working men and women.

No circuit court in the Nation is more important to Hispanic Americans than the DC Circuit. I commend the Congressional Hispanic Caucus for the time, the effort its members have invested and the courage its members have shown in closely examining the record, in interviewing Mr. Estrada, and in offering its judgment about the importance of this nomination for the interests of Hispanic Americans everywhere.

What kind of cases does this court handle, and what is at stake in the decisions it renders? There is a big hint in a front page story that ran a few days ago in Roll Call, in which leaders on the other side of the aisle are reminding lobbyists for big business groups that they have a major stake in who gets on this crucial circuit court.

This process starts with the President. With a simple directive to the Justice Department, he can help the Senate resolve this. I was encouraged early in his term when the President said he wanted to be a uniter and not a divider. Yet he has sent several judicial nominations, selected foremost for their ideology, and not for their fairness, that have divided the American people and divided the Senate. And in terms of fairness, it also needs to be pointed out that the Republican Senate blocked President Clinton's nominees to this very same court.

What are we asking for? It is a simple request: We ask only for sufficient answers and information so that the Senate can make informed decisions about candidates for lifetime appointments to the Federal judiciary.

The PRESIDING OFFICER. The Senator from Alaska.

LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

The minority whip.

Mr. REID. Mr. President, Senator STEVENS had asked some time ago if we could move things along. The Senator from Iowa has agreed to allow the Senator from Minnesota, who has been waiting here a long time, to give a speech on a subject, I believe it is Iraq. And he originally wanted to speak for 20 minutes. I asked him if he would speak for 10, and he has graciously consented to do that. It is my understanding the Senator from Arizona wishes to speak.

I ask unanimous consent that following the Senator from Minnesota speaking for 10 minutes, the Senator from Arizona be recognized for a period not to exceed—how much time?

Mr. MCCAIN. One hour.

Mr. REID. One hour. I ask unanimous consent that be the order.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Actually, I object. I will not take a time agreement at this time. I will agree. I withdraw my objection.

Mr. REID. I say, before the Chair enters that, if the Senator from Arizona needs more time, we will certainly arrange that.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I thank my colleague from Nevada for this agreement. And I thank the distinguished senior Senator from Alaska, Mr. STEVENS, and Senator MCCAIN also for graciously granting me this opportunity.

IRAQ

Mr. DAYTON. Mr. President, the Senate has been dealing with some important matters these days, with a judicial nomination to the second highest court in the country, and shortly to bring up an appropriations bill that will determine spending across this country with hundreds of billions of dollars for the rest of this fiscal year.

But there is something else going on in this country which is of overwhelming importance which really should supersede all of this, and that is the imminent prospect of a war against Iraq.

At the same time we are talking about these other matters, this country is under a condition code orange, the second highest level of security we have. Our citizens have been told in the last few days to go out and get duct tape and sheets of plastic and water.

Today at the Senate Armed Services Committee hearing, of which I am a member, the Secretary of Defense called the time that we are in now ''the most dangerous security environment that the world has ever known.'' It is for those reasons I wrote the majority leader and urged we not take a recess as planned next week, that we stay in