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## Senate

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

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Dr. George D. McKinney, of Saint Stephens's Church of God in Christ in San Diego, CA.

### PRAYER

The guest Chaplain offered the following prayer:

May we pray together.

Eternal God, Creator of the universe, the Source of life, order, and truth, we bow in reverence in Your presence. We thank You for divine favor and all the values and principles that continue to shape our national character and challenge us to greatness.

We pray for our Nation, our President, his family, Cabinet, and advisors. Grant wisdom and courage to the Senators as they fulfill their responsibility to our great Nation. Empower all who shoulder the responsibility of leadership and servanthood. May our duties become delightful because of Your gifts of joy, faith, and hope.

Lord, we are grateful for the privilege of working together with You for peace and justice for all people. We affirm with our Founding Fathers and Mothers that we are one Nation under God, with a common goal of liberty and justice for all. Amen.

### PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

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

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader.

### SCHEDULE

Mr. BENNETT. Mr. President, the Senate will spend the day in executive session deliberating, once again, and for the ninth day, the nomination of Miguel Estrada to be a circuit court judge for the DC Circuit. The Senate will recess from 12:15 to 2:30 for the weekly party lunches. Between now and the next recess we have a number of important issues that the majority leader would like to see addressed. Therefore, he hopes we can get passed this delay and let the Senate work its will on this nomination. Senators should be advised, therefore, that roll-call votes are possible during the day.

The PRESIDENT pro tempore. The deputy minority leader.

Mr. REID. Mr. President, I say to my friend—in fact, the two Senators from Utah—that, as I indicated to the majority leader last night, there are three ways we can move off Estrada. The nomination can be pulled. The decision can be made by this administration that he will supply the memos from the Solicitor's Office while he worked there that he wrote and allow more questioning of Estrada. Thirdly, the majority leader can file a motion to invoke cloture to see if there are the 60 votes to move ahead.

If that does not happen, we can stay on Estrada for a long time. If there are other things to do—and I mentioned yesterday I doubt that there are—if there are other things to do, then let's move to those. If not, then we can stay in this procedural quagmire, which is something that has been done in the past.

As I indicated yesterday, there have been, of course, filibusters of Presidential nominations in the past and Presidential nominations of judges. They usually are not as open and notorious as this, the reason being they come at a later time in the session where time is of the essence. Now time is not of the essence. There are other things that the leader has decided are

not important enough to be on the floor at this stage.

So I would hope that everyone would understand that we are anxious to move on to other judicial nominations. We are anxious to move on to other legislative matters. But as long as Miguel Estrada refuses to answer the questions or to submit the memos that we have requested, this is going to be the procedural posture of the Senate.

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

Mr. HATCH. Mr. President, I have listened to the distinguished Senator from Nevada, and I have a few things to say.

Mr. President, I rise today to address, once again, the nomination of Miguel Estrada for the United States Court of Appeals for the District of Columbia Circuit.

Are we ready to go?

The PRESIDING OFFICER. Will the Senator suspend for the Senate to lay down the pending orders, please.

### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

### EXECUTIVE SESSION

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

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 21, which the clerk will report.

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

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



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The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise in favor of the nomination of Miguel Estrada for the United States Court of Appeals for the District of Columbia Circuit.

We started the debate on this nomination during the week of February 3. We debated the entire week of February 10. And now here we are again in our third week of debate, all because some of my Democratic colleagues refuse to allow an up-or-down vote on this nomination.

The renowned former Senator from Massachusetts, Henry Cabot Lodge, once said that “[t]o vote without debating is perilous, but to debate and never vote is imbecile.” Yet that is precisely what is happening on Mr. Estrada’s nomination. We are debating and debating and debating the same points again and again but never actually voting on the nomination. Enough is enough. It is time to vote.

My Republican colleagues and I have tried to get an agreement to vote on Mr. Estrada’s nomination no fewer than three separate times. Each time, our Democratic colleagues blocked our efforts. I even suggested that we agree to debate on this nomination for 10 hours, then 20 hours, then up to 50 hours before voting. Fifty hours. That is 10 hours of solid debate every day for the entire week, and 2 ½ times the amount of time that we give for a reconciliation bill around here. But each time, our Democratic friends rejected our entreaties, without hesitation or even good explanation.

We have to ask ourselves why our colleagues across the aisle are so intent on preventing a vote on Mr. Estrada’s nomination. I have heard all of their arguments. They allege he did not answer their questions, that he lacks judicial experience, and that he cannot be confirmed before they see confidential and privileged memos he authored at the Solicitor General’s Office, just to name a few. And those memos were his recommendations to the Solicitor General with regard to appeal decisions, with regard to certiorari decisions, with regard to amicus curiae decisions—very specific information that, if compromised and forced to be given to the Congress of the United States, could chill any future honest recommendations.

But all of these arguments they have raised are reasons they believe Mr. Estrada should not be confirmed. As misguided and wrong as they are, these are reasons my Democratic friends believe they should vote against Mr. Estrada. None of those arguments justifies the continuation of this filibuster to prevent an up-or-down vote on Mr. Estrada’s nomination.

So I say now to my Democratic friends: Vote for him or vote against him. That is what we should do. If you don’t like Mr. Estrada, if you don’t believe he has the capacity to be a circuit court of appeals judge, vote no. But if

you do, as I think a majority does in this body, we would vote aye. Do as your conscience dictates you must, but do not prolong the obstruction of the Senate by denying a vote on this nomination. Do not continue to treat the third branch of our Federal Government—the one branch intended to be insulated from political pressures—with such disregard that we filibuster its nominees. Do not perpetuate this campaign of unfairness. Vote for him or vote against him but just vote.

Now, an editorial that appeared in the Washington Post last week summed it up well. This editorial, aptly entitled, “Just Vote” observed—let me read the one part I want to emphasize, though I would not mind reading the whole thing—

The arguments against Mr. Estrada’s confirmation range from the unpersuasive to the offensive. He lacks judicial experience, his critics say—though only three current members of the court had been judges before their nominations. He is too young—though he is about the same age as Judge Harry T. Edwards was when he was appointed [by President Carter] and several years older than Kenneth W. Starr was when he was nominated. Mr. Estrada stonewalled the Judiciary Committee, they claim, by refusing to answer questions—though his answers were similar in nature to those of previous nominees, including many nominated by Democratic presidents. The administration refused to turn over his Justice Department memos—though no reasonable Congress ought to be seeking such material, as a letter from all living former solicitors general attests. He is not a real Hispanic and, by the way, he was nominated only because he is Hispanic—two arguments as repugnant as they are incoherent. Underlying it all is the fact that Democrats don’t want to put a thinking conservative [Hispanic] on the court.

That is what it comes down to.

Continuing from the Post:

It’s long past time to stop these games and vote.

I will read the editorial from beginning to end because it is the Washington Post. A lot of my friends on the other side love the Washington Post. I have to say that I love it, too, but not for the same reasons. This is what it says:

The Senate has recessed without voting on the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit. Because of a Democratic filibuster, it spent much of the week debating Mr. Estrada, and, at least for now, enough Democrats are holding together to prevent the full Senate from acting. The arguments against Mr. Estrada’s confirmation range from the unpersuasive to the offensive. He lacks judicial experience, his critics say—though only three current members of the court had been judges before their nominations. He is too young—though he is about the same age as Judge Harry T. Edwards was when he was appointed and several years older than Kenneth W. Starr was when he was nominated. Mr. Estrada stonewalled the Judiciary Committee by refusing to answer questions—though his answers were similar in nature to those of previous nominees, including many nominated by Democratic presidents. The administration refused to turn over his Justice Department memos—though no reasonable Congress ought to be seeking such material, as a

letter from all living former solicitors general attests. He is not a real Hispanic and, by the way, he was nominated only because he is Hispanic—two arguments as repugnant as they are incoherent. Underlying it all is the fact that Democrats don’t want to put a conservative on the court.

Laurence H. Silberman, a senior judge on the court to which Mr. Estrada aspires to serve, recently observed that under the current standards being applied by the Senate, not one of his colleagues could predictably secure confirmation. He’s right. To be sure, Republicans missed few opportunities to play politics with President Clinton’s nominees. But the Estrada filibuster is a step beyond even those deplorable games. For Democrats demand, as a condition of a vote, answers to questions that no nominee should be forced to address—and that nominees have not previously been forced to address. If Mr. Estrada cannot get a vote, there will be no reason for Republicans to allow the next David S. Tatel—a distinguished liberal member of the court—to get one when a Democrat someday again picks judges. Yet the D.C. Circuit—and all courts, for that matter—would be all the poorer were it composed entirely of people whose views challenged nobody.

Nor is the problem just Mr. Estrada. John G. Roberts Jr., Mr. Bush’s other nominee to the D.C. Circuit, has been waiting nearly two years for a Judiciary Committee vote. Nobody has raised a substantial argument against him. Indeed, Mr. Roberts is among the most highly regarded appellate lawyers in the city. Yet on Thursday, Democrats invoked a procedural rule to block a committee vote anyway—just for good measure. It’s long past time to stop these games and vote.

I think the Washington Post has it just right. The fact is there hasn’t been one good argument used against Mr. Estrada. They can’t point to one reason he should not be confirmed to this circuit court of appeals. They can’t give one logical, good, substantive reason to reject him. But I still grant them the right to vote against him if that is the way they feel. If in their hearts feel that this man will not operate on the court the way he should, then, by gosh, they have a right to do that. Naturally, I do take opposition or issues with the Post’s characterization of how we treated the Clinton nominees, but other than that, I think it is dead on.

Let me tell you why I take opposition. If you look at the facts, as I have said before, President Reagan was the all-time confirmation champion. He amazingly got 382 judges confirmed.

But he had 6 years of a Republican Senate, with control of the Judiciary Committee by Republicans, to help him to do that. I have heard so much whining from the other side about how badly President Clinton’s nominees were treated. It is repeated in this editorial to a limited degree. But the fact is, President Clinton got virtually the same number as President Reagan. Three hundred seventy-seven Federal judges were confirmed during President Clinton’s 8 years, and for 6 of those years the Republicans controlled the Senate and the Senate Judiciary Committee. He was treated very fairly.

If you go back in time, when President Bush was President, Bush 1, when he left his Presidency and the Democrats controlled the committee at that

time, there were 97 vacancies and 54 left holding. In other words, 54 nominees did not get heard. By the way, one of them was John Roberts, who has been sitting here for 11 years, nominated three times by two different Presidents for this circuit court of appeals job. It isn't just 2 years, as the Post said; it is 11 years, going on 12. That is disgraceful. He is considered one of the two greatest appellate lawyers in the country, arguing 39 cases before the Supreme Court. Yet he was blocked last week in committee as well.

The fact is, when President Clinton left office and I was still chairman of the committee, there were 41 left holding. There were 67 vacancies, 30 fewer than when the Democrats last held the committee with a Republican President leaving office. And there were 41 left holding versus the 54 left by the Democrats. We didn't cry about that—at least I didn't. That is part of the process. There are always some left holding because it is a difficult process to get through. Could we have done better? I think we could have done better; I will acknowledge that. The fact is, we didn't cry when they left 54 hanging, and they shouldn't be crying because 41 of theirs were left hanging. By the way, of the 41, at least 9 were put up so late no committee chairman could have gotten them through, so it was really only 32. And if you go back through these, for many there was no consultation with the Republican Senators, an absolute must in order to confirm people.

I happen to know this administration is consulting with Democrat Senators. To the degree that Senators say they are not, that is because they interpret the consultation to mean doing what they want rather than what the President wants. That is not the definition of consulting.

There is a point here that bears repeating because I believe that in the debate over Mr. Estrada's nomination this point has been lost. My Democratic colleagues have articulated every reason under the Sun they believe they should vote against Mr. Estrada, yet they will not allow his nomination to proceed to a vote. Why is this? I will tell you what I think, plainly put, with no window dressing: I think it is because they are afraid Mr. Estrada will be confirmed if there is a vote on his nomination. I predict he will be. They believe a majority of the Members of this body will vote to confirm him.

The only way they can prevent this from happening is to filibuster his nomination. As I said last week, when a minority of Senators prevent a majority from voting on a judicial nomination, it is nothing but tyranny of the minority. It is unfair, and it has no place in the process we use to confirm judges.

Last week, I noted that some of my Democratic colleagues were not always so eager to use a filibuster to prevent a vote on judicial nominations.

I think it is important to note again what some of my colleagues had to say about filibustering judicial nominees when there was a Democrat in the White House. The ranking member of the Judiciary Committee, the Senator from Vermont, said in 1999:

I . . . do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41.

The distinguished Senator from California, who also serves on the Judiciary Committee, likewise said in 1999:

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

She continued:

It is our job to confirm these judges. If we don't like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that don't pass muster, vote no.

My colleague from Massachusetts, a former Judiciary Committee chairman, said in 1998:

Nominees deserve a vote. If our Republican colleagues don't like them, vote against them. But don't just sit on them—that is obstruction of justice.

I wonder why it was obstruction of justice then but it is not today. It does appear to be a double standard, as White House counsel said this week on television. There is a double standard being applied to this Hispanic nominee, without any legitimate, logical, good reason for holding him up.

I think I have made my point. When the shoe was on the other foot—when a Democratic President was the one nominating Federal judges—my Democratic colleagues stood firm against the idea that a judicial nominee should be denied a vote. But now that it is a Republican President nominating Federal judges, things are obviously different to them. They apparently no longer believe it is a problem to go down a path where a minority of the Senate is determining a judge's fate on votes of 41, or requiring a supermajority vote of 60 in order to have a nominee approved and confirmed—even though our obligation is to advise and consent. That means a vote up or down. They no longer believe that voting on a nominee—whether for or against—is the honest thing to do, and they no longer believe that denying nominees a vote is obstruction of justice—which is what they called it when they had the Presidency. And liberals were being nominated and confirmed by us then.

There is no question that we are in the middle of a full-blown filibuster of Mr. Estrada's nomination. The Senator from New York, Mr. SCHUMER, has said they are not filibustering. What the heck is it then? Preventing a vote up or down on the nominee is called a filibuster. They can prevent a vote, as long as they can require us to get 60 votes and as long as they have at least 41 votes against cloture. Never before has an appellate court nominee—or any lower court nominee, for that matter—been defeated through a filibuster.

If this filibuster is successful, if Mr. Estrada's nomination is denied a vote,

we are entering into a sad new chapter in the confirmation of judicial nominees. It is a chapter where the will of a minority of the Members of this body can obstruct the confirmation of a lower court nominee. Simply put, it is tyranny of the minority, and it is unfair.

I have to admit there were some on our side during the Clinton years who wanted to filibuster some of his judges. In all honesty, I fought against that and helped to prevent it. We never had a true filibuster against a circuit court of appeals nominee. I thought it was unfair then, and I think it is unfair today.

It is significant that, in addition to the Washington Post, many other fine newspapers across the country, from California to Maine, have taken note of what is going on in the Senate and have spoken out against a filibuster. These are newspapers that generally do not, as a matter of regular practice, comment on the Senate's confirmation of Federal judges. The fact that these newspapers have chosen to speak out against a filibuster of Mr. Estrada—a nominee with no connection to their own State—says quite a lot about the blatant unfairness of what is going on here.

Take, for example, the Riverside, CA, Press-Enterprise. In a February 18 editorial, it said:

The Democrats' tactic employed last week of filibustering the nomination of [Mr. Estrada] . . . is an anything-goes strategy that ought to be abandoned.

This is a newspaper that happens to agree with the Democrats' contention—which I think is absolutely baseless—that Mr. Estrada was not completely open during his testimony before the Judiciary Committee. It is also a newspaper that was pretty harsh on us Republicans in the same editorial—unjustly, in my view, but that is a different story. The point is that its anti-filibuster position is even more credible. The Press-Enterprise is saying that even if you did not like the way Mr. Estrada answered questions before the committee, that is no reason to filibuster his nomination.

As they concluded:

[T]he process has to stop at some point. It's one of advice and consent, not advise and confront.

Let's look at what some of the other newspapers across the country have been saying since this filibuster started 3 weeks ago. Like the Riverside Press-Enterprise, many of these newspapers are quite harsh on us Republicans, too, but they are united on one point: The filibuster of Mr. Estrada's nomination is unfair and it should end.

Another California newspaper, the Redding Record Searchlight, had this to say:

This filibuster comes at a time when there are all sorts of pressing issues before the nation. The tactic has no excuse. . . . If liberals in the Senate think conservatives will spell the end of civilization if they become judges, they can vote against Estrada. Keeping others from voting their consciences on this

particular matter is more than slightly reprehensible.

The Bangor Daily News in Maine wrote that the Democrats:

are mistreating a fellow citizen through the same means they fear an unqualified judge would employ: using their authority to harshly punish someone on ideological grounds. It is unfair no matter which party does it and it is harmful to the working of the Senate.

Well, amen to that.

The Providence Journal-Bulletin in Rhode Island said:

The point about Miguel Estrada is not that he may or may not harbor conservative judicial opinions. The point is that he is an inspiring American success story, a brilliant scholar, a distinguished public servant, and an outstanding lawyer. For Senate Democrats to talk down his nomination is not just embarrassing, but outrageous.

The Grand Forks Herald in North Dakota wrote in an editorial entitled "Stop the Filibuster" that Senate Democrats "should back off and let the Senate vote."

The Chicago Sun-Times asked:

[W]ho can look at the spectacle of the 108th Congress and not believe that both justice and the basic operation of the Nation is being sacrificed on the altar of ugly, obstructionist, partisan politics?

They continued:

Our legal system cannot and must not be held hostage to political nitpicking.

The Rochester, NY, Democrat and Chronicle opined:

Yet another fight over a judicial nominee should not descend to filibuster.

The Detroit News wrote:

Estrada should have his nomination put up for an ordinary vote, as have all of his predecessors. If he loses, fair enough. But a filibuster would signal an unreasonable posture by Democratic Senators that could have long-term—and damaging—consequences for how business is conducted in the U.S. Senate.

Mr. President, I ask unanimous consent that these and other editorials from newspapers across the Nation condemning the filibuster of Mr. Estrada's nomination be printed in the RECORD.

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

[From the Press-Enterprise, Feb. 18, 2003]

The process of filling a vacancy in the federal judiciary is a political one. The Founding Fathers placed it into a political area. The president nominates and the Senate confirms—or doesn't—but that doesn't mean anything goes.

The Democrats' tactic employed last week of filibustering the nomination of Miguel A. Estrada to the U.S. Court of Appeals for the District of Columbia Circuit is an anything-goes strategy that ought to be abandoned. However, with 49 Democratic senators, they are likely to be able to muster the 41 votes needed to maintain a filibuster.

What makes the filibuster inappropriate is that it is rarely used to block a judicial nominee, and Mr. Estrada hardly qualifies as a target for such a big gun. Yes, he was not completely open with members of the Judiciary Committee when he appeared, and Democratic senators are frustrated by the White House's refusal to release to them memoranda he wrote as solicitor general.

But in the best of times, such a request would be out of line, and these are closer to the worst than to the best for the nomination process. If the memoranda were to be used as an honest beginning to a discussion of Ms. Estrada's legal views, there might be some justification for releasing the documents that would normally be considered privileged.

One suspects that's not the role the Democrats have in mind for the memoranda. They probably hope to expose Mr. Estrada's conservative views, which no one doubts he holds, in hopes of defeating the nomination or at least scoring some political points.

The two parties have been allowing their political battles over judicial nominees to escalate since Robert H. Bork's nomination to the U.S. Supreme Court in 1987. One suspects that Republicans, if they were in the minority, would have done the same with the Estrada nomination. The parties need to de-escalate.

