In fact, I think it is very unfortunate that physical education has been dropped from so many of our schools, that so many of our youngsters not only do not have the opportunity to discharge energy and engage in physical activities, but to learn about sports, to find out that maybe something would inspire their passion and their commitment.

There are other ways to ensure that all boys and girls, all men and women have the opportunity for athletic experiences, to participate on teams.

I was somewhat distressed, when the Commission was appointed, with the number of Commissioners who represented an experience that is not the common experience; namely, the experience of very high stakes, big college and university football, which of course is important; I very much believe that. But that is only one sport, and it is a very expensive sport.

I think there are ways, without taking anything away from anyone—boys, girls, men, women—that we can listen to the voices of experience, such as Julie's and Donna's, and come to recognize that there may be other reasons, besides the law, that some men's teams have been discontinued, which I am very sorry about and wish did not have to happen and believe should not have happened if there had been a fairer allocation of athletic resources across all sports.

So I think we can come to some agreements that would serve perhaps to create additional opportunities, but we should not do it to the detriment of girls and women.

I appreciate the opportunity to come to the floor to recognize this very important piece of legislation which has literally changed the lives of girls and women and should continue to do so. What we ought to be doing is looking for ways we can enhance the physical activity, the athletic, competitive opportunities of boys and girls.

One of the biggest problems we have confronting us now is obesity among young people. We need to get kids moving again. We need to get them in organized physical education classes, intramural sports, interscholastic sports, afterschool sports, and summer sports, so they can have an opportunity to develop their bodies and their athletic interests, as well as their minds and their academic pursuits.

Mr. KYL. Mr. President, also, for the information of my colleagues, ''Open to All,'' the report of the Secretary of Education's Commission on Opportunity in Athletics can be found at http://ed.gov/pubs/titleixat30/index.html.

HOMELAND SECURITY

Mrs. CLINTON. Now, Mr. President, on another issue that is of deep concern to me, I come also to raise questions about our commitment to homeland security. This is something I have come to this Chamber to address on numerous occasions, starting in those terrible days after September 11, 2001. And it is an issue I will continue to address in every forum and venue that I possibly can find because, unfortunately, I do not believe we have done enough to protect ourselves here at home.

On February 3, Mitch Daniels, the Director of the Office of Management and Budget, said:

> There is not enough money in the galaxy to protect every square inch of America and every American against every conceived threat.

This statement bothered me at the time. It has continued to bother me. I suppose, on the face of it, it is an accurate statement. Not only isn't there enough money in the United States, the world, or the galaxy to protect every square inch, but what kind of country would we have if we were trying to protect every square inch? That would raise all sorts of issues that might possibly change the character and quality of life here in America.

But I do not think that is what really motivated the statement. The statement was a kind of excuse, if you will, as to why this administration has consistently failed to provide even the rudimentary funding that we have needed for our first responders and to deal with national security vulnerabilities.

We have learned, in the last few months, that threats do exist all over our country. It is not just New York City or Washington, DC, that suffered on September 11. We know that in the months since then, we have seen many other parts of our country respond to alerts—our latest orange alert—which have required huge expenditures of resources in order to protect local water supplies, bridges, chemical plants, nuclear powerplants, to do all that is necessary to know that we have done the best we can.

Life is not certain. There is no way any of us knows where we will be in an hour or in a day or in a year. But what we try to do is to plan for the worst, against contingencies that might undermine our safety. And then we have to just hope and trust and have faith that we have done enough. But if we do not try, if we do not make the commitment, if we do not provide the resources, then we have essentially just put up our hands and surrendered to what did not have to be the inevitable.

When I heard Mr. Daniels make that comment, I thought to myself, if you had made a list of every community in America that might possibly be a site for an al-Qaida terrorist cell, I am not sure that Lackawanna, NY, would have made that list. It is a small community outside of Buffalo where the FBI, in cooperation with local law enforcement, uncovered such a cell of people who had gone to Bin Laden's training camps in Afghanistan and then come back home, most likely what is called a sleeper cell. Their leader was in Yemen where one of our predator aircraft found him and took action against him and his compatriots who are part of the al-Qaida terrorist campaign against us. If we were just thinking, where should we put money to protect ourselves, I am not sure Lackawanna, NY, would have been on that list. Yet we have reason to believe it should be on any list anywhere. Just yesterday four men in Syracuse, NY, were accused of sending millions of dollars to Saddam Hussein.