A first step would be to not filibuster nominations like this one of a well-qualified nominee. He's distinctly an American success story, having immigrated from Honduras, gone to Columbia and Harvard and served as a clerk to a Supreme Court justice.

Democrats, or Republicans when they are in the minority, may fairly make things tough on a nominee in committee or on the Senate floor, in order to fashion nominations more to their liking. But the process has to stop at some point. It's one of advice and consent, not advise and confront.

[From the Redding Record Searchlight, Feb. 15, 2003]

#### SENATE LIBERALS SHOULD NOT FEAR VOTE FOR JUDGE

Miguel Estrada is—oh no, oh no, can it be?—a conservative, and if that makes your heart pound with fear, you may very well be a Democrat serving in the Senate. You would then be among those trying to thwart majoritarian decision-making with a filibuster, there being no chance that an honest vote will go your way.

It's irresponsible and an outrage, this hysteria being acted out by the Democrats to keep Estrada from serving on the U.S. Court of Appeals for the District of Columbia. But the Democrats do have their excuses, each more petty and pathetic than the next.

One excuse is that they just don't know enough about this fellow, but there is a life history here, and a rather amazing one: Estrada immigrated to this country from Honduras, graduated with honors at Columbia College, was editor of the Law Review at Harvard Law School, was a clerk to a Supreme Court justice, has argued before the Supreme Court 15 times, has done pro bono work for a down-and-outer and has received the highest possible recommendation of the American Bar Association.

Well, but the administration won't hand over memos he wrote when he was in the solicitor general's office, say the Senate Democrats. It apparently does not matter to them that publicizing them could rob future memos of their candor and that every former solicitor general of either party has said the Democrats seek too much.

But listen, the Democrats continue, Estrada refused to blab his heart out when he appeared before a Senate committee, as if they did not know that its violates widely endorsed principles to indicate beforehand how you as a judge might decide cases that could come before you. Estrada did say he would be an impartial judge loyal to the law. On other topics—his broad political views—he was relatively quiet, which is fine.

This filibuster comes at a time when there are all sorts of pressing issues before the na-

tion. The tactic has no excuse (although there are explanations, such as a Democratic fear that Estrada would be in line for a Supreme Court nomination if he gets this other judgeship first). If liberals in the Senate think conservatives will spell the end of civilization if they become judges, they can vote against Estrada. Keeping others from voting their consciences on this particular matter is more than slightly reprehensible.

[From the Bangor Daily News, Feb. 19, 2003]

#### VOTING ON ESTRADA

George Washington took office April 30, 1789, but the Senate waited until Aug. 5 of that year to reject one of his nominees—Benjamin Fishbourn of Georgia, one of 102 appointments submitted by President Washington to become collectors, naval officers and surveyors of seaports. The Senate thus established the use of its authority for advise and consent and simultaneously demonstrated that no appointment is too minor to fret over.

Just before they left for vacation last week, Senate Democrats had begun what they say will be an extended filibuster of the nomination of Miguel Estrada, nominated in May 2001 by President Bush to become U.S. circuit judge for the District of Columbia Circuit. The Democrats say they do not have enough information about the nominee and cannot persuade him to talk sufficiently about his judicial philosophy so cannot allow a vote.

This lack of information, however, has not stopped conservative groups from strongly supporting the nomination and liberal groups from strongly opposing it. They know enough to choose a position, as do the Democrats, who actually mean by insufficient information that they would like to reject a Bush nominee but were hoping to find a larger reason for doing so than the fact that Mr. Estrada apparently supports strong anti-loitering laws, to the detriment of migrant workers.

Democratic Sen. Harry Reid of Nevada a couple of weeks ago quoted comments his Republican colleagues offered during the Clinton administration on the requirement that the Senate "do what it can to ascertain the jurisprudential views a nominee will bring to the bench," to use an example from Republican Sen. Orrin Hatch of Utah. (Sen. Reid also offered numerous precedents in which memoranda of the sort Mr. Estrada wrote while advising the solicitor general have been made public, as they have not with this nomination.) Sen. Reid's point, of course, is that if this behavior was acceptable for Republicans it ought to be acceptable for Democrats. But for the public, it is not acceptable in either case.

The Senate has a long history of rejecting presidential nominations, from Cabinet appointments right down to surveyors of seaports. Democrats, having drawn out this nomination for maximum political effect, now face the questions of backlash for appearing to beat up a nominee. More importantly, they are mistreating a fellow citizen through the same means they fear an unqualified judge would employ: using their authority to harshly punish someone based on ideological grounds. It is unfair no matter which party does it and it is harmful to the working of the Senate.

The Democrats should consider that the information they have in hand is all they will get and allow, even encourage, a vote. If the information is insufficient, they should vote no and see if they can round up enough votes to block the nomination. If it is sufficient and they have no substantial questions about Mr. Estrada's abilities, they should vote yes even if they do not agree with all of

his politics. But the filibuster should end this week with the congressional recess.

[From the Providence Journal-Bulletin, Feb. 14, 2003]

#### THE ESTRADA CASE

The decision of Senate Democrats to filibuster the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia is unfortunate, to say the least. Democrats are now in the position not only of turning away a nominee rated "highly qualified" by the American Bar Association, but of rejecting a onetime Supreme Court clerk and Honduran immigrant who graduated magna cum laude from Harvard Law School, for political reasons.

The Democratic complaint is that Mr. Estrada is a "stealth conservative," and that his responses in committee hearings were insufficient to reveal his political opinions. To that end, Minority Leader Tom Daschle (D.-S.D.) and his colleagues have demanded not only supplementary detailed responses to political inquiries, but also Mr. Estrada's confidential memoranda written while he was an assistant solicitor general. Every living solicitor general, Democratic and Republican, has gone on record to oppose this unwarranted intrusion into the deliberative process in the Justice Department. And the Bush administration has been correct to resist Democratic demands.

Make no mistake: Senate Democrats are worried that President Bush might nominate conservative lawyers and jurists to the federal bench. But that is no reason to reject a highly qualified nominee. Just as Bill Clinton appointed judicial liberals to the federal bench—including three Supreme Court justices—it stands to reason that Mr. Bush will nominate conservatives.

The process is called democracy. Democrats may not like the results of the 2000 presidential election, but their recourse is to win back the White House in 2004, not to subject distinguished nominees like Miguel Estrada to political torture.

And after all, judicial nominations are for life, and no president can be clairvoyant. When Franklin Roosevelt nominated Felix Frankfurter for the Supreme Court in 1939, he had no idea that Justice Frankfurter would evolve into one of the court's leading conservatives. And when the first George Bush nominated David Souter for the court in 1989, he might have changed his mind if he had known that Justice Souter would become one of the court's reliable liberals.

The point about Miguel Estrada is not that he may or may not harbor conservative judicial opinions. The point is that he is an inspiring American success story, a brilliant scholar, a distinguished public servant and an outstanding lawyer. For Senate Democrats to talk down his nomination is not just embarrassing, but outrageous.

[From the Grand Forks Herald, Feb. 15, 2003]

#### EDITORIAL: STOP THE FILIBUSTER

Our View: Senate Democrats should let Miguel Estrada's name come up for a floor vote.

There are two responsible ways for Senate Democrats to keep conservative lawyers off of the federal bench.

The first is for Democrats to regain a majority in the Senate. The second is to convince a few Republicans to vote against those nominees on the floor. Both of those methods use politics' most-respected and time-honored technique: persuasion—persuading voters in the first case, colleagues in the second, of the strength and power of your argument.

In the U.S. Senate, however, there's also a coercive and borderline-irresponsible method

for the minority party to have its way. That method is the filibuster. Senate Democrats are staging one now against Miguel Estrada, an appeals court nominee.

They should back off and let the Senate vote.

A filibuster is a delay that can't be broken without a supermajority's consent. Now, at times in a democracy, a "tyranny of the majority" may arise that principled senators feel they must resist. This isn't one of those times. Estrada is neither a criminal, nor a spy, nor a hack whose nomination sprang from backroom deals where money changed hands.

Just the opposite: He is, by every account, a living, breathing embodiment of the American dream. An immigrant from Honduras, Estrada spoke little English when he came to the United States at age 17. Yet, he graduated with honors from Harvard Law School, clerked for a Supreme Court justice and built an honorable and exemplary career.

He's also a judicial conservative. And if there's one thing that drives some Democrats berserk, it's a person from an ethnic minority background who strays from the party line.

That's why the Democrats are filibustering. That's why they're holding up matters of real-life war and peace. That's why they're thwarting the majority's will and asserting an anti-democratic veto power on a matter of congressional routine.

And that's why they ought to back off.

Because frankly, those reasons are politics, nor principle. And politics isn't enough.

[From the Chicago Sun-Times, Feb. 14, 2003]

#### WHEELS OF JUSTICE CAUGHT IN WASHINGTON GRIDLOCK, AGAIN

"The time has come for the U.S. Senate to stop playing politics with the American judicial system. So bad has the situation become that some Americans wonder whether justice is being hindered . . ." So began an editorial on this page five years ago, during the now-distant days of the Clinton administration, when Senate Republicans were stonewalling judicial nominees from a Democratic president.

We mention it because the party in power tends to scream about efficient government, while the party out of power complains about failure to follow procedure. To quote Shakespeare, "A plague on both their houses." The only update we'd make in the opening quote is to change "some Americans" into "many Americans" or even "most Americans." For who can look at the spectacle of the 108th Congress and not believe that both justice and the basic operation of the nation is being sacrificed on the altar of ugly, obstructionist, partisan politics?

After dragging their feet on shifting committee chairmanships and the routine operations of the nation's business, Senate Democrats, though in a minority, are threatening to filibuster over the confirmation of Miguel Estrada, a Washington lawyer who seems eminently qualified for the federal appeals bench in every way except for his alacrity to answer questions about his opinions on legal matters that have not yet been presented to him, such as the issue of abortion.

The entire idea behind disabling the business of the nation is so that the blame for whatever bad situation we find ourselves in come election 2004 can be laid at the feet of the Republicans, since they are in power. But the Democrats forget that, if they manage to torpedo the Republican agenda, then the Republicans are not really fully in power, and whatever problems are certain to come are the fault of both parties. And obstructionism hurt Democrats in last November's voting.

President Bush called the Democratic approach "shameful politics." We are not revealing a bias when we agree—the nation needs good judges, from both parties, of both conservative and liberal outlooks. Our legal system cannot and must not be held hostage to political nitpicking. Estrada deserves to be the first Hispanic on the U.S. Court of Appeals for the District of Columbia, and if his nomination in some way helps to break the political deadlock keeping critical judge-ships from being filled, that will be just another accomplishment to add to his record.

[From the Rochester Democrat and Chronicle, Feb. 7, 2003]

#### THE ESTRADA NOMINATION

Yet another fight over a judicial nominee should not descend to filibuster.

The oft-heard scuttlebutt around Washington is that Congress is a far less congenial place now than 20 years ago. Partisanship, once a coin of the realm, is today the only currency that matters.

The truth of that troubling assessment shows most tellingly in the drag-out fights over judicial nominees. It used to be that the opposing party, once in power, would get its appointments. No longer.

Led by Sen. Chuck Schumer, Senate Democrats, who narrowly lost a Judiciary Committee vote on U.S. Court of Appeals nominee Miguel Estrada, are threatening a filibuster to prevent a floor vote on the nomination. Estrada's sin? He was unresponsive to the committee's questions regarding past causes and other issues.

It's a smokescreen. The Democrats know Estrada's legal record, and it's a good one.

To suggest that the needed to answer the questions to establish his credentials is disingenuous. There's more than enough known about Estrada for an up-or-down floor vote.

A filibuster could make partisanship history—never before has the Senate prevented a lower-court confirmation via filibuster. The Democrats have a duty to ask tough questions and to base their votes on the answers, or lack of them. But they also have a duty to live by the final tally—not delay its taking with divisive filibuster.

[From the Detroit News, Feb. 10, 2003]

#### U.S. SENATE SHOULD FORGET JUDICIAL CANDIDATE FILIBUSTER

#### IT'S TIME TO END VENDETTAS AND REVENGE IN JUDICIAL NOMINATIONS

U.S. Senate Democrats' threat to filibuster President George W. Bush's nomination of Miguel Estrada to the U.S. Court of Appeals in Washington, D.C. would further poison an already badly damaged judicial nomination process.

Both parties share the blame for the wrecked process. But Senate Democrats are now engaging in revenge for bad GOP behavior in the second term of former President Clinton, when Republicans stalled votes on a number of his nominees, ultimately derailing them when Bush gained the presidency. Until the GOP regained the Senate last November, they tied up a number of Bush nominations in committee.

Now, the Democrats have a chance to rise above partisan political hackery and end this stupid game. Instead, they are seriously considering making the situation worse.

Miguel Estrada is a well-regarded native of Honduras who served in the office of U.S. solicitor general under both former Presidents Clinton and George H.W. Bush. The solicitor general represents the U.S. government before the Supreme Court.

Estrada has personally argued 15 cases before the nation's highest court. He has been unanimously rated "well-qualified" by the

American Bar Association—which Senate Democrats declared would be the “gold standard” by which they would assess judicial nominees when they controlled the Senate.

Estrada’s nomination was one of those bottled up in committee. With the GOP in control, his nomination has now been voted out to the Senate floor. The nomination is drawing more than the usual interest because Estrada, 42, is considered a strong possibility for eventual nomination to the U.S. Supreme Court by President Bush.

Senate Democrats are deciding just how much they want to obstruct the president’s nominees. A filibuster can only be broken by 60 votes—9 votes more than is usually required for a nominee to be approved. Reportedly, a filibuster has never before been used to block an appointment to the U.S. Court of Appeals.

Democrats complained that Estrada, during his committee hearings, declined to tell them his positions on particular issues. It is a violation of the canons of judicial ethics for potential judges to do that.

Democrats also demanded that he produce his memos and recommendations while he was in the solicitor general’s office—which had never been done for any other candidate who had been an assistant in that office. The demand was rejected not only by Estrada, but by every former solicitor general still living, including those who served Democratic presidents.

The level of obstruction his nomination has faced has been truly extraordinary. Michigan Sens. Carl Levin and Debbie Stabenow—who are running their own vendetta in blocking four Bush nominees to the Court of Appeals in Cincinnati—shouldn’t be a part of it. That would be an insult to their Hispanic constituents.

Estrada should have his nomination put up for an ordinary vote, as have all his predecessors. If he loses, fair enough. But as filibuster would signal an unreasonable posture by Democratic senators that could have long-term—and damaging—consequences for how business is conducted in the U.S. Senate.

Mr. HATCH. I agree with these newspapers that the perpetuation of this filibuster against Mr. Estrada’s nomination is extremely unfair. It is unfair to the majority of the Members of the Senate who stand prepared to vote on Mr. Estrada’s nomination. It is certainly unfair to Mr. Estrada, whose life is in limbo while the Senate engages in its endless debate. It is unfair to the American people, who have a justified expectation that the Senate will vote on Mr. Estrada’s nomination and move on to debate and consider other important business.

The solution is not to protract debate, upon which some of my Democratic colleagues insist. The solution is not to go on a fishing expedition for privileged, confidential memoranda Mr. Estrada once authored on appeal recommendations, certiorari recommendations, and amicus curiae recommendations. The solution is not to demand answers to questions that Mr. Estrada already addressed when the Senate was under Democratic control. The solution is for Senators to vote on Mr. Estrada’s nomination. Vote for him or vote against him. Do what your conscience dictates. Just vote—exactly what the Washington Post has called upon us to do.

Mr. President, I have additional remarks, but I notice the distinguished Senator from Georgia is here. I note that he wants to give some remarks and I am happy to interrupt my remarks for that purpose. I know he has an important message he would like to give. I am happy to interrupt my remarks for him.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MILLER. Mr. President, I ask unanimous consent to proceed in morning business as in legislative session for 15 minutes.

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

#### HILLBILLIES

Mr. MILLER. Mr. President, I rise this morning—and I appreciate the generosity of the Senator from Utah and the Senator from Vermont in giving me this opportunity—to get something off my chest.

CBS Television is currently planning what that great company calls “a hillbilly reality show.” I would like to say a few words about that as a Senator who happens to be a hillbilly.

I can call myself that, Mr. President, but please don’t you call me that, for “hillbilly” is a term of derision that was first coined in April of 1900 when the New York Journal had an article on “Hill Billies” with this description:

A free and untrammelled white citizen who lives in the hills, has no means to speak of, talks as he pleases, drinks whiskey when he gets it and fires off his revolver as his fancy strikes him.

The description has not improved very much over the past 100 years. White minstrel shows depicting these ignorant creatures played to laughing audiences in New York and Chicago in the 1920s and 1930s.

After a man named Al Capp saw one, he dreamed up the comic strip “Li’l Abner” who lived in a place called Dogpatch with a mama who smoked a pipe and a girlfriend named Daisy Mae who ran around barefooted and half naked. It was a riot, and it made Al Capp a fortune.

A short time later, Snuffy Smith, a wife abuser with his ever-present jug of moonshine, also appeared in comic strips around the Nation. Then came Ma and Pa Kettle in the movies and the Beverly Hillbillies on television. Even the contemporary poet and author James Dickey has contributed to this false image of mountain people by portraying them as depraved cretins in his popular book and movie “Deliverance.”

My neighbors and I have lived with this ridicule and overdrawn stereotype all of our lives, as did our parents and their parents before them. My roots run very deep in the Appalachian Mountains of North Georgia where I was born and raised and always have made my home. It is where my children, grandchildren, and great grandchildren live today.

My ancestors were among the very first mountain settlers. They were de-

scendants of the Scotch-Irish who were driven out of Northern Ireland by the Stuart Kings. They landed in Maryland and Virginia and migrated westward as far as the hostile Indians and French would allow, and then moved southward into the heart of a region of rugged mountains and beautiful valleys we now know as Appalachia.

They were accompanied and followed by the Huguenots, Pennsylvania Quakers, Palatine Germans, and various dissatisfied Protestant sects.

These mountain people were the very first Americans to fall back on their own resources as they settled in isolation from the remainder of the Nation and the world.

Their language, customs, character, possessions, knowledge, and tools were isolated with them and suspended in time, an unchanging microcosm of early American thought, culture, and mores.

These mountaineers possessed the qualities that formed the fundamental elements of pioneer American character: love of liberty, personal courage, a capacity to withstand and overcome hardship, unstinted hospitality, intense family loyalty, innate humor, and trust in God.

It could be said that if they had one overriding characteristic, it would have to be independence. They developed as extreme, rugged individualists who never closed their doors, had inherent self-respect, were honest and shrewd, knew no grades of society, and had unconscious and unspoiled dignity. They were utterly without pretension or hypocrisy.

When the Civil War came along, it was this area of the Mountain South that opposed secession, for there were no vast plantations in the mountains of the South and very few slave owners among those poor people. Some even fought on the side of the Union, with families sometimes divided over that terrible conflict.

Later, when the wars of the 20th century came along, it was the families in the mountains of the South who sent a disproportionate share of their young men who volunteered to fight in distant lands, far away from their peaceful valleys.

When this country was threatened to be torn apart over Watergate, it was two great Members of this Senate from opposite parties but the same part of the country who helped keep this Nation on an even keel: Democrat Sam Ervin from the mountains of North Carolina and Republican Howard Baker from the mountains of Tennessee.

I am very pleased and proud that these are my people, and I find that one of the great ironies of history is that while the cowboy, another type of frontiersman, has been glorified, the mountaineer—the first frontiersman—has been ridiculed and caricatured in the image of a Snuffy Smith.

Why am I going into all of this? Because now in the 21st century—the enlightened 21st century—there are plans underway for a new hillbilly minstrel show using the same old stereotype, denigrating, laughing at, and ridiculing this group of people.

CBS calls it a reality show—CBS, the once proud and honorable broadcasting company that brought us Edward R. Murrow and that unforgettable program of his, “The Harvest of Shame.”

In the sixties, brave and courageous CBS reporters risked their lives to cover the civil rights struggles in the South, and for decades, CBS’s “60 Minutes” has set the standard for all of television. But today in this money-grubbing world, CBS, it seems, has become just another money-grubber.

It is now part of the giant Viacom. CBS has a CEO named Mr. Les Moonves, the man who is pushing this program-to-be; a man who obviously believes that network television is an ethics-free zone and that it is acceptable for big profits to always come ahead of good taste.

I do not know Mr. Moonves, but from his actions, it seems he is a person who cares little about human dignity and believes television has no social responsibility. I suppose we should not be surprised, for his ilk have been around long before the creators of Li'l Abner and Snuffy Smith. Since the beginning of civilization, there have always been some Homo sapiens who, it seems, had to have someone to look down upon, some group to feel superior to. For this kind of person, it is as basic to their human nature as the drive to reproduce or the urge for food and water. They were there in the time of the Greeks. They were there in the time of the Romans. They can be found all through the Bible. That is what the parable of the Good Samaritan is all about.

Jesus was very concerned about how the rejects of society were looked down upon and warned us about “a haughty spirit” and an “unkind heart.”

Shakespeare wrote about them as did Dickens and Steinbeck and Faulkner. And songwriter Merle Haggard, who knew personally how it felt, wrote that memorable line “another class of people put us somewhere just below, one more reason for my mama’s “Hungry Eyes.”

This country was not meant to be this way. We are supposed to be better than that. More than two centuries ago, Moses Sexius was the warden of the Hebrew Congregation of Newport, RI.

He wrote hopefully to the President of this new Nation of his delight at the birth of a government “which to bigotry gives no sanction, to persecution no assistance, but generously affords to all liberty of conscience.”

That new President, George Washington, wrote back.

Here is a copy if the letter affirming that the Government of the United States “would give to bigotry no sanction, to persecution no assistance.”

That was Washington’s dream for this country.

What CBS and CEO Moonves proposed to do with this Cracker Comedy is “bigotry” pure and simple. Bigotry for big bucks. They will deny it. They will say it is just harmless humor. But they know better and they feel safe.

They know the only minority left in this country that you can make fun of, demean, humiliate, put down and hardly anyone will speak up in their defense are hillbillies in particular and poor rural people in general. You can ridicule them with impunity.

Can you imagine this kind of program being suggested that would disrespect an African American family or denigrate a Latino family? Years ago, the program Amos and Andy was removed from television—as it should have been—because it was in poor taste and made fun of a minority.

In this wonderful and diverse country today, one of every six Americans speaks some other language other than English in their homes. In my home State of Georgia, their number has more than doubled in the past decade. I believe that may be the largest increase in the Nation.

From the red clay hills of Georgia to the redwood forests of California, all of us are struggling to answer the simple question: Can’t we all get along?

And that daunting challenge, can’t we live our lives as if we are all created equal? All of us: we eat, we sleep, we have strengths and weaknesses; we have dreams and anxieties. A tear knows no race, no religion, no color. A tear has no accent. We all cry in the same language.

Many years ago, the rabbis were asked why was it that in the beginning God created just one man, Adam, and one woman, Sa-ba, or Eve. Surely, God could have created multitudes.

The rabbis answered that only one man and one woman were created to help us all remember that we all came from the same mother and father. So no one should ever say, “I’m better than you,” and no one should ever feel, “I’m less than you.”

CBS, Viacom, Mr. Moonves: I plead with you to call off your hillbilly hunt. Make your big bucks some other way. Appeal to the best in America not the worst. Give bigotry no sanction.

For no one—not even a rich and powerful network like CBS—should ever use the airwaves of this Nation to say to one group of people in God’s image, “We’re better than you.”

And no one, Mr. Moonves, no one should ever be made to feel, “they’re less than you.”

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the Senator from Georgia for his comments.

The Senator from Utah has spoken and will be coming back, and so I am going to speak about the Estrada nomination, the matter at hand. I say what

everybody knows, especially those of us like the distinguished Presiding Officer, who have practiced law, becoming a Federal judge for a lifetime is a privilege. It is not a right.

No nominee should be rewarded for stonewalling the Senate and the American people. The Constitution directs Senators to use its judgment in voting on judicial nominees. It does not direct them to rubberstamp. It says “advise and consent,” not advise and rubberstamp.

During the 17 months that the Democrats were in control of the Senate, we confirmed a record 100 of President Bush’s judicial nominees. Interestingly enough, no judicial nominees of President Bush’s had been confirmed up to mid-July when I took over as chairman of the committee. Within 10 minutes of taking over as chairman of the committee, I called the first confirmation hearing, and in 17 months we set a record of moving nominations. We certainly acted faster, and I believe more fairly, than the Republicans did for President Clinton.

President Bush also has proposed several controversial nominees like Miguel Estrada. They divide the American people and the Senate. The President, of course, could easily end this impasse. I hope he will act to give Senators the answers they need to make informed judgments about this nomination. That was suggested by one of the most distinguished and senior Republican Members of this Senate. So far it has been rejected by the White House. I hope they will reconsider. The President can also help by choosing mainstream judicial nominees who can unite instead of divide the American people.

Unfortunately, the White House seems to have this attitude that they should divide and not unite, and I think that is a mistake. One of the unfortunate aspects of the President’s determination to pack the Federal courts with extreme conservatives is a division that the nomination of Miguel Estrada has caused among Hispanics. Rather than nominate someone whom all Hispanic Americans would support, the President has chosen to divide rather than unite. The White House’s ideological litmus test has motivated the President to select another highly controversial nominee rather than a consensus nominee.

Over the last several days, the division within the Hispanic community has been the subject of a number of news reports. On February 14, the Washington Times ran a front page story quoting a statement for the National Council of La Raza noting that since the Latino community is clearly divided on the Estrada nomination, we find the accusation that one side or another is anti-Latino to be particularly divisive and inappropriate.

The division was likewise noted in the Boston Globe on February 15, in a story by Wayne Washington. And on February 20, the Washington Post

noted the division in a story by Darryl Fears.

I ask unanimous consent that some of the articles on this issue be printed in the RECORD.

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

[From the Boston Globe, Feb. 15, 2003]

LATINOS BITTERLY DEBATE ESTRADA  
NOMINATION

(By Wayne Washington)

WASHINGTON.—President Bush's nomination of Miguel Estrada for a federal judgeship has exposed sharp divisions among Latinos, who are weighing the possibility of having one of their own on a fast track to the US Supreme Court against a fear that the minority group's interests could be harmed if the Senate confirms that the conservative lawyer of Honduran descent.

In the divisive intra-ethnic battle, some Latinos have challenged Estrada's allegiance to the Hispanic community, an accusation that others have sharply criticized. Each side has at times accused the other of being anti-Latino. The debate has gotten so nasty on Spanish-language television and over the Internet that this week the National Council of La Raza, a Latino group that says it is neutral on Estrada's nomination, called for both sides to tone down their language.

"We urge those who are engaging in name-calling and accusatory language to instead focus on the substantive issues and merits of this nomination," the group said in its statement. "Since the Latino community is clearly divided on the Estrada nomination, we find the accusation that one side or another is 'anti-Latino' to be particularly divisive and inappropriate."

Estrada's nomination to the Court of Appeals for the District of Columbia has been endorsed by the Hispanic Bar Association, US Hispanic Chamber of Commerce, the Latino Coalition, and the League of United Latin American Citizens, which is comparable to the NAACP. Opposed are the Mexican American Legal Defense and Education Fund, the Puerto Rican Legal Defense and Education Fund, and the Congressional Hispanic Caucus, whose members are Democrats.

Bush nominated Estrada in May 2001, but Senate Democrats blocked his approval. This week, they stalled the nomination by threatening a filibuster. Estrada, 42, would be the first Latino on the D.C. Appeals Court, where six of the nine justices currently on the Supreme Court once served. Only 12 of the 154 judges on federal appeals courts are Latinos; one has never served on the nation's highest court.

Some observers have compared the volatile debate to dissension among African-Americans when President George H.W. Bush nominated Clarence Thomas—then a member of the D.C. Court of Appeals—to the Supreme Court.

"There are similar fault lines," said Lisa Navarrete, spokeswoman for the National Council of La Raza, a nonprofit Hispanic group that fights poverty and discrimination. "Some people said Clarence Thomas is African-American and would be the only one on the court. He deserves our support. Others felt that his views would be harmful to the community. That's exactly what's happening here."

Born in Honduras, Estrada immigrated to the United States with his family as a teenager, graduated magna cum laude from Columbia College, and earned a law degree from Harvard, where he was an editor of the Harvard Law Review. He went on to work as an assistant US attorney in New York and

an assistant to the solicitor general during the Clinton administration. Currently, he is a partner in the Washington office of Gibson, Dunn & Crutcher.

His ethnicity and academic and legal record have been enough to win the support of some Latinos, while critics maintain that Estrada, a member of the conservative Federalist Society, has not clearly spelled out his judicial philosophy. He clerked for Justice Anthony M. Kennedy, a member of the conservative majority on the Supreme Court.

"That Miguel Estrada is of the Hispanic culture counts far more than the fact that he is a Republican or a Democrat," said Tina Romero-Goodson, a social service official in New Mexico. "What weighs heavily with me is that he is Hispanic and will have far more in common with me and mine than a Democratic Anglo or African-American candidate."

Representative Robert Menendez, Democrat of New Jersey, said Estrada "shares a surname" with Latinos but has done little to help them.

"Mr. Estrada said he is unfamiliar with cases that are important to our community," Menendez said. "He has said that his being Hispanic would be irrelevant to his role as a judge. I don't want it to be irrelevant, and neither does the community."

That stark call to ethnic solidarity outrages other Latinos.

"I think it's just shameful," said Robert G. de Posada, president of Latino Coalition, a nonprofit Washington-based policy group. "There is no other way to describe it."

De Posada said Menendez and other congressional Democrats are trying to portray Estrada as a well-off lawyer "who never had a problem in his life."

Of Menendez, de Posada added: "He's a Cuban-American who looks completely white. I wonder: Has he faced the racism and isolation that other Hispanics have faced? Can you challenge his Hispanic-ness? I would never do that. He's a success story. But so is Miguel Estrada."

Pierre M. LaRamee, acting president of the Puerto Rican Legal Defense and Education Fund, said Republicans have attempted to portray Estrada as "a Latino Horatio Alger." That portrayal, LaRamee argues, makes it proper to question just how representative he is of Latino communities.

"He didn't come from a poor, disadvantaged background," La Ramee said. "He came from a background of relative privilege. Of course, that's nothing negative about Miguel Estrada. He's been successful. . . . We'd rather have a non-Latino judge who we believe would be a better judge."

Supporters point out that Estrada did pro bono legal work on antiloitering laws that some Latino community group leaders believe led to the harassment of black and Latino men.

Latinos who are not of Mexican-American descent have said Estrada would get more support from Latinos if he were part of it. Mexican-Americans are the largest subgroup of Latinos in the United States.

"There's a dirty little secret in the Hispanic community," said Jennifer Braceras, a member of the U.S. Commission on Civil Rights. "There's a real intra-Hispanic community rivalry. There's a real feeling in the Mexican-American community that the first Latino Supreme Court nominee should be Mexican-American."

Not true, said Marisa Demeo, regional counsel for the Mexican American Legal Defense and Education Fund. "It has nothing to do with his ethnicity," she said. "It has to do with how he would be as a judge."

Democrats are expected to resume their filibuster of Estrada's confirmation when the Senate returns from a recess on Feb. 24.

[From the Washington Post, Feb. 20, 2003]

FOR HISPANIC GROUPS, A DIVIDE ON ESTRADA  
POLITICAL, GEOGRAPHIC FAULT LINES EXPOSED

(By Darryl Fears)

When he spoke in support of federal judicial nominee Miguel Estrada at a recent news conference, Jacob Monty masked his harsh criticism of opponents in Spanish. He said Latinos who are fighting against the Bush administration's choice for a judgeship on the U.S. Court of Appeals for the District of Columbia Circuit "no tienen vergüenza"—have no shame.

That comment by Monty, a former chairman of the Texas-based Association for the Advancement of Mexican Americans, was just one shot in a bitter war of words that has divided Latino politicians and civil rights organizations in ways rarely seen.

It followed one fired by Rep. Robert Menendez (N.J.), a member of the Democratic Congressional Hispanic Caucus, which opposes the nominee. "Being Hispanic for us," Menendez said, "means much more than having a surname"—a statement his critics understood to imply that Estrada is not "Hispanic enough."

The name-calling has reminded some observers of the bitterness among African Americans during the Senate confirmation hearing for Supreme Court Justice Clarence Thomas—a hearing that Thomas, a conservative black man, likened to a lynching after liberal activists persuaded Anita Hill, a former assistant, to come forward with sexual harassment allegations against him.

Latino activists have differing perceptions of who Estrada is and what kind of judge he would be.

Estrada's supporters say is a Latino success story, immigrating as he did from Honduras at age 17 and going on to graduate from Columbia College at Columbia University and Harvard Law School, and clerking for Supreme Court Justice Anthony M. Kennedy. He is now a partner with the District law firm of Gibson, Dunn & Crutcher and a nominee for a judgeship on what is considered the nation's second most powerful court because it has jurisdiction over all appeals regarding federal regulatory agencies.

Opponents question whether Estrada appreciates the interests of poor people—his family came from the Honduran elite—and say his conservative politics would color his decisions on the bench. They say Estrada has a low regard for hard-won civil rights protections that benefit Latinos.

Ideological wars over federal judicial nominations are nothing new, but the fight among Latinos offers a small window on how what will soon be the nation's largest ethnic minority is divided by ideology and geography.

Of the Latino community's three most influential groups, each has taken a different position on Estrada's nomination. The League of United Latin American Citizens, based in Texas, supports it; the Mexican American Defense and Educational Fund, in California, opposes it, and the National Council of La Raza, in Washington, has remained neutral.

The fuse for the current debate was lit in June, when members of the Congressional Hispanic Caucus met with Estrada in the basement of the Capitol. Rep. Charlie Gonzalez (D-Tex.) said the nominee at first looked uncomfortable as he stared at the faces of 16 Democrats across the long boardroom table.

"We wanted to make sure the nominee . . . appreciates what the court system means for Latinos," Gonzalez said recently. Estrada was not available for comment.

"We wanted him to give us some idea of how the role of a judge impacts minority communities, and it just wasn't there."

Two weeks later, the caucus returned a recommendation opposing Estrada's nomination to the Senate Judiciary Committee, then controlled by Democrats. Latino civil rights groups read the recommendation, then met among themselves.

In October, the League of United Latin American Citizens (LULAC) voted to support Estrada.

"It was just very difficult for us not to support the guy, given his impeccable credentials," said Hector Flores, president of the Texas-based group. "It's the American dream, rising up from Honduras the way he has. The battle isn't whether he's conservative; it's that he represents Latinos, whether we like him or not."

Flores said the vote to support Estrada was overwhelming, but in recent days the California state delegation of LULAC broke away from the national group in opposing the nominee. In a Feb. 12 statement, a former president of LULAC, Mario Obledo, opposed the nominee because of his "sparse record" on civil and constitutional rights issues, and because he declined to answer questions about his record in Senate hearings.

LULAC's overall support was backed by Monty, the former chairman of AAMA. His assertion that Estrada's opponents were shameless was broadcast on C-SPAN and remembered by Flores, who was present. Monty did not return several calls seeking comment.

President Bush tried to keep up the pressure yesterday by giving an interview by the Spanish-language Telemundo network, and vigorously urged senators to confirm Estrada.

Sen. Orrin G. Hatch (R-Utah) recently said that Estrada's Democratic opponents were "anti-Latino," and brought howls from his liberal colleagues and from leaders of Latino organizations across the land.

Marisa Demeo, regional counsel for the Los Angeles-based Mexican American Legal Defense and Educational Fund, said Hatch failed to mention three Latinos nominated for judgeships by the Clinton administration whom Republican senators opposed. Those nominations—of Jorge Rangel, Enrique Moreno and Christine Arguello—were returned to President Bill Clinton without a hearing or vote.

Demeo said LULAC and AAMA back Estrada for cosmetic reasons. "Because he's Latino, they would support him," she said. "They've been very strong in thinking there should be a Latino sitting on the D.C. Circuit, and we say it is important, but not as such a cost."

The cost, she said, would be the weakening of civil rights laws. "The groups opposing have taken the analysis a step further," Demeo said. "We look at the record to determine what kind of judge Mr. Estrada would be."

MALDEF is supported by the Puerto Rican Legal Defense and Educational Fund, the Southwest Voter Registration Project and the Hispanic caucus, among other groups.

"I don't know why the administration put up Estrada," said Antonio Gonzalez, president of the Southwest Voter Registration Project. "He was marked as a right-wing ideologue some time ago. Clearly, that is a tactic by the Bush administration . . . not to really embrace issues that are important to Latinos, but to try symbolic measures."

Mr. LEAHY. Hispanic lawmakers and leaders, including Representative XAVIER BECERRA, Representative LUCILLE ROYBAL-ALLARD, Representative GRACE NAPOLITANO, Representative ROBERT MENENDEZ, Representative CHARLIE GONZALEZ, and Los Angeles County su-

pervisor Gloria Molina have all spoken publicly about their opposition to this nomination.

I ask unanimous consent a recent news account of their statements be printed in the RECORD.

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

LATINO POLITICIANS SPLIT ON ESTRADA  
POLITICS: GROUPS APPLAUD, PAN BUSH'S  
NOMINATION TO SECOND-HIGHEST COURT IN U.S.  
(By Mike Sprague)

LOS ANGELES.—President Bush's nomination of Miguel Estrada to the Washington, D.C., Court of Appeals is splitting this area's Latino politicians.

On Friday, Los Angeles County Supervisor Gloria Molina and U.S. Rep. Grace Napolitano, D-Santa Fe Springs, joined a news conference held by the Congressional Hispanic Caucus to denounce Estrada and oppose his Senate confirmation to the second-highest court in the United States.

"When this gentlemen came before us, we asked specific questions and he had very little offer," said Napolitano, vice chairwoman of the 20-member caucus. "He really was a blank page. This could be our Latino Clarence Thomas."

But Assemblyman Robert Pacheco, a Republican from the City of Industry, who was reached by telephone later in the day Friday, accused the caucus of taking a partisan stand.

"They don't represent the entire Latino community," he said. "I'm very upset with the way they're approaching it, because of the partisan nature."

"What an opportunity for the Latino community to have someone in that position who has earned his stripes, having risen from poverty."

The news conference was held at the Mexican-American Legal Defense and Educational Fund's office in Los Angeles. The organization also is opposing confirmation.

The Senate Judiciary Committee recently approved the nomination, but some Senate Democrats since then have launched a filibuster to prevent a vote.

Estrada has served as assistant U.S. solicitor and an assistant U.S. attorney.

Napolitano said that caucus members had interviewed Estrada, and he hadn't responded favorably to their questions on whether he had worked with any minority organizations or on behalf of minorities and if he had been involved as a volunteer.