I don't know that we can sit here in Washington and say: Well, we can't possibly protect everybody so we shouldn't protect anybody. But that seems to be the attitude of this administration. That is what concerns me most. We should be doing everything we possibly can to make our country safer. We should be thinking 24 hours a day, 7 days a week about new steps, smart steps that we should be taking. Why? Because that is what our enemies do when they think about how to attack us. If somebody is on CNN or the Internet, it doesn't stop at our borders. That is viewed and analyzed in places all over the world. We know that they are working as hard as they possibly can to do as much harm to us and our way of life as they possibly can.

Since September 11, our first responders, our mayors, police and fire chiefs have said over and over again they need Federal support so they can do their jobs to protect the American people. During this recent code orange alert, they have done a remarkable job. They have responded to their new responsibility as this country's frontline soldiers in the war against terrorism with grace, honor, and a dedication that Washington should emulate.

We have had the opportunity to do so. We could have already had in the pipeline and delivered more dollars to pay for needed training, personnel, overtime costs, equipment, whatever it took as determined by local communities that they require to do the job we expect them to do. But every time the Senate has tried to do more for our first responders, the administration and some in Congress have said we should do less.

Senator BYRD stood right over there last summer and offered an amendment, which the Senate supported, that would have provided more than $5.1 billion in homeland security funding. It included $585 million for port security; $150 million to purchase interoperable radio so that police, firefighters and emergency service workers can communicate effectively, a problem we found out tragically interfered with communication on September 11 in New York City; another $83 million to protect our borders. But in each case, despite having passed it in the Senate, the administration and Republican leaders settled for far less. They called such spending ''unnecessary.'' In some cases, such as the funding for interoperable radios, not only did we not get the increase to buy this critical equipment, the funding was cut by $66 million.

It was during that debate that we needed the administration's support. But instead, they opposed such efforts,

and the President himself refused to designate $5.1 billion last August as an emergency to do the kinds of things that mayors and police chiefs and fire chiefs and others have been telling me and my colleagues they desperately need help doing.

The paper today says the President acknowledges we need to do more. I welcome that acknowledgment. But I have learned that we have to wait to see whether the actions match the words. We have to make sure this new awareness about having shortchanged homeland security doesn't translate into taking money away from the functions that firefighters and police officers are called upon to do every day, transferring it across the government ledger, relabeling it counterterrorism, and wiping our hands of it and saying: We did it.

That just doesn't add up. That is what they tried to do for the last year, take money away from the so-called COPS program, which put police on the beat onto our streets, which helped to lower the crime rate during the 1990s, taking money away from the grants that go to fire departments to be well prepared to get those hazardous materials, equipment, and suits that will protect them and claiming that we take that money away, we put it over here, and we say we have done our job. That is just not an appropriate, fair-minded response.

We cannot undo the past, but every day we don't plan for the future is a lost day. I don't ever want to have a debate in the Senate about what we should have done or we could have done or we would have done to protect ourselves, if only we had taken as seriously our commitment to homeland security as the administration takes our commitment to national security.

Last month I issued a report about how 70 percent of the cities and counties in New York are not receiving any Federal homeland security funding. I commissioned this study because I wanted to know for myself whether maybe some money had trickled down into their coffers that I was not aware of. Well, 70 percent say they had gotten nothing; 30 percent say they had gotten a little bit of the bioterrorism money that we had appropriated. But then I also asked them, how much did they need and what did they need it for and how did they justify their needs. And I must say, most of the requests were very well thought out, prudent requests for help that in this time of falling revenues and budget crunches, city and county governments just cannot do themselves.

When that orange alert went out a week or so ago, what happened? I know in New York City, if you were there, you would have seen an intense police presence because our commissioner of police, our mayor, knew they had to respond. They had to get out there and keep a watchful eye. But there was no help coming from Washington for them to do that. It may be a national alert, but it is a local response. And we are not taking care of the people we expect to make that response for us.

Then I was concerned to see that in so many of the discussions of potential weapons of mass destruction, doctors and nurses and hospital administrators are saying: We are not ready. We do not have the funding. We don't even have the funding to do the preventive work, the smallpox vaccination. We don't have the means to be ready for some kind of chemical or biological or radiological attack.

When we had the incident a few months ago of the shoulder-fired missile that was aimed at the Israeli airline in Kenya—thankfully it missed—I called the people in the new Department of Homeland Security. I said: What are our plans? How do we respond to the threat posed by shoulder-fired missiles?

The response I got back was: Well, that is a local law enforcement responsibility.