Estrada said no to the questions, she said. Rep. Lucille Roybal-Allard, D-Los Angeles, said that Estrada shouldn't be confirmed to the court just because of his ethnic origin.

"We have worked very hard to ensure that Latinos are nominated to high positions in the country," Roybal-Allard said. "Just because someone has a Hispanic surname doesn't automatically qualify him for any position."

Roybal-Allard also denied the caucus was acting for partisan reasons.

"Out of all the nominees, President Bush has appointed, this is the first time we have been opposed," she said. "We're opposed to Miguel Estrada based on his lack of qualifications."

HISPANIC LAWMAKERS FROM CALIFORNIA  
OPPOSE BUSH'S COURT NOMINEE  
(By Paul Chavez)

LOS ANGELES.—Hispanic lawmakers from California stepped up their campaign Friday against the first Hispanic to be nominated for a spot on an important federal appellate court.

Three Democratic members of the Congressional Hispanic Caucus and representatives from two advocacy groups said lawyer Miguel Estrada, 41, has refused to answer key questions about his position on cases, his background and other key issues.

"Ethnic origin is no automatic pass to becoming a judge on the federal judiciary, you have to be qualified," said Rep. Xavier Becerra, D-Los Angeles.

Estrada's nomination by President Bush has been held up in the U.S. Senate Judiciary Committee, with Democrats launching a filibuster to stall a full Senate vote until Estrada answers more questions and provides documents from his work with the Department of Justice.

Estrada was nominated in May 2001 by Bush for a seat on the U.S. Court of Appeals for the District of Columbia, which has been a steppingstone for three current justices on the U.S. Supreme Court.

Estrada, a partner in the law firm that worked with Bush during the Florida election recount, came to the United States at age 17 from Honduras. He graduated from Harvard Law School in 1986 and has argued 15 cases before the Supreme Court.

Republicans have accused Democrats of treating Estrada unfairly because he is a conservative Hispanic.

Rep. Lucille Roybal-Allard, D-Los Angeles, said the decision to oppose Estrada's appointment was not easy.

"This was a particularly difficult and disappointing decision that had to be made given the fact that the Hispanic caucus actively works long and hard to promote the appointment of more Latino judges," she said.

The Hispanic caucus decided to oppose Estrada after interviewing him, Roybal-Allard said.

"Unfortunately, he did not satisfactorily answer any of our questions with regard to his experience or sensitivity or commitment to ensuring equal justice and opportunity for Latinos," she said.

Rep. Grace Napolitano, D-Norwalk, said Estrada told the caucus that he has not done any work on behalf of minority organizations. She said such work was important since Estrada "could be our Latino Clarence Thomas."

The Congressional Hispanic Caucus, which is made up exclusively of Democrats, along with the Mexican American Legal Defense and Educational Fund have previously stated their opposition to Estrada's appointment.

The California branch of the League of United Latin American Citizens also said Friday it was opposed to his nomination, although its national leadership has supported Estrada. His nomination also has been supported by the U.S. Hispanic Chamber of Commerce.

Democrats have sought documents written by Estrada when he worked in the Justice Department's Solicitor General's Office. But White House counsel Alberto Gonzales told senators in a letter Wednesday that the administration would not release the documents, which are normally not made available.

All of the living former solicitors general—four Democrats and three Republicans—have agreed with the White House position, Gonzales said.

Mr. LEAHY. The Congressional Hispanic Caucus, the Mexican American Legal Defense and Education Fund, the Puerto Rican Legal Defense and Education Fund, the California Chapter of the League of United Latin American Citizens, Los Angeles County supervisor Gloria Molina, and Mario Obledo

oppose this controversial nomination. I am sure they do so out of principle. I know they do not relish opposing this nomination. These are organizations, individuals who have devoted their lives to improving the lives of Hispanic members. They worked for decades to increase representation of Latinos on the courts of our country.

It is because of the history and dedicated efforts and deep-seated commitment to the cause of equality for Hispanics I take their views seriously. I understand the Congressional Hispanic Caucus and the Puerto Rican Legal Defense and Education Fund came to their conclusion after a thorough review of the nomination but also after interviewing and meeting with the nominee.

Yesterday, we received a letter from 15 former presidents in the Hispanic National Bar Association, 15 well-respected national leaders of this important bar association, leaders who date back to the founding of the organization in 1972 have written to the Senate leadership to oppose this nomination. Their weighty opposition is based on the criteria to evaluate judicial nominees this association has formally used since 1991. It has been their standard practice for the past 30 years.

In addition to the candidates' professional experience and temperament, the criteria for endorsement also includes, "one, the extent to which a candidate has been involved and supported and responsive to the issues, needs, and concerns of Hispanic Americans; and, two, the candidates' demonstration of the concept of equal opportunity and equal justice under law."

In the view of the overwhelming majority of the living past presidents of the HNBA, Mr. Estrada's record does not provide evidence he meets those criteria. His candidacy falls short in those respects, they say.

Now the Hispanic National Bar Association has been at the forefront of efforts to increase diversity on the Federal bench. They have been at the forefront of the effort to improve public confidence among Hispanics and others in the fairness of the Federal courts. The most important thing in the Federal courts is the fairness, their integrity, their independence.

Time and time again I have asked, both when we have had nominees of Democratic Presidents and Republican Presidents, is this nominee somebody I believe I could walk into the court and be treated fairly? As a Democrat or Republican, whether as plaintiff or defendant, whether rich or poor, white or person of color, no matter what my religion, no matter what my background, would I be treated fairly?

During Democratic leadership of the Senate, we confirmed 100 of President Bush's nominees, and I voted for the overwhelming majority of them. When I was chairman, I moved his nominees through far faster than Republicans ever did for President Clinton when they were in charge, when they aver-

aged only 39 confirmations per year during their six and one-half years of control of the Senate. But I set the same test. Sometimes to satisfy myself of the test I had to go to a hearing that lasted sometimes a day long to be sure. You have a conservative, I want to be sure they will be fair and not too much of an ideologue; the same way I did when I believed someone was too liberal and could be too much of an ideologue. I had to satisfy myself they would be fair.

Now, the HNBA has done the same. They want to make sure the Federal courts are independent and fair. They have supported Republican nominees as well as Democratic nominees. These 15 individuals, all of whom are past presidents of the Hispanic National Bar Association, people who have devoted a great deal of time in their legal careers to advancing the interests of Hispanics in the legal community, have felt compelled to publicly oppose the Estrada nomination.

I regret very much that the White House, instead of seeking someone who would unite the community, has brought in somebody who would divide the community.

Yesterday, Dolores Huerta, who co-founded the United Farm Workers with Cesar Chavez, wrote a column in the Oregonian opposing Mr. Estrada's confirmation. I ask unanimous consent this article be printed in the RECORD.

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

[From the Oregonian, Feb. 24, 2003]

DOLORES C. HUERTA: ESTRADA WOULD DESTROY HARD-FOUGHT VICTORIES  
(By Dolores C. Huerta)

As a co-founder of the United Farm Workers with Cesar Chavez, I know what progress looks like. Injustice and the fight against it take many forms—from boycotts and marches to contract negotiations and legislation. Over the years, we had to fight against brutal opponents, but the courts were often there to back us up. Where we moved forward, America's courts helped to establish important legal protections for all farm workers, all women, all Americans. Now, though, a dangerous shift in the courts could destroy the worker's rights, women's rights, and civil rights that our collective actions secured.

It is especially bitter for me that one of the most visible agents of the strategy to erase our legal victories is being called a great role model for Latinos. It is true that for Latinos to realize America's promise of equality and justice for all, we need to be represented in every sector of business and every branch of government. But it is also true that judges who would wipe out our hard-fought legal victories—no matter where they were born or what color their skin—are not role models for our children. And they are not the kind of judges we want on the federal Courts.

Miguel Estrada is a successful lawyer, and he has powerful friends who are trying to get him a lifetime job as a federal judge. Many of them talk about him being a future Supreme Court justice. Shouldn't we be proud of him?

I for one am not too proud of a man who is unconcerned about the discrimination that many Latinos live with every day. I am not

especially proud of a man whose political friends—the ones fighting hardest to put him on the court—are also fighting to abolish affirmative action and to make it harder if not impossible for federal courts to protect the rights and safety of workers and women and anyone with little power and only the hope of the courts to protect their legal rights.

Just as we resist the injustice of racial profiling and the assumption that we are lesser individuals because of where we were born or the color of our skin, so too must we resist the urge to endorse a man on the basis of his ethnic background. Members of the Congressional Hispanic Caucus met with Miguel Estrada and came away convinced that he would harm our community as a federal judge. The Mexican American Legal Defense and Educational Fund and the Puerto Rican Defense and Education Fund reviewed his record and came to the same conclusion.

Are these groups fighting Miguel Estrada because they are somehow anti-Hispanic? Are they saying that only people with certain political views are "true" Latinos? Of course not. They are saying that as a judge this man would do damage to the rights we have fought so hard to obtain, and that we cannot ignore that fact just because he is Latino. I think Cesar Chavez would be turning over in his grave if he knew that a candidate like this would be celebrated for supposedly representing the Hispanic community. He would also be dismayed that any civil rights organization would stay silent or back such a candidate.

To my friends who think this is all about politicians fighting among themselves, I ask you to think what would have happened over the last 40 years if the federal courts were fighting against workers' rights and women's rights and civil rights. And then think about how quickly that could become the world we are living in.

As MALDEF wrote in a detailed analysis, Estrada's record suggests that "he would not recognize the due process rights of Latinos," that he "would not fairly review Latino allegations of racial profiling by law enforcement," that he "would most likely always find that government affirmative action programs fail to meet" legal standards, and that he "could very well compromise the rights of Latino voters under the Voting Rights Act."

Miguel Estrada is only one of the people nominated by President Bush who could destroy much of what we have built if they become judges. The far right is fighting for them just as it is fighting for Estrada. We must fight back against Estrada and against all of them. If the only way to stop this is a filibuster in the Senate, I say, Que viva la filibuster!

Dolores C. Huerta is the co-founder of the United Farm Workers of America.

Mr. LEAHY. Here is what this Hispanic leader wrote:

It is true that for Latinos to realize America's promise of equality and justice for all, we need to be represented in every sector of business and every branch of government. But it is also true that judges who would wipe out our hard-fought legal victories—no matter where they were born or what color their skin—are not role models for our children. And they are not the kind of judges we want on the federal courts.

Miguel Estrada is a successful lawyer, and he has powerful friends who are trying to get him a lifetime job as a federal judge. Many of them talk about him being a future Supreme Court justice. Shouldn't we be proud of him?

I for one am not too proud of a man who is unconcerned about the discrimination that many Latinos live with every day. I am not especially proud of a man whose political

friends—the ones fighting hardest to put him on the court—are also fighting to abolish affirmative action and to make it harder if not impossible for federal courts to protect the rights and safety of workers and women and anyone with little power and only the hope of the courts to protect their legal rights.

Just as we resist the injustice of racial profiling and the assumption that we are lesser individuals because of where we were born or the color of our skin, so too must we resist the urge to endorse a man on the basis of his ethnic background.

Are these groups fighting Miguel Estrada because they are somehow anti-Hispanic? Are they saying that only people with certain political views are “true” Latinos? Of course not. They are saying that as a judge this man would do damage to the rights we have fought so hard to obtain, and that we cannot ignore that fact just because he is Latino. I think Cesar Chavez would be turning over in his grave if he knew that a candidate like this would be celebrated for supposedly representing the Hispanic community. He would also be dismayed that any civil rights organization would stay silent or back such a candidate.

I deeply resent the charges leveled by Republicans that those opposing this nomination are anti-Latino or anti-Hispanic. As we began this debate about 2 weeks ago, I urged Republicans who said such things to apologize for these baseless and divisive charges. They have yet to do so. Because they have not apologized for these baseless charges, it prompted the League of Latin American Citizens, an organization that has supported this nomination, to write to the Senate to protest the charges leveled without basis by Republicans. I emphasize the League of United Latin American Citizens, which supports Mr. Estrada's nomination, has written to the Senate to protest the charges of bias leveled without basis by some Republicans.

Hector Flares, the LULAC National President wrote on February 12:

[We are alarmed by suggestions from some of the backers of Mr. Estrada that the Senate Democrats and the members of the Congressional Hispanic Caucus are opposing his nomination because of his race, ethnicity or an anti-Hispanic bias. We do not subscribe to this view at all and we do not wish to be associated with such accusations.

LULAC has had a long and productive working relationship with many Senate Democrats and all of the members of the Congressional Hispanic Caucus and our experience is that they would never oppose any nominee because of his or her race or ethnicity. On the contrary, it is most often the Democratic members of the Senate who support LULAC's priority issues. . . .

I thank LULAC for disassociating itself with the base political efforts of Republicans to accuse those who oppose this nomination as doing so based on race or ethnicity. On the contrary, it is most often the Democratic Members of the Senate who support Hispanic priority issues.

I thank LULAC for disassociating itself with the base political efforts of some Republicans who accuse those who oppose this nomination of doing so based on race or ethnicity. I renew my request for an apology for all the statements made in connection with the

Senate debate that suggest those opposed to this nomination are anti-Hispanic.

I think perhaps we should go back to a different time, a time when I first came to the Senate, when Republicans and Democrats assumed the best motives of patriotism and honesty on the part of each other; when you did not hear attacks made on people saying they are anti this race or that race or anti this religion or that religion. I am concerned.

I will speak only for myself, not for other Senators, but I look back at 29 years in the Senate, a record of one who I think has always stood for anti-discrimination, one who has a record where I have never questioned the race, ethnicity, or religion of anybody else. When I hear charges that opposition to a candidate, in this case opposition to a candidate that has divided the American people, is done on the basis of that person's race, I find that more than distasteful, I find it wrong. In the same way, I found wrong the attacks on my religion by some in the Republican Party because of opposition to 1 of this President's more than 100 nominees, especially since I made it very clear in my statements on this floor that I never once considered religion or the background of any nominee for anything—nominees from either Republican or Democratic administrations. Not in any of the thousands upon thousands of nominees of both Republican and Democratic Presidents that I voted for have I ever once considered their religious background. So I find it distasteful when my religion is attacked by members of the Republican caucus, and I find it distasteful when members of that caucus attack Democrats on the claim that their principled opposition to this nomination is anti-Hispanic. I think the largest Hispanic organization supporting Mr. Estrada made it very clear they resent it, too. I join with them on that.

We know Mr. Estrada's short legal career has been successful. By all accounts he is a good appellate lawyer and legal advocate. He has had a series of prestigious positions and is professionally and financially successful. In my case, as the grandson of immigrants, as a son, a father and grandfather, I know no matter the country of origin or economic background that a family takes pride in the success of its children. Mr. Estrada's family has much to be proud of in his accomplishments, no matter what happens to this nomination.

He is now 41 years old. He has a successful legal career in a prominent corporate law firm, which was the firm of President Reagan's first Attorney General, William French Smith, and that of President Bush's current Solicitor General, Ted Olson. I am told that Mr. Olson, along with Kenneth Starr, have been among Mr. Estrada's conservative mentors. At his relatively young age, Mr. Estrada has become a partner in the law firm of Gibson, Dunn & Crutch-

er, having previously worked with the Wall Street law firm of Wachtell, Lipton, Rosen & Katz.

While in private practice, his clients included major investment banks and health care providers. Mr. Estrada's financial statement, which Senator HATCH had printed in the CONGRESSIONAL RECORD, says he earned more than \$½ million a year 2 years ago.

At his hearing, Mr. Estrada testified: I have never known what it is to be poor, and I am very thankful to my parents for that. And I have never known what it is to be incredibly rich either, or even very rich, or rich.

I will let his financial statement speak for itself on that point. Half a million dollars a year in my State does put you in the upper brackets.

So he is a well-compensated lawyer in a first-rate law firm. His family and friends take pride in his success, and rightfully so.

In his almost 6 years with Gibson, Dunn & Crutcher, with its thriving appellate court practice, developed by its senior partner, Ted Olson, who was confirmed to be Solicitor General in June 2001, Mr. Estrada has had one argument before the Supreme Court—just one. That was in connection with a habeas petition on which he worked pro bono when he first came to the firm. It is one of the only pro bono cases he has taken in his entire legal career, according to his testimony.

I am about to yield the floor. I note one thing, some of the speeches on the other side of the aisle make you think everyone opposes the efforts of Democrats to get answers to fair questions and review documents provided in past nominations. Especially in the case where a supervisor has called into question a nominee's ability to be fair, that is all the more reason we should see what he did. There is also ample precedent for the Senate Judiciary Committee examining memos written by Department of Justice attorneys, including Assistant Solicitor Generals—like Mr. Estrada was—in connection with nominations to either lifetime or short-term appointments, such as in the nominations of Robert Bork, William Rehnquist, Brad Reynolds, Stephen Trott, and Benjamin Civiletti.

There have been a number of papers and published editorials and op-eds supporting our efforts to know more about Mr. Estrada before we give him a lifetime seat, before we could never question him again, before we put him, for a lifetime, on one of the most powerful courts of the country.

On February 4, Senator HATCH said, and I will paraphrase: Mr. Estrada is not nominated to the Supreme Court—of course he is right—but his nomination may be even more important because the Supreme Court hears only about 90 cases per year while the DC Circuit issues nearly 1,500 decisions per year. These decisions affect the rights of working people and the environmental rights of all people. The Senate must not be a rubberstamp.

I ask unanimous consent to have printed in the RECORD some of the editorials in favor of the position the Democrats have taken here. Just to name a few, we have editorials from the New York Times, the Boston Globe, and the Rutland Daily Herald, among others, as well as op-ed from the Washington Post and Wall Street Journal, and letters to the editor of the Washington Post, disagreeing with their earlier editorial—touted by Republicans this morning—urging an immediate vote in spite of the precedent for requesting documents and getting answers to questions before giving someone such an important job.

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

[From the New York Times, Feb. 13, 2003]

#### KEEP TALKING ABOUT MIGUEL ESTRADA

The Bush administration is missing the point in the Senate battle over Miguel Estrada, its controversial nominee to the powerful D.C. Circuit Court of Appeals. Democrats who have vowed to filibuster the nomination are not engaging in “shameful politics,” as the president has put it, nor are they anti-Latino, as Republicans have cynically charged. They are insisting that the White House respect the Senate’s role in confirming judicial nominees.

The Bush administration has shown no interest in working with Senate Democrats to select nominees who could be approved by consensus, and has dug in its heels on its most controversial choices. At their confirmation hearings, judicial nominees have refused to answer questions about their views on legal issues. And Senate Republicans have rushed through the procedures on controversial nominees.

Mr. Estrada embodies the White House’s scorn for the Senate’s role. Dubbed the “stealth candidate,” he arrived with an extremely conservative reputation but almost no paper trail. He refused to answer questions, and although he had written many memorandums as a lawyer in the Justice Department, the White House refused to release them.

The Senate Democratic leader, Tom Daschle, insists that the Senate be given the information it needs to evaluate Mr. Estrada. He says there cannot be a vote until senators are given access to Mr. Estrada’s memorandums and until they get answers to their questions. The White House can call this politics or obstruction. But in fact it is senators doing their jobs.

[From the Boston Globe, Feb. 15, 2003]

#### RUSH TO JUDGES

The Senate Judiciary Committee ought to come with a warning sign: Watch out for fast-moving judicial nominees. Controlled by Republicans, the committee is approving President Bush’s federal court nominees at speeds that defy common sense.

One example is Miguel Estrada, nominated to the US Court of Appeals for the District of Columbia. Nominated in May 2001, Estrada had been on a slow track, his conservative views attracting concern and criticism.

Some Republicans called Democrats anti-Hispanic for challenging Estrada. He came to the United States from Honduras at the age of 17, improved his English, earned a college degree from Columbia, a law degree from Harvard, and served as a Supreme Court clerk for Justice Anthony Kennedy.

What has raised red flags is Estrada’s refusal to answer committee members’ ques-

tions about his legal views or to provide documents showing his legal work. This prompted the Senate minority leader, Thomas Daschle, to conclude that Estrada either “knows nothing or he feels he needs to hide something.”

Nonetheless, Estrada’s nomination won partisan committee approval last month. All 10 Republicans voted for him; all nine Democrats voted against. On Tuesday Senate Democrats began to filibuster Estrada’s nomination, a dramatic move to block a full Senate vote that could trigger waves of political vendettas.

It’s crucial to evaluate candidates based on their merits and the needs of the country.

Given that the electorate was divided in 2000, it’s clear that the country is a politically centrist place that should have mainstream judges, especially since many of these nominees could affect the next several decades of legal life in the United States.

Further, this is a nation that believes in protecting workers’ rights, especially in the aftermath of Enron. It’s an America that struggles with the moral arguments over abortion but largely accepts a woman’s right to make a private choice. It’s an America that believes in civil rights and its power to put a Colin Powell on the international stage.

Does Estrada meet these criteria? He isn’t providing enough information to be sure. And the records of some other nominees fail to meet these standards.

Debating the merits of these nominees is also crucial because some, like Estrada, could become nominees for the Supreme Court.

The choir—Democrats, civil rights groups, labor groups, and women’s groups—is already singing about how modern-day America should have modern-day judges. It’s time for moderate Republicans and voters to join in so that the president can’t ignore democracy’s 21st-century judicial needs.

[From the Wall Street Journal, Feb. 20, 2003]

#### SYMMETRY IN JUDICIAL NOMINATIONS

The White House has a message for Democratic senators tying up its judicial nominations: we won the election, you’re thwarting the people’s will.

Not quite. Never mind it was an evenly divided electorate. The selection of judges was a non-issue. George W. Bush didn’t even mention the topic in his speech at the GOP’s Philadelphia convention or in his acceptance remarks when he finally emerged victorious—thanks to judges—after Florida.

In two of the three debates, judicial selections weren’t mentioned. In the other, candidate Bush, while ducking the question of whether all his judicial appointments would be anti-abortion, insisted he wouldn’t have any litmus tests. But he declared that, unlike Vice President Gore, he would not appoint judicial activists; judges, he declared, “ought not take the place” of Congress. As the president accuses Democrats of playing politics, however, he nominates almost nothing but pro-life judges and passionate activists of a conservative stripe.

For all the emotions judicial appointments arouse on both sides, the political implications for senators are wildly exaggerated. Over the past several decades the only one who lost an election because of a judicial vote was Illinois Democrat Alan Dixon, defeated in a primary after he voted to confirm Clarence Thomas for the Supreme Court. What these battles are about is energizing the base; that’s why during presidential campaigns they are retail, not wholesale, issues.

Currently, Senate Democrats are staging a mini-filibuster over the nomination of movement conservative Miguel Estrada for the

U.S. Court of Appeals to the dismay of not only Republicans but many editorial writers. How dare they employ politics! In these matters there should be a simple test: symmetry. Or, as former Clinton Solicitor General Walter Dellinger declares, “Whatever factor a President may properly consider, senators should also consider.” Since ideology clearly is the guiding force behind the slate of Bush circuit court nominees, it’s perfectly appropriate for Senate Democrats to sue the same standard.

That’s certainly the criterion Republicans used in the Clinton years. Orrin Hatch is outraged at Democrats’ insistence that nominee Miguel Estrada, who refuses to express an opinion on any Supreme Court decision, be more forthcoming. Yet it was only a few years ago that the same Utah Republican was insisting on the need “to review . . . nominees with great specificity.”

In 1996 Sen. Hatch decried two Clinton, judicial nominees as “activists who would legislate from the bench.” Later, the then Senate Republican leader, Trent Lott, left no doubt that it was ideology that prompted his objections to the “judicial philosophies and likely activism” of prospective judges.

Judicial activism used to be a term reserved for liberals. Now much activism on the bench comes from the right, often, in the words candidate Bush used to attack liberals, in the form of judges who “subvert” the legislature. In recent years, congressional measures such as the Americans with Disabilities Act, legislation to oppose violence against women and to increase gun control have been gutted by conservative judges.

As Indiana law professor and former Clinton Justice Department official Dawn Johnson chronicled in a Washington Monthly piece last year, the right-wing Federalist Society-agenda envisions an activist judiciary that would roll back many of the guarantees enacted by Congress under the Commerce Clause and the 14th Amendment.

A contemporary example is Jeffrey Sutton, a brainy legal scholar nominated for the Fourth Circuit Court of Appeals. Mr. Sutton clearly is qualified but just as clearly would turn back the clock on protecting people with disabilities. Should senators who care about disability rights simply ignore his ideology?

The right claims that central to the Democrats’ opposition to these nominees is abortion. And it’s true that, more than any other issue, abortion remains a litmus test for both sides. Almost all the Bush circuit-court nominees have been pro-life and a high percentage of the Clinton appointments were pro-choice. But, as Mr. Sutton’s selection shows, the issues are much broader than the disproportionate influence placed on abortion.

In the Estrada fight, some Republicans also allege an anti-Hispanic motive. Opposition to his nominees sends “the wrong message to Hispanic communities,” charges Georgia Sen. Saxby Chambliss. For the record, Mr. Bush has nominated one Hispanic judge to the circuit courts; President Clinton nominated 11. Three of the Clinton nominations were killed by Senate Republicans. Were they racially motivated? That makes as much sense as the Estrada charges.

To be sure, the Democrats play the same games, though the Clinton nominees, as a whole, were nowhere near as ideological as the Bush picks. But there is some overreach; the Democrats’ efforts to get Mr. Estrada’s private notes when he worked in the solicitor general’s office would set a bad precedent.

Thoughtful people on both sides of the aisle worry about these perpetual battles. Mr. Dellinger, for one, notes that if the focus

is only on "noncontroversial," selections, the result chiefly would be courts full of "relatively undistinguished lawyers lacking any substantial record of creative scholarship or advocacy." Instead, he proposes a more constructive solution. Opposition leaders in the Senate would develop a short list of distinguished scholars and practitioners for the president to submit for the courts of appeal. There is a precedent: President Bush last year renominated Clinton nominee, Roger Gregory, the first African American on the Fourth Circuit, in to win acceptance for his other nominees.

Currently, Mr. Dellinger says if Senate Democrats proposed a "distinguished" nominee like former Solicitor General Seth Waxman for the U.S. Circuit Court, a deal could be crafted whereby he and Bush nominees Mr. Estrada and John Roberts are promptly confirmed. Republicans still would hold the upper hand, but the rightward rush would be modified.

It makes a lot of sense and would result in a better judiciary. But the activists on both sides have little interest; it wouldn't energize their bases.

[From the Rutland Daily Herald, Feb. 24, 2003]

#### PARTISAN WARFARE

Senate Democrats are expected to continue their filibuster this week against the appointment of Miguel Estrada, a 41-year-old lawyer whom President Bush has named to the federal appeals court in Washington, D.C.

Sen. Patrick Leahy, ranking Democrat on the Judiciary Committee, is in the middle of the fight over the Estrada appointment. He and his fellow Democrats should hold firm against the Estrada nomination.

Much is at stake in the Estrada case, most importantly the question of whether the Democrats have the resolve to resist the efforts of the Bush administration to pack the judiciary with extreme conservative judges.

The problem with the Estrada nomination is that Estrada has no record as a judge, and senators on the Judiciary Committee do not believe he has been sufficiently forthcoming about his views. It is their duty to advise and consent on judicial nominees, and Estrada has given them no basis for deciding whether to consent.

President Bush has called the Democrats' opposition to Estrada disgraceful, and his fellow Republicans have made the ludicrous charge that, in opposing Estrada, the Democrats are anti-Hispanic. For a party on record against affirmative action, the Republicans are guilty of cynical racial politics for nominating Estrada in the first place. He has little to qualify him for the position except that he is Hispanic.

Unless the Democrats are willing to stand firm against Bush's most extreme nominations, Bush will have the opportunity to push the judiciary far to the right of the American people. Leahy, for one, has often urged Bush to send to the Senate moderate nominees around whom Democrats and Republicans could form a consensus. In a nation and a Congress that is evenly divided politically, moderation makes sense.

But Bush's Justice Department is driven by conservative ideologues who see no reason for compromise. That being the case, the Senate Democrats have no choice but to hold the line against the most extreme nominees.

Leahy has drawn much heat for opposing Bush's nominees. But he has opposed only three. In his tenure as chairman of the committee, he sped through to confirmation far more nominees than his Republican predecessor had done. But for the Senate merely to rubber stamp the nominees sent their way by the White House would be for the Senate

to surrender its constitutional role as a check on the excesses of the executive.

The Republicans are accusing the Democrats of partisan politics. Of course, the Republicans are expert at the game, refusing even to consider numerous nominees sent to the Senate by President Clinton.

The impasse over Estrada is partisan politics of an important kind. The Republicans must not be allowed to shame the Democrats into acquiescence. For the Democrats to give in would be for them to surrender to the fierce partisanship of the Republicans.

The wars over judicial nominees are likely to continue as long as Bush, with the help of Attorney General John Ashcroft, believes it is important to fill the judiciary with extreme right-wing judges.

The Democrats, of course, would like nothing better than to approve the nomination of a Hispanic judge. But unless the nominee is qualified, doing so would be a form of racial pandering. That is the game in which the Republicans are engaged, and the Democrats must not allow it to succeed.

Mr. LEAHY. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have been listening to my distinguished colleague. I noted that he mentioned the Hispanic National Bar Association's past presidents' statement. I have seldom read a statement that is so absolutely bankrupt as this statement. I have seldom read anything that has disgusted me as much as these past presidents of this Hispanic Bar Association in this letter. I have never seen less backing for a letter than what these people have signed off on.

First, let me note for the record that the Hispanic National Bar Association supports Mr. Estrada's nomination. So these people have gone way off the reservation. They may have been past presidents, but they should never be allowed to be a president of this bar association again. They ought to throw them out of the bar association because they entered into politicization of this nominee, in contradiction to what their own bar association has done in endorsing him. The bar association speaks for its many members, not these 15 former presidents. We know why they have done this, because they are 15 partisans. It is disgraceful.

Let me read part of this letter—"Based upon our review and understanding. . . ."

What kind of review? They talked to their friends on the Democratic side? Is that where they got this stuff? Most of which is absolutely false and distorted:

Based upon our review and understanding of the totality of Mr. Estrada's record and life's experiences, we believe that there are more than enough reasons to conclude that Mr. Estrada's candidacy falls short in these respects.

Listen to this:

We believe for many reasons including his virtually nonexistent written record. . . .

Could I make a little point here that I think needs to be made? These are the appellate briefs in the 15 Supreme Court cases. There has not been a nominee before this Senate in recent years who has been able to have that type of illustration of what they do.

These inane people who have entered into partisan politics have disparaged a man who is 10 times better than they are. It is unbelievable the lengths and the depths to which they will stoop to betray one of their own fellow Hispanic people.

I hope the rest of the members of the Hispanic Bar Association will rise up and let them know how far off the mark they are.

Listen to this:

We believe that for many reasons including: his virtually nonexistent written record, his . . . judicial and academic teaching experience—

This is the written stuff that they can't match—very few of them—or even come close to matching. I don't think any of them can. The reason I don't think so is because not many people in this world have that type of a record—a written, open record that anybody can read and find. There are not many attorneys living today who have argued 15 cases before the U.S. Supreme Court and have the record of winning 10 of them.

They say he doesn't have any academic teaching experience. You mean you can't be a judge?

Let us put it this way. Since there have been many academics who have gone on the Federal bench in circuit courts of appeals, the Supreme Court, and district courts, do you mean the Hispanics can't go on the bench unless they have academic and teaching records?

That is what this seems to say by 15 former presidents of the Hispanic Bar Association which has endorsed him. They have gone against their own organization. It is hard to believe.

Then they said:

We believe that for many reasons including: his virtually nonexistent written record.

Look at that record. He has verbally expressed an un rebutted extreme view?

I haven't heard an extreme view throughout this whole process, and we have a transcript that thick of questions by our friends on the other side, and ourselves really. Extreme views? I haven't heard any extreme views. I don't think anybody has made a case that he has extreme views.

Then the letter says, "his lack of judicial or academic teaching experience—

OK. What they are saying—these Hispanic Bar Association presidents—is that hardly any Hispanics will ever qualify for the circuit court of appeals or even the district court because they haven't had any judicial experience or teaching experience. They are condemning their own people. What a ridiculous, dumb statement. I don't swear. But I'll be darned. I am having a tough time not swearing here.

Then it says in parentheses:

(against which his fairness, reasoning skills and judicial philosophy could be properly tested)

What about the five of the eight on the current court who haven't any judicial experience? And I don't know

many of them who have had any teaching experience. You can go through dozens of Clinton appointees who never had any either.

Why the double standard for Miguel Estrada? Why? I am having a rough time answering that question.

There are some answers which I hope aren't true. But I am starting to think they are true.

It says:

... his poor judicial temperament.

Since he has never been a judge, how do they know what his judicial temperament is? The fact is that none of them—I don't believe any of them—even know Miguel Estrada. And if they do, they know he has a decent temperament.

Do you know where they get that? They get that from some of our friends on the other side who believe that Paul Bender, who we have discredited, I believe, fairly and honestly, who gave him the highest possible ratings when Miguel was his junior, when he was Miguel's supervisor in the Solicitor General's Office, and then off the cuff says he doesn't have a judicial temperament, in essence.

Who are you going to believe? The things that he put in writing at the time when they were really important and when they really made a difference or the off-the-cuff remarks that a partisan Democrat liberal—about as liberal as you can get—would say to try to scuttle a nomination? These guys buy it—lock, stock, and barrel. What kind of lawyers are they? Then they say:

... his total lack of any connection whatsoever to, or lack of demonstrated interest in the Hispanic community.

How do they know that? They are prejudging this man without knowing all the people he has met with and worked with and for whom he has been an example. Every Hispanic young person can look up to Miguel Estrada because he is the embodiment of the American dream.

My gosh. This is the most biased, uninformed, stupid, dumb letter I have ever read, and it is done for purely partisan purposes against a fellow Hispanic. I can't believe it. I couldn't believe it when I saw this.

Then it says:

... his refusals to answer even the most basic questions about civil rights and constitutional law.

Give me a break. He spent as much if not more time than almost any nominee we have had over the last 27 years to the circuit court of appeals. We simply did not treat people as this man is being treated by some on the other side—not everybody. What do they know about his knowledge of civil rights and constitutional law? I happen to believe Miguel Estrada will be one of the champions for civil rights, and he is certainly one of the tough lawyers with regard to constitutional law—something I doubt very many of these past presidents had much experience

in. Maybe they do. I would like to hear from them if they do. But I am disgusted with them. If they do, that makes it even worse because they have misjudged him if they have the experience in these areas—and I doubt that they do.

Then they say:

... his less than candid responses to other straightforward questions of Senate judiciary members.

Where did they get that? I bet none of them have read this transcript. I doubt that many of them saw the hearings. Where would they get that? It certainly wasn't from this side, I guarantee you, because we saw him answer the questions. He just didn't answer them the way our colleagues on the other side of the aisle wanted him to answer them. They couldn't lay a glove on him. That is why this is a phony request for confidential and privileged materials from the Solicitor General's Office—the attorney for our country and for the people in this country.

Let me tell you that when I practiced law, my files were confidential, too. There is no way I would have given them to anybody. There is no court in the land that would force me to give them to anyone. They are privileged; that is, since I am an attorney. Can you imagine the privilege the Solicitor General's Office can assert—and they have.

Like I said, seven former Solicitors General—four of whom were Democrats—have said this is ridiculous. Yet it keeps coming up. It is a red herring. It is a double standard. It is a standard applied to Miguel Estrada that has never in history been applied to anybody else.

The letter request was to give up his recommendations on appeals, certiorari matters and amicus curiae matters.

Then it says:

... and because of the administration's refusal to provide the Judiciary Committee the additional information and cooperation it needs to address these concerns.

Give me a break. He has made himself available. Any Democrat who wants to talk to him he will talk to. A number of them refused to even talk to him. Why is that?

So they are trying to do justice here? Why is that so? Why is this Hispanic independent thinker being treated this way? I suggest that it is because he is Hispanic and he is an independent thinker. He doesn't just toe the line.

I am disgusted. Some of these people I know. They should have done better by their fellow Hispanics. They should have thought twice before putting their names on this piece of garbage called a letter by past presidents. It is a disgrace to the Hispanic community. It is a disgrace to the Hispanic National Bar Association and the rest of the membership that is behind Miguel Estrada. And it is a disgrace to them personally to do this type of disgraceful thing in a miserably partisan way.

I don't want to spend any more time on it. It doesn't deserve it. I didn't

mean to be so aggravated, but these types of things just aggravate me to death.

I fought very hard for Clinton's nominees. The other side knows it. I was very fair to their nominees. They know it. Was everyone fair to them? Not everybody, but I was. I expect fairness to be given to our nominee and to their President's nominees.

Finally, I didn't agree with President Clinton's nominees' ideology in probably none of the cases—none of the nominees. But that wasn't the issue. The issue was whether they were qualified. And there has very seldom been a person as qualified as Miguel Estrada. All you have to do is point to the ABA's unanimous well-qualified rating, the highest rating they could possibly give. They are tough.

Now, having said that, I am really disappointed in my colleagues on the other side because they have tried to say the standing committee of the American Bar Association was prejudiced and stacked in coming up with this rating. They do not have a good argument to make, so they make a phony argument.

I want to respond to statements by one of my Democratic colleagues yesterday, suggesting that Mr. Estrada's ABA rating was somehow rigged. I hate to say it, but this is stooping low, too, to make that kind of a statement.

Before I address these statements head on, I think it is first appropriate to lay the predicate, to lay the significance of Mr. Estrada's ABA rating.

Let me just look at this chart. This chart is entitled "Senate Democrats Praise the ABA."

[The] ABA evaluation has been the gold standard by which judicial candidates have been judged.

That was Senator PATRICK LEAHY in March 2001.

What ABA is simply telling us, and has historically, is whether or not a prospective judge is competent.

That was Senator TOM DASCHLE on March 22, 2001.

[I] fear . . . that the Judiciary Committee will be less able than the ABA to discern a nominee's legal qualifications.

That was Senator DIANNE FEINSTEIN on March 31, 2001, the distinguished Senator from California. She is right.

The ABA, with its extensive contacts in the legal community all across the country, is the best organization to evaluate the integrity, professional competence and judicial temperament of potential nominees.

That was Senator RUSSELL FEINGOLD in July 2001.

[T]he ABA . . . has always been impartial. . . . [The ABA is] hardly partisan or ideological. . . . The ABA is the national organization of all lawyers: Democrats, Republicans, liberals, conservatives.

That was Senator CHARLES SCHUMER on May 9, 2001.

We have had our problems with the ABA when there were, it seemed to me, prejudicial decisions from time to time made. And I have had some real problems with them. But I have to say,

they certainly have cleaned up their act, and I said this before the end of the Clinton administration, even though I have not been happy with any one single organization having a vetting responsibility, which is what some of my colleagues always wanted the ABA to have.