Are we going to provide more funding so we can have more police patrols on the outskirts of large airports similar to the ones we have in New York and other States have?

Well, no, that is not in the cards. You just go out there and keep an eye out for those shoulder-fired missiles.

Time and time again we hear about a threat. We hear the conversations from our government officials. We listen to the experts tell us what we have to be afraid of. And if you are a police chief or a fire chief sitting in any city in our country, you are sitting there in front of the television set saying to yourself: My goodness, how am I going to protect my people? How am I possibly going to do the work I need to do when my State budget is being cut, when my local budget is being cut, when the Federal budget is not providing me any resources? How am I going to do that?

It is a fair question. Yet when we dial 911, we expect that phone to be answered, not in this Chamber, not down at the other end of Pennsylvania Avenue in the White House, but right in our local precinct and our local firehouse. Yet in place after place around America, we read stories about police being laid off or being enticed into early retirement to save money, firehouses being closed or firefighters being encouraged to take early retirement, not filling classes in the police and fire academy.

There is something wrong with this picture. Now, we have done all we know to do to give our men and women who wear military uniforms every bit of support we believe they need. If we are going to put them in harm's way, then we owe it to them, to their families, to equip them and train them, and give them the best possible protection so they can fulfill their mission without harm to themselves.

But this is a two-front war. We hear that all the time. My gosh, there is nothing else coming across the airwaves except about what is happening in the Persian Gulf and on the Korean peninsula and what is happening with al-Qaida. We know we are in a global war against terror and against weapons of mass destruction. That is good offense. We need to be out there trying to rid the world of weapons of mass destruction, rid the world of tyrants and dictators who would use such weapons.

But what about defense? What about what happens here at home? We have not done what we need to do to protect our homeland or our hometowns. That is absolutely unacceptable. The one thing we have learned from the horrors of September 11 is that in this new globalization of transportation and information we now live in, boundaries mean very little. Part of the reason we were immune from attack through many decades—with the exception of Pearl Harbor and the attack on this city and on Baltimore in the War of 1812—is we were protected by those big oceans, and with friendly neighbors to the north and south. But those days are gone. You can get on a jet plane from anywhere. You can be in a cave in Afghanistan and use your computer. You can transfer information about attacks and about weapons of mass destruction with the flick of a mouse.

So we have to upgrade and transform our homeland defense, just as we have to think differently about our military readiness and capacity. This does not come cheaply. This is not easy to do. I spend a lot of time talking with police, firefighters, hospital administrators, and front line doctors and nurses; they are ready to make the sacrifice to perform in whatever way they are expected to do so to protect us. But we are not giving them the help they need.

Now, we can remedy this. It was a good sign when the President admitted today that he and his administration have not funded homeland security, and I am glad to hear they have finally admitted that. But now we have to do something about that admission. It cannot be just a one-day headline. We have to figure out, OK, now that you are seeing what we see, what we have been worried about, let's do something. Let's make sure that whatever budget is sent up here has money in it for these important functions, so we can look in the eyes of our police officers, firefighters, and emergency providers, and say we have done the best we know how to do.

That doesn't mean we are 100 percent safe. There is no such thing. That is impossible. That is not something we can possibly achieve. But we have to do the best we can. I believe it is probably a good old adage to ''hope for the best, but prepare for the worst.'' When you have done all you knew how to do, when something does happen, hopefully, you are prepared to deal with it.

From my perspective, Mr. President, this is a national priority that cannot wait. Many of the commentators and pundits of the current theme talk about the likely military action necessitated by Saddam Hussein's refusal to

disarm, and point to the possibility that such action will trigger an upsurge in potential attack not only here at home but on American assets and individuals around the world. It would be impossible to write any scenario about the next 10 years without taking into account the potential of future terrorism.

But what is not impossible—in fact, what is absolutely necessary—is for us to be able to say to our children and the children of firefighters and police officers and emergency responders that we did all we knew to do; we were as prepared as we possibly could be. That is what I want to be able to say, and I know we cannot do that without the resources that will make it a real promise of security, instead of an empty promise.

So, Mr. President, it is my very strong hope that in the wake of the administration's recognition of the failure thus far to fund homeland security, now we can get down to business; that we not only can fund it, but do it quickly, get the money flowing, and get local communities ready to implement it, and we can get about the business of making America safer here at home. I will do everything I can to realize that goal. I look forward to working with my colleagues on both sides of the aisle as we provide the kind of homeland security Americans deserve.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. PRYOR. Mr. President, I ask unanimous consent that I be permitted to speak in morning business for up to 25 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The Senator from Arkansas is recognized.