Now, let's consider Miguel Estrada. The ABA rated him "well qualified" unanimously—that is the highest possible score—at around the time my Democratic colleagues heaped praise on the ABA. But now, 2 years later, some of my friends across the aisle apparently want to adopt a new rule: ABA ratings are the gold standard—unless we don't like the nominee.

It is against this backdrop that one of my Democratic colleagues, the distinguished minority whip, now asserts that respected Washington lawyer Fred Fielding somehow tricked the ABA into rating Miguel Estrada unanimously well qualified.

Now, I have great respect and loving friendship for my friend from Nevada. Everybody knows that. I care for him deeply. But I could hardly believe my ears when I heard that one. I think it is important to set the record straight, and so here are the facts. I have to presume my colleague just did not know the facts and, therefore, went off on this tangent, and I hope he will withdraw that statement once he hears what the facts are.

Mr. Fielding was a member of the ABA standing committee that rates judicial nominees when Miguel Estrada was unanimously rated well qualified. Mr. Fielding left the ABA committee in November 2001. He did not become affiliated with Boyden Gray's Committee for Justice until August 2002. In fact, the Committee for Justice was not even founded until August 2002. There is no way the Committee for Justice could have influenced Mr. Fielding's duties at the ABA because the Committee for Justice did not even exist at the time.

From 1996 to 2002, when he was on the ABA committee, Fred Fielding consistently evaluated nominees fairly and with an open mind. He voted to rate many of President Clinton's circuit court nominees "well qualified," including the following:

Allan Snyder, the DC Circuit Court of Appeals; Robert Katzmman, the Second Circuit Court of Appeals; Marjorie Rendell, the Third Circuit Court of Appeals; Maryanne Barry, the Third Circuit Court of Appeals; Robert Cindrigh, the Third Circuit Court of Appeals; Stephen Orlofsky, the Third Circuit Court of Appeals; Andrew Davis, the Fourth Circuit Court of Appeals; Alston Johnson, the Fifth Circuit Court of Appeals; Ronald Gilman, the Sixth Circuit Court of Appeals; Kathleen McCree Lewis, the Sixth Circuit Court of Appeals; Ann Claire Williams, the Seventh Circuit Court of Appeals; Susan Graber, the Ninth Circuit Court of Appeals; James Duffy, the Ninth Circuit Court of Appeals; Richard

Tallman, the Ninth Circuit Court of Appeals; Raymond Fisher, the Ninth Circuit Court of Appeals; Stanley Marcus, the Eleventh Circuit Court of Appeals; Frank Hull, the Eleventh Circuit Court of Appeals—all of those rated by Mr. Fielding as unanimously well qualified.

You can hardly say this man was as was described yesterday; in fact, not at all. Anybody who knows Fred Fielding knows he is an honest man. It is offensive to have that type of characterization made, even in the height of a very political battle, which this appears to be—well, to be. I could have said 2 weeks ago: to be coming.

Now, as that list illustrates, Mr. Fielding voted to give numerous Clinton circuit nominees the highest rating possible. If he had been promoting a partisan agenda, he would not have voted to find a single Clinton nominee well qualified, or he certainly would have found a number of those, perhaps, not well qualified—even though they deserved the qualification they got—if he was partisan.

There is simply no reason to believe his vote to find Miguel Estrada well qualified reflected anything other than his unbiased, nonpartisan assessment of Mr. Estrada's fitness for the Federal bench.

Moreover, there is simply no way Mr. Fielding alone could have been responsible for the ABA's unanimous decision to rate Miguel Estrada "well qualified." The ABA's rules make clear that every member of the ratings committee must evaluate each nominee independently:

After careful consideration of the formal report and its enclosures, each member submits his or her rating vote to the Chair.

Now, that is an insult to the other members of the standing committee for somebody to imply they would all pay attention to a "corrupt" Mr. Fielding, if that were even possible, which, of course, it is not.

Mr. Fielding's background as a Republican was more than offset by the committed Democrats who served on the ABA committee at the time and who joined in the unanimous decision to give Miguel Estrada a well-qualified rating.

For example, according to public records, the chairman of the ABA committee at the time Mr. Estrada was rated well qualified contributed to the election campaign of Senator SCHUMER. This individual agreed that Miguel Estrada is "well qualified," the highest rating possible.

Now, I am not going to accuse the chairman of the ABA committee at the time, because he donated to Senator SCHUMER's campaign—which he had every right to do—I am not going to accuse him of being improper, as I believe the implication was for Mr. Fielding.

Get this point. The ABA's Second Circuit representative contributed to Senator Robert Torricelli's reelection campaign and to the New Jersey Demo-

cratic State Committee. This individual agreed that Miguel Estrada should be given the highest rating: "well qualified," unanimously, the highest rating.

I am not going to say that person was biased because that person gave to Senator Torricelli. It is apparent he was not biased.

How about the ABA's Fourth Circuit representative? He made political contributions to Senator CHARLES SCHUMER, Senator TOM DASCHLE, Senator JEAN CARNAHAN, former Vice President Al Gore, Representative JERROLD NADLER, Representative MARTIN FROST, Representative ANTHONY WEINER, Representative ELLEN TAUSCHER, and Representative CHARLES RANGEL. This individual agreed that Miguel Estrada is "well qualified." I do not think these people would be influenced by some Republican saying: Well, we ought to pull a fast one here and get this fellow well qualified when he was not worthy of being well qualified.

There is no question that Fred Fielding is a Republican. There is no question that he supports Republicans politically. But there is also no question he is a person of impeccable honor and integrity who has served as White House Counsel and that he would do what is right on this committee, just like these Democrats did what was right in rating Miguel Estrada as well qualified.

How about this: The ABA's Sixth Circuit representative—this is on the standing committee—contributed to the Democratic National Committee, Senator FRANK LAUTENBERG, Senator CHARLES SCHUMER, former Senator BILL BRADLEY, Senator EDWARD KENNEDY, Representative RICHARD GEPHARDT, and the Arizona State Democratic Central Executive Committee. Now, this individual agreed that Miguel Estrada is "well qualified," the highest rating the standing committee could give. He could not be a more partisan Democrat, but I believe he is doing the job fairly on the committee.

The fact that he supports Democrats, I wish he didn't as much as a Republican, but the fact that he supports Democrats I find no problem with.

How about this one: The ABA's Seventh Circuit representative contributed to Emily's List, the feminist political organization; Voters for Choice, one of the pro-abortion organizations; Senator PATTY MURRAY; former Representative Geraldine Ferraro, former Senator Carol Moseley-Braun; Senator MARY LANDRIEU; Senator Jean Carnahan; Senator BARBARA MIKULSKI, and Senator DICK DURBIN. Yet he voted "well qualified." So Fielding is out of line? Come on. That is phony.

How about the ABA's Eighth Circuit representative. He contributed to Senator JOSEPH BIDEN, Senator HILLARY CLINTON, Senator Paul Wellstone, Senator Jean Carnahan, and former Vice President Al Gore. This individual agreed that Miguel Estrada is "well qualified." I don't think he had any

bias in that. I don't think Fred Fielding had all that influence with all these big-time Democrats. I really don't. I don't think anybody in their right mind does.

How about the ABA's Eleventh Circuit representative. He contributed to Senator Max Cleland. This individual agreed that Miguel Estrada is "well qualified." Did he have a bias? Do you think he was influenced by Fred Fielding?

How about the ABA's Federal circuit representative who contributed to Emily's List, the pro-feminist list; Senator Chuck Robb; the Democratic National Committee. This individual agreed that Miguel Estrada is "well qualified." That is just the beginning of the story.

At the start of the 108th Congress, the ABA then reaffirmed Mr. Estrada's unanimous well-qualified rating. It appears that the Democrats on this year's ABA committee are equally enthusiastic about Miguel Estrada's nomination.

The ABA's DC Circuit representative—Fred Fielding's successor—contributed to the Democratic National Committee and Emily's List. This individual agreed that Miguel Estrada is "well qualified."

The ABA's Federal circuit representative contributed to Senator HILLARY CLINTON, the Irish American Democrats, Representative NANCY PELOSI, the Democratic National Committee, Senator JOHN BREAUX, former Vice President Al Gore, and the Democratic Congressional Campaign Committee. This individual agreed that Miguel Estrada is "well qualified."

I wonder why all these Democrats on the ABA's standing committee find him well qualified while our friends on the floor are filibustering this well-qualified individual? I don't understand it. It seems to me to be a double standard.

The ABA's Fourth Circuit representative contributed to Senator JOHN EDWARDS in the North Carolina Democratic Victory Fund and Bill Bradley. This individual agreed that Miguel Estrada is "well qualified."

The ABA's Eighth Circuit representative contributed to the Missouri Democratic State Committee and Senator Jean Carnahan. This individual agreed that Miguel Estrada is "well qualified." There are a lot of Democrat leaders who contributed to a lot of Democrats running for office who all found Miguel Estrada well qualified, unanimously well qualified.

What is clear from this recitation of political contributions is that in Mr. Estrada's case, the attorneys on the ABA committee put aside their political views and provided the Senate with a neutral and dispassionate analysis of his qualifications.

Fred Fielding, of course, did not hijack the ABA process, nor was Mr. Fielding's participation in that process "unethical," as my Democratic colleagues suggested.

It is time to get rid of these phony arguments. In the case of Miguel Estrada, the process worked just as the ABA intended. It took a lot of very partisan Democrats acting in a non-partisan way fulfilling their duties on the ABA standing committee to find him well qualified, not just when Mr. Fielding was on the committee but also the second time in this Congress.

That is pretty important stuff. I have to respond to Senator LEAHY's remarks that Miguel Estrada handled only one pro bono case. That is not accurate. I am sure my colleague must have overlooked the case of *Campaneria v. Reid*. Miguel Estrada represented pro bono, without fee, a criminal defendant seeking to vacate his conviction on grounds that the admission of his confession at trial violated the Miranda rule. The two judges on the Second Circuit panel hearing the case agreed with Miguel Estrada that his client's right to remain silent had been violated but ultimately ruled that the error was harmless. One judge dissented, arguing that the admission of Mr. Campaneria's confession was not harmless. Miguel Estrada spent countless pro bono hours on that case which further illustrates his commitment to equal access to justice for all.

Since Senator LEAHY brought up Mr. Estrada's pro bono work, let me remind him of Mr. Estrada's work in *Strickler v. Green*. This is an important case as well. It is important to bring it up in light of what has been said. Miguel Estrada represented, free of charge, Tommy David Strickler, who was convicted of abducting a college student from a shopping center and murdering her. Miguel Estrada devoted hundreds of hours to Mr. Strickler's appeal without being paid. Ultimately, the Supreme Court held that although a Brady violation had occurred when the prosecution withheld exculpatory evidence from the defense, the error was harmless. Mr. Strickler was accordingly executed, but it does not negate the fact that Miguel Estrada gave that kind of service free.

It was a legitimate question, too. The court did not rule for Miguel Estrada in the case, but he did do what he has been accused of not doing, and that is giving pro bono service for a person in need.

I would like to read a portion of a letter the committee received from Mr. Estrada's cocounsel in the case, Barbara Hartung:

[Miguel Estrada] values highly the just and proper application of the law. . . . Miguel's respect for the Constitution and the law may explain why he took on Mr. Strickler's case, which at the bottom concerned the fundamental fairness of a capital trial and death sentence. I should note that Miguel and I have widely divergent political views and disagree strongly on important issues. However, I am confident that Miguel Estrada will be a distinguished, fair and honest member of the federal appellate bench.

Why do we have these arguments that are not right? Why are we doing that to this man? Why is it that this

Hispanic man who is an independent thinker and who has an amazing record for a person of his age, who has the qualifications to be on the Circuit Court of Appeals for the District of Columbia, why are we doing this to him? Why the double standard? Nobody else has been treated this shabbily, especially by these past presidents of the Hispanic Bar Association. Keep in mind that Hispanic National Bar Association supports Miguel Estrada. Yet these people gratuitously signed this ridiculous letter. I hope they feel ashamed of themselves. They ought to be.

The Hispanic community ought to tell them to be ashamed of themselves. I believe they will. I think that is going on right now. The Hispanic people are starting to catch on on this and what is going on. It just plain isn't fair. It just plain isn't right. It just plain is not a good thing to do to filibuster a Federal judicial nominee. It just isn't. We have always had some who wanted to do it, but we on this side have always been able to stop them. This is the first true filibuster that we have had on a Federal judicial nominee.

I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Nevada.

Mr. REID. Mr. President, I know there are others who wish to speak, but I wanted to take a minute to talk about my friend's comments about Mr. Fielding.

I think that while my name was mentioned—and I have the greatest respect for my friend from Utah. We are close personal friends. Our families are friends. We have been in each other's homes. There is nothing personal about this. This is a partisan matter we are bringing before the Senate.

Mr. President, the political contributions that people make is certainly very different from being an inside political operative, as Mr. Fielding was. In fact, for lack of a better way to describe him, he was an inside guy for the Republicans and had been for many years. I will list in a minute the many things he had done.

Mr. President, the more I hear about the ABA, the more convinced I am the Republicans were right when they said let us not have the ABA involved in this. I think those people who said that were absolutely right. I didn't know as much about the ABA as I do now. I practiced law for a long time before I came here. I was a trial attorney. I didn't belong to the ABA. I thought it was a bad organization then, and the more I hear about it today, the worse I think it is. I think what they have done on these judicial nominations—Democratic and Republican—reeks, smells. There are thousands of lawyers in the country, thousands of members of the ABA. Couldn't they get people who are selecting nominees who could pass the smell test? In this one, this ABA qualification should be thrown right in the trash.

Mr. President, it is not the Senator from Nevada who feels Mr. Fielding

was wrong in what he did. Here is an article out of a newspaper dated yesterday, by Tom Brune. The headline is "Estrada Endorser Had Partisan Role." It goes on to say—this is a news article, not an editorial:

The lawyer who recommended the American Bar Association's highest rating for controversial appellate judge candidate Miguel Estrada took part in partisan Republican activities during his term as a non-partisan judicial evaluator for the Bar, according to records and interviews.

The man who wrote this column said what I quoted. He says:

While serving on the ABA's nonpartisan Standing Committee on the Federal Judiciary, veteran Washington lawyer Fred F. Fielding also worked for Bush-Cheney Transition Team, accepted an appointment from the Bush administration and helped found a group to promote and run ads supporting Bush judicial nominees, including Estrada.

An editorial comment here, Mr. President. That is only part of his political involvement. Let me read part of it. There are other things.

Fielding cofounded the Committee for Justice, with Bush confidante and former White House counsel C. Boyden Gray. They founded this organization to help the White House with the public relations end of its effort to pack the bench and to run ads against Democrats. . . .

In addition, Fielding has a long career as a Republican insider. He served as Deputy Counsel to President Richard Nixon. He then served on the Reagan-Bush campaign in 1980, the Thursday Night Group. He served on the Lawyers for Reagan advisory group, the Bush-Reagan transition, 1980-1981. He served—this is a dandy—he was conflict of interest counsel. That is a laugh. He worked with the Office of Government Ethics, which is also a joke. He served on the White House transition team. He served in the Office of Counsel to the President, as deputy counsel to President Reagan. He served on the Bush-Quayle campaign in 1988; as Republican National Convention legal advisor; as campaign counsel to Senator Quayle; and as deputy director of the Bush-Quayle transition team. He served on the Bush-Quayle campaign, 1992, as the senior legal advisor conflict of interest counsel and the Republican National Committee advisor. He served as the legal advisor to the Dole-Kemp campaign, 1996.

Mr. President, in short, the Bush White House could not have hand-picked somebody with better partisan credentials than Fielding to evaluate his DC Circuit Court nominees.

The ABA should be ashamed of themselves. Lawyers are trying to have a reputation that is good and does not have conflicts of interest, that is ethical. This thing reeks.

Estrada graduated with honors from Harvard. You cannot take that away from him. He is a fine lawyer, but this ABA thing, take it away because it means nothing. How can one have confidence that Mr. Fielding did not paint a very rosy picture for partisan reasons.

The article by Mr. Brune goes on to say:

Fielding evaluated Estrada in the month after President George W. Bush nominated him on May 9, 2001, ABA officials said. That was just weeks after Fielding vetted executive appointments for Bush's transition team and a year before he helped start the partisan Committee for Justice, records show.

Contrary to what was said a few minutes ago, Fielding did cofound this group while a member of the ABA evaluation committee.

The article continues:

The overlap has thrust Fielding—and his evaluation . . .—into the heated political battle over Estrada's nomination. . . .

. . . On February 12, Senator Harry Reid charged that Fielding had a conflict.

I said at that time, and there is a quote in the newspaper:

Doesn't Mr. Fielding's dual role—purportedly "independent" evaluator and partisan foot soldier—violate ABA rules?

As the investigative reporter notes:

Those rules say no Standing Committee member should participate in an evaluation if it would give rise to the appearance of impropriety or would otherwise be incompatible with the committee's purpose of a fair and nonpartisan process.

It goes on to say, "Former ABA President Robert Hirshon said he was concerned when in late July 2002 he read reports that Fielding had joined Republican C. Boyden Gray to start the Committee for Justice."

"That raised some concerns in my mind," said Hirshon, "given the fact that our committee has been tarred by both conservatives and liberals as poster boys for the other side. . . ."

He called Roscoe Trimmier, Jr., then the Standing Committee chair, and asked him to talk with Fielding. "I don't see how you can do both," Hirshon said. If Fielding became involved in Gray's group, he couldn't serve as an ABA evaluator again, he said.

. . . Fielding is still listed as a board member of the Committee for Justice.

"I don't see the conflict," Gray said—

I bet he didn't. He helped form the Committee for Justice.

He added that

Fielding didn't vet Estrada while on the transition team and left the ABA post soon after the group formed.

But Nan Aron, executive director of the liberal Alliance for Justice, which opposes Estrada, charges that Fielding is too partisan to do a fair evaluation.

The article notes:

Fielding was President Ronald Reagan's White House counsel—

And some of the things I have already put into the RECORD.

Listen to this fact uncovered by the reporter:

In May, Bush appointed Fielding to an international center that settles trade disputes.

He gets \$2,000 a day plus expenses for this.

The article also notes that:

last fall, President Bush thanked Fielding publicly during a rally for his judicial nominees.

I bet he did.

The article also notes that Burbank, a Professor of ethics at the University of Pennsylvania says Fielding's activi-

ties raise questions of appearances, which would cause more damage to the ABA. Ironically, Bush removed the ABA from his long-held role prescreening judicial nominees because of the evaluators' perceived liberal bias.

"In light of the controversy concerning the proper role of the ABA Standing Committee," Burbank said, "it seems to me to be a shame to structure the process in such a way that reasonable people might be concerned."

Mr. President, let me simply say that the evaluation by Fred Fielding is a scam, it is unfair, it is not right. There certainly is an appearance of unfairness and partisanship. If you want to debate Miguel Estrada based on this ABA qualification, I will do that all day long. There are many positive things Estrada has. This is not one of them. This was an evaluation done by a very partisan person, who has only recommended well qualified ratings for Bush nominees in D.C.

I repeat what I said a few minutes ago. The more I learn about the ABA, the less I feel inclined to support the ABA for anything they want. In this situation, if I ever have anything to do with it in the future, the ABA should be eliminated. It would be one less process we would have to go through to get people on this floor. The ABA's "gold standard", as far as I am concerned, is tarnished, and rightfully so.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I am disappointed. I just read over all of the Democrats on the Standing Committee who have contributed to Democratic Party politics. I have never accused any of these people. Along with these are these judges on this chart. What does that mean? That he wasn't right when he found unanimously well qualified all of the Clinton judges, or nominees?—that is not right—when he voted for Miguel, along with all of these Democrats I have listed who have contributed?

All I can say is I think we have answered the points. I agree no outside body should be a voting instruction. I have always felt that. But I have to say the ABA has been part of the process, whether we like it or not, for a long time. There were plenty of Democrats who voted for Miguel Estrada as well qualified.

The PRESIDING OFFICER. The Democratic leader.

#### DEALING WITH ECONOMIC PROBLEMS

Mr. DASCHLE. Mr. President, I was home in South Dakota over the last week, and I had the opportunity to talk with farmers and ranchers, businesspeople, educators, and government leaders. What I bring back from those many discussions is the strong belief that if there is anything we do in the Senate over the course of the next several weeks, it ought to be addressing the economic problems that our country is facing.

I wish I had an accurate count of the number of times in various ways business men and women and farmers and ranchers asked the question: So why are you spending all of this time on a judge when our country is in such economic disarray?

This is an important issue, the Estrada nomination, but we have said from the beginning, and I think we will be able to continue to say with authority, that there will not be any resolution until the Solicitor General documents are released and until Mr. Estrada is more forthcoming with regard to his positions.

We can take up time on the Senate floor week after week, or we can put it aside, make some decision with regard to whether or not there will be some reconciliation on that issue and answer the question posed by so many South Dakotans to me last week: When will we address the economy? When will we recognize that there is a lot more productive use of the Senate's time than an unending debate about Miguel Estrada?

They do not understand why we are stymied and why we are unresponsive to the growing concern they have about the direction the economy is taking.

There is a growing credibility gap between what the President and the administration says and what they do, between their rhetoric and their reality. The President has taken occasion to go around the country to talk about his concern for the economy. On several occasions over the last couple of weeks, he has made his speeches about his concern for the economy and his approach through his tax cuts. I have to say, if he cared, if he was concerned, he would ask the Senate to take up this matter immediately. It will not be a day too soon.

A report was released this morning that said consumer confidence is now at a 10-year low. Consumer confidence, as registered and reported through its index, has plummeted to 64 from a revised 78 just last month. That is the lowest rating since 1993, 10 years. Unemployment is rising. We have seen an increase in the number of unemployed by 40 percent. We now have 8.3 million Americans out of work and 2.5 million private sector jobs have been lost just in the last 2 years. The unemployment spells are lengthening, wage growth is now stagnant, and the shortage of jobs has slowed wage growth so that only those at the very top are still experiencing wage increases that outpace inflation. We now have the worst job creation record in 58 years, while State budgets continue to be plagued with deficits of close to \$70 billion. Some have reported even more than that.

We have an economic crisis that is not being addressed, and while that economic crisis grows, there is another concern expressed to me last week by scores of South Dakotans who are our first responders. Our fire departments, our police departments, those involved

in crisis management all tell me they haven't a clue as to what they would be required to do should some emergency come about. There is no coordination. There is absolutely no training.

When I asked them last week, What would you suggest I go back and tell the President and my colleagues, they said: Understand that unless we have training, unless we have communications equipment, unless we have more of a coordinated effort to bring us into the infrastructure required for response, we will not be able to live up to the expectations of the people right here. Help us.

We have attempted to help those first responders over and over: last December, with \$2.5 billion that the President said we could not afford; last month with \$5 billion that the President, once again, said we could not afford. You tell those first responders that we cannot afford providing them the resources to do their job when we look at what has happened in just the last 48 hours in our basing arrangements with Turkey. According to press reports, we can afford up to \$6 billion in grants and \$20 billion in loan guarantees for Turkey, but for some reason we cannot afford providing homeland and hometown assistance—direct, coordinated help—to provide the training and communication and coordination required. That is a credibility gap that I think this President needs to address.

I hope we can set aside this issue of Mr. Estrada and deal with the issue about which our people, regardless of geography, are concerned. The President has a plan, Democrats have proposed a plan, and there is a significant difference between the two. There, too, we find a credibility gap.

An article was written in the New York Times that appeared this morning by David Rosenbaum entitled "The President's Tax Cut and Its Unspoken Numbers." I ask unanimous consent that this article be printed in the RECORD.

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

[From the New York Times, Feb. 25, 2003]

THE PRESIDENT'S TAX CUT AND ITS UNSPOKEN NUMBERS

(By David E. Rosenbaum)

WASHINGTON, Feb. 24.—The statistics that President Bush and his allies use to promote his tax-cut plan are accurate, but many of them present only part of the picture.

For instance, in a speech in Georgia last week, the president asserted that under his proposal, 92 million Americans would receive an average tax reduction of \$1,083 and that the economy would improve so much that 1.4 million new jobs would be created by the end of 2004.

No one disputes the size of the average tax reduction, and the jobs figure is based on the estimate of a prominent private economic forecasting firm.

But this is what the president did not say: Half of all income-tax payers would have their taxes cut by less than \$100; 78 percent would get reductions of less than \$1,000. And the firm that the White House relied on to predict the initial job growth also forecast

that the plan could hurt the economy over the long run.

The average tax cut (the total amount of revenue lost divided by the total number of tax returns) is over \$1,000 because a few rich taxpayers would get such large reductions. For households with incomes over \$200,000, the average cut would be \$12,496, and the average for those with incomes over \$1 million would be \$90,222.

But the cut for those with incomes of \$40,000 to \$50,000, according to calculations by the Brookings Institution and the Urban Institute, would typically be \$380. For those with incomes of \$50,000 to \$75,000, it would be \$553.

The president's jobs figure was based on a preliminary analysis by Macroeconomic Advisers, of St. Louis. The firm, to whose services the White House subscribes, issued projections in January concluding that by raising disposable income, bolstering stock values and reducing the cost of capital, the president's program would lead to 1.365 million new jobs by the end of next year.

But the White House has never mentioned the caution in the second paragraph of the firm's report. The forecasters predicted that if the tax cuts were not offset within a few years by reductions in government spending, interest rates would rise, private investment would be crowded out, and the economy would actually be worse than if there had been no tax changes.

The president has not proposed spending reductions that would offset the tax cuts. To the contrary, the administration has argued that the budget deficits resulting from the cuts would be too small to harm the economy.

Another argument that administration officials make regularly is that under the president's plan, the wealthy would bear a larger share of the nation's tax burden than they do now. A table released last month by the Treasury's office of tax analysis showed that people with incomes over \$100,000 would see their share of all income taxes rise to 73.3 percent from the current 72.4 percent.

At the same time, the table showed, taxpayers with incomes of \$30,000 to \$40,000 would get a 20.1 percent reduction in income taxes, and those earning \$40,000 to \$50,000 would get a 14.1 percent cut.

The problem with figures like those is that a large percentage of a small amount of money may be less important to a low- middle-income family's lifestyle than a small percentage of a large amount of money would be to a rich family. For example, a \$50 tax cut would be a 50 percent reduction for a household that owed only \$100 in taxes to start with, but that small amount of money would not significantly improve the family's well-being.

A better measure may be the increase in after-tax income, or take-home pay, that would result from tax cuts. According to data from the Joint Congressional Committee on Taxation, the tax reduction of \$380 for a family with an income of \$45,000 would amount to less than 1 percent of the household's after-tax income. But the \$12,496 tax cut received by a family with an income of \$525,000 would mean a 3 percent increase in money left after taxes.

The president and his advisers also offer a variety of incomplete statistics to bolster their proposal to eliminate the taxes on most stock dividends.

Among the points they make are that more than half of all taxable dividends are paid to people 65 and older, that their average saving from eliminating the tax on dividends would be \$936, that 60 percent of people receiving dividends have incomes of \$75,000 or less and that up to 60 percent of corporate profits are lost to income taxes paid by either the companies or the stockholders.

All that is true, but here is a more complete picture:

Only slightly more than one-quarter of Americans 65 and older receive dividends. Two-thirds of the dividends the elderly receive are paid to the 9 percent of all elderly who have incomes over \$100,000.

The Tax Policy Center at the Brookings Institution and the Urban Institute calculated that the average tax cut from the dividend exclusion would be \$29 for those with incomes of \$30,000 to \$40,000 and \$51 for taxpayers with incomes of \$40,000 to \$50,000.

On the other hand, the two-tenths of 1 percent of tax filers with incomes over \$1 million (who have 13 percent of all income) receive 21 percent of all dividends, and the Tax Policy Center figured that their average tax reduction from the dividend exclusion would be \$27,701. For taxpayers with incomes of \$200,000 to \$500,000, the typical tax cut from the exclusion was calculated at \$1,766.

In instances where both the corporation and the shareholder are paying taxes at the maximum rate, it is possible, as the administration maintains, for 60 percent of the profits to be taxed away. But calculations based on I.R.S. data and performed by Robert S. McIntyre of the nonpartisan Citizens for Tax Justice show that on average, only 19 percent of corporate profits are paid in taxes by companies and shareholders combined.

Mr. DASCHLE. Mr. President, the President talks about his plan providing 92 million Americans with an average tax reduction of \$1,083, and yet with closer scrutiny and attention, with a more careful review of the facts, we find that is not the case at all. That is like Bill Gates and TOM DASCHLE averaging their income. If he and I averaged our income, mine would be somewhere around \$39 billion. I only wish I had \$39 billion to average with Bill Gates, but I do not. But that is the method this President is using to provide these average numbers with regard to the beneficiaries of his tax cut.

Here are the facts: 78 percent of Americans are going to get less than \$1,000, and over half of all taxpayers will get less than \$100 under the President's plan. That is right, less than \$100. That is all more than half of all taxpayers will receive under the President's plan. That is fact. That is a credibility gap. That is saying one thing and doing another. That is saying the average American gets \$1,000 but actually, in fact, the average American is going to get under \$100.

There is a credibility gap across the board. He said his plan will create 1.4 million jobs by the end of 2004.

According to the same report President Bush cites by macroeconomic advisers of St. Louis, his tax cuts actually have the potential to harm the economy in the long run, but the President did not mention any references to those parts of the report stated later on.

The President has said eliminating the double taxation of dividends is good for enhancing the lifestyle of millions of Americans all across the country. The reality is that only 22 percent of those with incomes under \$100,000 reported any dividend income in the year 2000. The average tax cut from the dividend exclusion would be \$29 for those with incomes below \$40,000.

There is a lot to discuss. There is a great need in this country to do what the American people are hoping we will do, and that is take up issues they are concerned about, to address the issues they will rise and fall on over the course of the next several months.

I cannot tell my colleagues the emotion I feel in the room oftentimes as I talk to businessmen whose lips would quiver, whose eyes would moisten, who would tell me: TOM, I do not know if I can be in business a year or two from now if things do not change. I have not sold a piece of farm equipment in 2 years. I have seen my sales plummet more than 20 percent in the last 3 months. I have no confidence about how we are going to turn this around, they tell me, unless you in Washington understand that things have to be done to make this economy better.

What do we do? We come back to Washington and we are back in the same old trap, talking about the same old thing. That will not change until Mr. Estrada is more forthcoming. So we can spend time on the economy or we can spend time talking about issues that have no relevance to the daily lives of the people of South Dakota and the people all across this country.

Mr. CORZINE. Will the minority leader yield for a question?

Mr. DASCHLE. I am happy to yield to the Senator from New Jersey.

Mr. CORZINE. I truly appreciate the focus on issues that matter directly to the people who live in our States and who live across the country.

The Senator spoke about the individual business person who had not sold any farm equipment. We are closing the last two autoplants in New Jersey over the next 2 or 3 years. They have already cut down to one shift. Bell Labs, one of the great research institutions of America, has literally been a part of the reduction of 130,000 jobs at Lucent, a lot of them in New Jersey. A lot of the Bell Labs people are doing basic core research, and the people are very upset.

That is what that consumer confidence number is. It is incredible in the history of real measurements of what is going on in the minds of American consumers. By the way, it is going on in business, too.

I ask the minority leader whether he saw yesterday's survey from Manpower, Inc. They said only 20 percent of businesses in America think they will add any jobs in the next 6 months, an indication of the kind of depth of concern that actually exists in the business community in conjunction with consumer confidence.

I applaud the minority leader for making sure we are being focused to have a debate about something that matters to people's lives, and I hope we can bring forth a real debate about a stimulus program to get our economy going, put people back to work because that is where real concerns seem to be. I presume that is the kind of question the Senator is receiving in South Dakota.

Mr. DASCHLE. I appreciate very much the comments of the distinguished Senator from New Jersey because I think among us all no one knows these economic issues better than he does.

Again, I would say to the distinguished Senator, this is part of that credibility gap I was referring to. The President professes to be concerned, the President talks about his proposals to address the economy, and yet we are not planning to take up any economic stimulus for months, I am told. It may be May before it comes to the Senate. How can anybody with any truthfulness express concern about the economy and say, no, but we will just do it later? We will not do it this week, we will not even do it this month, we will do it sometime down the road but, yes, I am concerned.

When they look at consumer confidence, when they look at the numbers of jobs lost, when they see those plants close, when they see the consumer confidence drop as precipitously as it has, how in the world can anybody in the world confess to be supportive of economic recovery and economic stimulus with numbers like that and the inaction we see from the White House?

Mr. CORZINE. If the minority leader will yield for one other observation and question, has the Senator noticed the fact that we have lost almost another trillion dollars in market value? And by the way, that translates into 401(k)s and IRAs for individuals. Those are some very serious numbers, actually since this program with regard to dividend disclosure has been announced. There is a credibility gap between the reality of what is being suggested as an economic growth program and what is actually occurring out in the real world. Certainly my constituents and the people I hear from around the country and in the business community are saying much of the same thing. I presume that is what the Senator is hearing as well from the folks in South Dakota.

Mr. DASCHLE. I say to the Senator from New Jersey, that is exactly what I am hearing from the people of our State. As I have traveled around the country, I hear it in other parts of the country as well. This is a very serious issue that will not go away, and I think the more we face the uncertainty of war, the more we face the uncertainty of international circumstances, the more this domestic economic question is going to be exacerbated.

People want more certainty. They want more confidence. They want to at least believe we understand how serious it is out there and we are going to do something to address it. And what do we do? We come back after a week's break and not one word about the economy from the other side, not one word about the recognition of how serious this problem is. We are still talking about the Estrada nomination.

UNANIMOUS CONSENT REQUEST—S. 414

I ask unanimous consent that the Senate proceed to legislative session

and begin the consideration of Calendar No. 21, S. 414, a bill to provide an economic stimulus package.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

Several Senators addressed the Chair.

Mr. DASCHLE. Mr. President, I believe I still have the floor privilege.

The PRESIDING OFFICER. The Democrat leader still has the floor.

Mr. DURBIN. Will the Senator from South Dakota yield?

Mr. DASCHLE. I yield to the Senator from Illinois.

Mr. DURBIN. I thank the minority leader for coming to the floor, and I hope those who are following the debate understand what just happened. The minority leader of the Senate has asked this Senate to move to the issue of the state of America's economy, that we take up immediately the question of what we can do to save businesses, create jobs, and I think foster some hope in America.

There was an objection immediately from the Republican side of the aisle. They do not want to discuss this issue.

I ask the minority leader the following: Since he has been home—and I have been in communication with the people of my State of Illinois—is it not a fact now that we have reached a point where our economy is dissembling, our foreign policy is in disarray, and this Congress is totally disingenuous, it ignores the reality of the challenges facing America today? I also ask the minority leader if he would tell me what he believes we should be debating at this point in time to do something about turning this economy around and bringing hope back to America.

Mr. DASCHLE. I thank the Senator from Illinois for his observation and his question. If we go home—and I know the Senator from Illinois was just home as well—there are two issues on the minds of virtually every American right now. I was asked questions everywhere I went pertaining to the Senator's first question, and that, of course, is what is going to happen in Iraq? We generally have an idea of what may evolve over the course of the next few weeks, and there is not much that South Dakotans can do about that.

The second question is, What is going to happen to my economic circumstance?

I talked to one businessman who had to lay off a couple of his employees, and it hurt him dearly. They had worked for him for a long period of time. He said: Tom, I have no choice.

I talked to people who had their health insurance dropped, in part because business was so bad their employer could no longer sustain the cost incurred of paying their health insurance. They said: We understand, but at least we got to keep our job.

But what are you going to do about it? That is the question. What are we

going to do about it? What will the majority do about it? What message are we going to send to those people to whom we must show some empathy if, indeed, these conversations with our constituents mean anything at all? That is why it is imperative we are cognizant of the message we send today, tomorrow, the next day, and the next day.

As this economy worsens, we spend our Senate time totally consumed with one nomination having to do with a circuit court nominee for the District of Columbia. This is the third week we have been on it. We can resolve this matter if Mr. Estrada will come forth with the information. But if he will not, let's move to something else until he does.

Mr. DURBIN. Will the Senator yield?

Mr. DASCHLE. I yield to the Senator.

Mr. DURBIN. I have followed this debate on a daily basis. If I am not mistaken, the Senator from Utah, Mr. BENNETT, came to the floor with a positive and constructive suggestion. He said that this nominee, Miguel Estrada, should produce the written documents from his experience working for the Department of Justice, working for the Supreme Court. In fact, he even suggested at one point they be produced so they can be reviewed carefully by both the Republican and Democratic leaders of the Senate Judiciary Committee and then a determination be made as to whether there should be followup hearings or questions and ultimately a vote so there would be disclosure. This suggestion did not come from a Democratic Senator; it came from a Republican Senator, Mr. BENNETT of Utah.

I thought it was a fair suggestion to break the logjam, to resolve this nomination up or down, and to move on to the people's business.

Can the Senator from South Dakota, our minority leader, tell me whether that suggestion of producing those documents really is consistent with what we are trying to achieve so we can once and for all give Mr. Estrada his fair hearing and final determination? Is that what this is about?

Mr. DASCHLE. That is exactly what this is about. I thank the Senator for asking the question. It is no more complicated than that.

On a bipartisan basis, Republican and Democrat Senators have said we need the best information that can be provided by any nominee before we are called upon to fulfill our constitutional obligation. That is what we are suggesting. We need that information to make the best judgment. That information is being withheld.

If I had an applicant for a job in my office and I said, I want you to fill out this application and I will be happy to consider your qualifications for employment in my office, and he or she said, I don't think I will fill out the second and third page, I will give you the front page, I will give you the

name, address, and maybe my employment history, but that is it, you have to make a guess as to the rest of my qualifications because I am not telling you, I would say to that prospective employee, come back when you can fill out the full application. That is what I would say. That is what every employer in this country would say.

Remarkably, when I went home last week and explained the issue to my constituents, they said: That sounds fair. That sounds reasonable. If an applicant for a lifetime position on the second highest court of the land is not willing to fill out his job application, how in the world should we consider that nominee as a bona fide applicant for the position in the first place? That, again, is a diversion from what I think most people are concerned about. They are concerned about this, and they want fairness, but they are a whole lot more concerned about whether they will be giving job applications to anyone in their State in their circumstances because they are doing the opposite.

We do not have lifetime applications for jobs in South Dakota because the economy is very soft. If anything, we are losing jobs in South Dakota. So while we talk about 1 job for the circuit court, we have lost 2.5 million jobs in the last 2 years in this economy. That does not make sense. That is what the American people want us to address.

Mr. DURBIN. If the Senator will yield for a last question, many people on the other side suggested we are picking on Miguel Estrada, we have focused on this man, a Hispanic nominee, and this is somewhat personal in terms of what we are trying to achieve.

I ask the Senator minority leader, is it not our constitutional responsibility to establish a standard and process to apply to all judicial nominees so that there is full disclosure from them as to who they are, what they believe, their values, so if they are given a lifetime appointment on the court, we at least know, going in, who these people might be. Is it not also the fact, as the Senator from South Dakota has told us, that Miguel Estrada has consistently refused to do just that, consistently refused to answer the questions, consistently refused to disclose the documents, consistently refused to tell us who he is as he seeks one of the highest Federal judicial appointments in the land?

I ask the Senator from South Dakota, is this an issue which goes beyond Miguel Estrada and calls into question the constitutional responsibility of the Senate when it comes to judicial nominees? We have approved 103 Federal judges for this Republican President, and I have voted for the overwhelming majority of them. Are we not in this discussion trying to raise the fundamental issue of equity and process as to the responsibility of the Senate under the Constitution?

Mr. DASCHLE. The Senator from Illinois has said it very well. That is exactly what this is about. At one level, this is about fulfilling constitutional obligations. This is about following precedent. This is about making sure there is fairness as we consider these nominees for all courts, but especially for courts at that level.

This is also about something also, about the management of the Senate. While the Senate has been concerned about one job for the last 3 weeks, a lot of us are saying we ought to be concerned about the 8.3 million jobs we do not have in this country today as a result of disastrous economic policies on the part of this administration, 2.5 million of which have been lost in the last 2 years. We spend our time talking about one job; there is no talk on the other side about all of those millions of jobs lost in this country because there is no economic policy.

What we are suggesting this morning is that there ought to be some consideration for those jobs, too; that to be consumed by one job and not consumed, or at least willing to address those millions of other jobs, is something I cannot explain to the people of my State or to the people of our country. I hope our Republicans will do something along those lines in the not too distant future.

Mr. SCHUMER. Will the Senator yield?

Mr. DASCHLE. I am happy to yield.

Mr. SCHUMER. Two questions. I want to follow up again on what the Senator from South Dakota said in the dialog with my colleague from Illinois. First, I know the Estrada judge issue has gotten a lot of attention in the newspapers. When I go back to my State of New York, virtually no one asks me about it—very few people. I get lots of people asking about the war and also about the economy and jobs. Is that particular to New York because we had September 11 or is the same thing happening in South Dakota?

Mr. DASCHLE. I say to the Senator from New York, before he came to the floor, I began my comments by reporting conversations I had with people back home last week. I was moved by the comments, by the reports, by the emotion I felt as I talked to people whose businesses, whose jobs, are perhaps more precarious than they have been for years. All the statistics bear that out. Consumer confidence is the lowest in 10 years, the number of those unemployed going up by millions in the last 2 years; every economic indicator is pointing to the growing crisis we face in the economy.

Yet what do we do? We find ourselves once again most likely scheduled for the entire week, debating 1 job rather than the 2.5 million jobs lost just in the last 2 years alone.

Mr. SCHUMER. If my colleague will yield for another question, we have seen in the newspapers the talk that the Democrats are filibustering, that Democrats are preventing the Senate

from going forward to other issues, whereas the Republicans are eager to go to other issues.

The real truth on this floor is, first of all, that we have asked just now to go to economic issues, that last week when the Republican leadership—they run the show—decided to bring up this omnibus budget, the Estrada nomination did not stand in the way. We did it. We voted in one fell swoop for the entire Federal budget, and, in fact, last week this floor, because the Republican leadership chose to do so, actually voted on three other judges who I believe passed unanimously, if not close to unanimously. And the filibuster, in a sense—in a very real sense—is not being conducted by the Democrats but rather, led by my capable and good friend from Utah, by the Republicans, and we would be happy to move on to other issues that are pressing, that are on people's minds, and maybe come back to this issue at some point when we get the requested material.

Just to rephrase my question, who is really preventing us from moving forward? Who is filibustering? Why are we staying on this issue? Is that the Senator's choice as the leader of the Democrats or is that the choice of our good friend from Tennessee as leader of the Republicans?

Mr. DASCHLE. I think the Senator from New York put his finger on exactly the question. We just attempted to move on to something else. We were prevented from doing so. It is not just something else but perhaps the single most important domestic issue facing our country today. Yesterday, the request was made and agreed to that we take up the Hatch-Leahy PROTECT Act, as we should have agreed. I am glad that we were able to take it up and pass it.

The Senate has demonstrated the ability to move off this legislation when it sees fit. We did it just yesterday. As the Senator from New York suggests, we did it again a few weeks ago with passage of the omnibus legislation. We are capable of moving off the bill and dealing with the other issues. I can't explain why we have chosen—why our Republican colleagues have chosen—to stay on this legislation even though we know there are so many more pressing issues that ought to be taken up. I can't explain their intransigence. I can't explain why they want to prolong this debate. I can't explain why they are unwilling to consider the 2.5 million jobs rather than the one job that we continue to debate on the Senate floor. That is inexplicable to me.

I just hope the American people understand. We have come back after listening to our people. They made it clear to us what they want us to take up. They want us to deal with the economy. They want us to deal with the real problems we have with homeland security and the lack of training, the lack of communication and the lack of good technology and equipment which

they need so badly. They do not have that either. That, too, would be economic in many respects, if we can provide that assistance. But it is not being provided because it is not being given the attention. Therein lies the credibility gap. Something is said and nothing is done. There is a big difference between rhetoric and reality when it comes to this administration and many of our colleagues on the other side.

Mr. SCHUMER. If my colleague will yield for just one final question, might it not be fair to say that it is not the Democrats filibustering to prevent Estrada from coming forward for a vote but, rather, the Republicans are filibustering until they get the vote on Estrada, which they have so far refused to call for? Is that an unfair characterization?

Mr. DASCHLE. That is exactly what happened this morning. If we were filibustering we would not have suggested that we get off the issue. A filibuster is to prolong the debate. We want to end the debate. We want to move on to something far more pressing to the people of this country than the one job. We want to talk about those 2.5 million jobs that we have lost. Therein lies the issue.

I hope the Republicans will bring this debate to a close so long as it doesn't appear that Mr. Estrada is willing to cooperate. At such time as he is prepared to do so, we can take this matter up again. But in the meantime, we ought to be concerned about those millions of jobs that continue to be lost because of congressional inaction and because of a failed economic policy on the part of the administration.

Mr. SCHUMER. I thank the leader.

Mr. CORZINE. Mr. President, will the distinguished minority leader yield for one more question?

Mr. DASCHLE. I am happy to yield.

Mr. CORZINE. Mr. President, I asked questions earlier about the private sector. I think we have all 50 Governors from across this Nation now in the Nation's Capital. I know many of them come to visit their Senate representatives and their congressional representatives. I wonder if the minority leader has had one single Governor approach him with respect to the Estrada nomination or whether he has had one single or multiple Governors come and talk about the state of their fiscal affairs in their State governments and their unbelievable difficulty in trying to maintain employment and support in Medicaid and all the other issues. I was just wondering if the minority leader has had any discussions with them about Judge Estrada versus the sake of the economy—or homeland security for that matter.

Mr. DASCHLE. I think the Senator from New Jersey asked the question that makes the point. The answer is absolutely no. Our Governors, of course, are hearing from the same people we are hearing from. They are concerned about the status quo. Someone once told me the status quo was Latin

for the “mess word.” Their concern for the “mess word” and this mess continues to be compounded by a budget deficit that grows by the month. We are told now that we could exceed \$70 billion. Some have suggested that the figure could be as high as \$100 billion in debt. They are struggling with their own budgets in part because of the mess we created for them in Medicaid, in education, in homeland defense, unfunded mandates, and the sagging economy, and no real economic plan in place. Their message in coming to Washington is: Fix it; help us address this issue and be a full partner recognizing that you, too, have a full responsibility to engage with us in solving this issue.

I think if you took a poll of all 50 Governors, should we stay on the Estrada nomination or should we address the economy and these budgetary questions, it would be unanimous—Republican and Democrat—they would say no; fix the economy and help us solve our own financial and fiscal problems. Do not be as consumed as you are about one job until you solve the problem for those 2.5 million jobs that haven’t been addressed.

Mr. CORZINE. I join with my colleagues on this side of the aisle in complimenting the leader and for rating this issue one job versus 2.5 million jobs. We have a major issue in this country with regard to our economy, and that is at the top of our agenda.

Mr. DASCHLE. I yield the floor.

Mr. HATCH. Mr. President, I have heard these crocodile tears on the other side. It is amazing to me because they know what a phony issue is—the request for confidential and privileged memorandum from the Solicitor General’s Office—and they are building their whole case on that. All they have to do to go on to anything else in the Senate is to exercise the advice and consent that the Constitution talks about; that is, to vote up and down. If they feel as deeply as they do about these, I think, spurious arguments that have been made just in the last few minutes—by the way, made by people who had all of last year to come up with a budget, and for the first time in this country couldn’t even do that. The reason they didn’t is because they knew it was pretty tough. They criticized us all these years for coming up with these tough budgets because we had to make the decisions. Senator DOMENICI from New Mexico has had to make tough decisions as Budget Committee chairman. We always came up with a budget, as tough as it was. We are criticized all the time for not having enough money for the poor and this and that and everything else, every phony argument in the books. Yet when they had the opportunity and saw how tough it is to come up with a budget, my gosh, they did not do it, nor did they do all those appropriations bills that we had to do once we took over.

All they have to do to go on to these wonderful economic issues—and we all

want to do it—is allow a vote up or down. They don’t like Miguel Estrada for one reason or another. Some of them are perhaps sincere reasons. I think other reasons are that they think he is just an independent Hispanic. Frankly, they do not like him. Vote him down, if you want. They have that right. If they feel sincerely that they are right in voting him down, vote him down. But let us have a vote. I have heard the distinguished Senator from Illinois ask, Why doesn’t Mr. Estrada produce those papers? He is not in the Solicitor General’s Office. He is not the Attorney General of the United States. He is not the Chief Counsel of the White House. He hasn’t controlled those papers. As far as he is concerned, he is proud of his work and they could be disclosed. The problem is seven former Solicitors General—four of them are Democrats—said you can’t give those kinds of papers up because it would ruin the work of the Solicitor General’s Office.

Look, if they are sincere and they really want to get on to the budget work they never did last year, the appropriations work they never did last year—we had to do it—then just vote. It is tough work. By gosh, it is tough to come up with a budget. I know the distinguished Senator from New Mexico has had to go through a lot of torment and criticism year after year to come up with a budget. But he always did, and we always did. We were maligned by the other side because we were never good enough, because we had to live within the budget constraints. When they found that they had to live within the budget constraints, they skipped a beat and missed doing the budget.

Here they are coming in here with crocodile tears saying a circuit court of appeals judge is not important enough. Well, if he is not, vote him down, let’s have a vote, and let’s vote him down. Now—

Mr. SCHUMER. Will my good friend yield for a question?

Mr. HATCH. If I could finish. I am wound up right now. I would like to unwind a little bit before I yield to my dear friend.

And to say that we are filibustering because we are trying to get a vote on this? Why don’t we just do that? Why don’t I just—I ask unanimous consent that we proceed to a vote on the Miguel Estrada nomination, so we can get to all these important budget matters. It would be a quick way of doing it. And those who do not like Miguel Estrada: vote him down. Those who do: vote him up. I ask unanimous consent that we proceed to a vote on Miguel Estrada.

The PRESIDING OFFICER (Mr. SESSIONS). Is there objection?

Mr. REID. I ask to amend the unanimous consent request, that after the Justice Department provides the requested documents relevant to Mr. Estrada’s Government service, which were first requested in May 2001, the

nominee then appear before the Judiciary Committee to answer the questions which he failed to answer in his confirmation hearing and any additional questions that may arise from reviewing such documents.

Mr. HATCH. Parliamentary inquiry.

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

Mr. HATCH. Can you amend a unanimous consent request? It is my understanding that you can’t.

Mr. REID. Of course you can. Absolutely. We do it all the time.

Mr. HATCH. Not if we object.

The PRESIDING OFFICER. The Senator from Nevada can ask the Senator from Utah to modify his request.

Mr. HATCH. Well, I refuse to modify it. I think we ought to vote up or down.

Look, if you folks are sincere on this other side—and, my goodness, I have to believe you must be, although I think if you are not, it is the most brazen thing I have seen in a long time to come here and act like the whole world is being held up because we want to fill one of the most important judge seats in this country. And we want to do it with a person who has had this much of a transcript of record, who has this much of a paper trail that they have been able to examine, who has had 2 years sitting here waiting for a stinking solitary vote.

Mr. REID. Parliamentary inquiry.

Mr. HATCH. Why not give him a vote?

The PRESIDING OFFICER. Is there objection to the request of the Senator from Utah?

Mr. REID. I object.

Mr. HATCH. Oh, my goodness. Several Senators addressed the Chair.

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

Objection is heard.

Mr. HATCH. Mr. President, the distinguished minority leader said that half of the American people are only getting \$100 out of this tax cut. I happen to know, the people who are at the \$40,000 level are getting about a \$1,000 tax cut. Just understand, the top 50 percent in our society pay 96-plus percent of the total income taxes in this country. So that is another phony argument.

I have to say, there are 52 million people in the stock market who have wanted dividends in spite of the representations that were made here. And in this downturn in the economy, perhaps they have not been able to get dividends because the companies have not done well. But this downturn started in the year 1999 or 2000. This President was not the President at the time. He has inherited these problems.

I just have to say that for people who never passed a budget last year, and did not pass hardly any of the appropriations bills, to come in here and use these crocodile tears, that this is somehow holding up our economic withal in this country, when they refuse to allow a vote, as we just saw—I think there is something wrong here.

Just remember, even the Washington Post said, "Just Vote." Just vote, fellows and ladies. All you have to do is vote. If you don't like Miguel Estrada, vote him down.

The reason they don't want a vote, and the reason this is a filibuster, is that they know Miguel Estrada has the votes here on the floor to be confirmed.

And for those who think that the economy is everything, let me just make a point. The judiciary is one-third of these separated powers. If we don't have a strong judiciary in this country, we will never have a strong economy because the Constitution would not be maintained. I would have to say this body has not maintained it through the years, as I have seen unconstitutional legislation after unconstitutional legislation move through here. It isn't this body that has preserved the Constitution, nor has it been the executive branch. We have seen a lot of unconstitutional things over there over the years, although I believe people have tried to sincerely do what is right. But it has been the courts that have saved this country and the Constitution.

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

Mr. HATCH. I will. Let me make one more statement.

It has been the courts. This is an important position, and if we are going to have to go through this on every circuit court of appeals nominee because the other side just doesn't like them—they don't have a good, valid reason for voting against Miguel Estrada, other than this phony red herring issue about the Solicitor General's Office, which I don't think anybody in their right mind would buy.

"Just Vote," the Washington Post said.

I will be happy to yield to my colleague.

Mr. SCHUMER. I thank my colleague. And I know he feels passionately about this. Many of us feel passionately about this.

Mr. HATCH. More than passionately.

Mr. SCHUMER. I would like to ask the Senator two questions.

The first question is this. My colleague said, in a very well done speech—I read it—before the University of Utah Federalist Society, in 1997:

Determining which of President Clinton's nominees will become activists is complicated and it will require the Senate to be more diligent and extensive in its questioning of nominees' "jurisprudential views."

Now, in fairness to my friend—

Mr. HATCH. Does the Senator have a question?

Mr. SCHUMER. I have a question. I am coming to it. In fairness, the Senator just said how important the judiciary is.

Mr. HATCH. That is right.

Mr. SCHUMER. Now, in those papers, the books that my colleague has held up—I have read them. I read the whole transcript. I was there for much of it. I chaired that hearing.

Mr. HATCH. There is a lot more than a transcript here.

Mr. SCHUMER. I know. I ask my colleague, does Miguel Estrada talk about how he feels about the 1st amendment, or the 2nd amendment, or the 11th amendment, or the commerce clause, or the right to privacy, or all the major issues that he will rule on for the rest of his life if he becomes a judge? And if he does not, other than to say, "I will follow the law"—and we all know judges follow the law in different ways—then why isn't what is good for the goose good for the gander?

In other words, when it was a Democratic nominee—and this is not tit for tat. My colleague, who cares about the judiciary, said he needed extensive questions. We didn't get that opportunity because, as my colleague well knows, Mr. Estrada just said, on every issue asked, "I will follow the law."

Mr. HATCH. Ask a question.

Mr. SCHUMER. My question to my colleague is—

The PRESIDING OFFICER. The Senator from New York will place a question.

Mr. SCHUMER. Why shouldn't we be accorded the same right, as he espoused in his speech in 1997, to get all the details to this appointment to the second highest court of the land, which is going to have a lifetime—Mr. Estrada has a job now; but this is a different job—a lifetime appointment that will affect everybody? Why is the one different than the other?

Mr. HATCH. Regular order, Mr. President.

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

Mr. HATCH. Look, I don't withdraw that statement. That statement is an important statement. The distinguished Senator from New York and his colleagues had almost 2 years. The distinguished Senator from New York conducted this hearing. The distinguished Senator from New York said it was a fairly conducted hearing. The distinguished Senator from New York had a right to ask any questions he wanted. He did. The distinguished Senator from New York had a right to ask written questions. He did not.

He could have asked: What do you think about the 11th amendment? Listen, that is a question that is almost improper because you are saying—

Mr. SCHUMER. Could I ask my colleague to yield?

Mr. HATCH. Let me finish answering your question. He could have asked: What do you feel about the first amendment? Are you kidding? That is not a question that should be asked a judicial nominee. And any judicial nominee would answer: What I feel is irrelevant—which is the way he answered it. It is what the law says. Frankly, he answered that time after time after time on question after question after question.

Where were the written questions of the distinguished Senator from New York? They were not there. You had a

chance to do it. You didn't do it. Now, after the fact, 2 years later, this man has been sitting there, waiting for fairness, being treated totally unfair, and he can't get—my gosh, he can't get a vote up or down, which is what the Washington Post says we should do.

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

Mr. HATCH. I know Senator DOMENICI has been waiting a long time.

Mr. SCHUMER. Sir, I was waiting longer than Senator DOMENICI. If my colleague will yield?

Mr. HATCH. No. Senator DOMENICI has been waiting for well over an hour. And, well, I am not yielding the floor. Several Senators addressed the Chair.

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

Mr. DOMENICI. Mr. President, might I ask the distinguished Senator from Utah how much longer he intends to speak on this round?

Mr. HATCH. Well, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

#### THE ECONOMY

Mr. DOMENICI. Mr. President, I would like to discuss for a few minutes with the Senate, and those who are interested in what we are doing here, first, the issue of the American economy and what we ought to be doing about it because the other side of the aisle—the Democratic leadership in the Senate—has decided that they are not going to permit us to vote on a most eminently qualified nominee, whose qualifications I will discuss shortly.

They come to the floor and discuss an issue—to wit, the American economy and the plight of the American worker—as if they can do something about that problem, as if they have a solution to the economic woes in this country, as if they could do something in the Senate that would help the working people.

They have no plan. The plans they have submitted are, according to most economists, far inferior to the only plan we have, and that is the plan of the President of the United States.

Nobody should be fooled by this discussion. We can take to the floor for the next 5 weeks and have speeches by the other side of the aisle claiming that they are concerned about the working people, that we have problems in the economy, but none of that will do anything to help the American people. If we know how to help them, we have to do something. And to do something, we have to act in the Senate and the House or the President has to act. As a matter of fact, the Budget Committee, which is currently chaired by the distinguished Senator from Oklahoma, Mr. NICKLES, which I used to chair, and which 3 years ago was chaired by a Democrat because they were in control, has to produce a budget before we can do anything.

So in response to all the rhetoric, we can take no action until we have a