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

Mr. SUNUNU. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I rise once again to speak in support of the confirmation of Miguel Estrada, an exceptionally well qualified nominee who does not deserve to have his nomination obstructed by this filibuster. I have been a strong supporter of Mr. Estrada's since he came before the Judiciary Committee last year. At that time, I argued that his nomination should come up for a floor vote, but we were not allowed to vote on his nomination then. Here we are a year later, and I am still strongly supporting Mr. Estrada, and I am still arguing for a floor vote, and that vote is still being refused. I think it is shameful to continue holding up the vote on this very qualified judicial nominee, who, by the way, will make an excellent member of the US Court of Appeals for the DC Circuit.

I know my colleagues heard Mr. Estrada's credentials many times last week. In fact, I am pretty sure that some of my colleagues could quote his credentials in their sleep. However, I think it is important that the Senate is reminded of how qualified this nominee is who is being filibustered. Not only is he regarded as one of the Nation's top appellate lawyers, having argued 15 cases before the Supreme Court of the United States, but the American Bar Association, which I think Democrats consider the gold standard of determination of the person's qualifications to be a judicial nominee, has given him a unanimous rating of, in their words, ''well qualified.'' This happens to be the highest American Bar Association rating. It is a rating they would not give to just any lawyer who comes up the pike. According to the American Bar Association, quoting from their standard:

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

We ought to demand that more qualified people like Miguel Estrada be appointed to the bench rather than fighting his nomination.

As my colleagues know, I am not a lawyer. There is nothing wrong with going to law school, but I did not. I have been on the Judiciary Committee my entire time in the Senate. I know some of the qualifications that are needed to be a Federal judge, particularly a Federal judge on this DC Circuit that handles so many appeals from administrative agencies and is often considered, by legal experts, to be the second highest court of our land.

Mr. Estrada's academic credentials are stellar. He graduated from Columbia University with his bachelor's degree magna cum laude and was also a member of Phi Beta Kappa. Then he earned his juris doctorate from Harvard University, also magna cum laude, where he was editor of the Harvard Law Review. Mr. Estrada did not just attend Harvard Law School; he graduated with honors. He also served as the editor of the Harvard Law Review. To be selected as the editor of a law review is a feat that only the most exceptional of law students attain.

While Mr. Estrada certainly has the intellect required to be a Federal judge, his professional background also gives testament to his being qualified for a Federal Court of Appeals judgeship as opposed to just any judgeship.

After law school, Mr. Estrada served as a law clerk to the Second Circuit Court of Appeals and as a law clerk to Justice Kennedy, on the United States Supreme Court. Subsequently, he served as an Assistant US Attorney and deputy chief of the appellate section of the US Attorney's Office of the Southern District of New York, and then as assistant to the Solicitor General of the United States of America.

Mr. Estrada has been in the private sector as well. He is a partner with the Washington, DC, office of the law firm of Gibson, Dunn & Crutcher. In this exceptional career, Mr. Estrada has argued 15 cases before the United States Supreme Court. He won nine of those cases. Mr. Estrada is not just an appellate lawyer; he is one of the top appellate lawyers in the country. So for a young lawyer, I think I can give my colleagues a person who can truly be labeled an American success story. In fact, instead of degrading his ability to serve as a circuit court judge, we should all be proud of Mr. Estrada's many accomplishments.

This is the nominee that the Democrats are filibustering. I fail to understand why a nominee of these outstanding qualifications, and who has been honored by the ABA with its highest rating, would be the object of such obstruction. In all my years on the Judiciary Committee—and that has been my entire tenure in the Senate—Republicans never once filibustered a Democratic President's nominee to the Federal bench. There are many I may have wanted to filibuster, but I did not do it—we did not do it—because it is not right.

In fact, as I understand it, in the entire history of the Senate neither party has ever filibustered a judicial nominee. Going back over 200 years, Republicans and Democrats have resisted the urge to obstruct a nominee by filibustering. Good men of sound judgment have come to the conclusion that to use this tool of last resorts to obstruct a nomination is, at best, inappropriate, and, at worst, just down right wrong.

This nominee, like all nominees, deserves an up-or-down vote. Anything less is absolutely unfair. I hope my colleagues on the other side of the aisle will reconsider this filibuster. The Senate should not cross this Rubicon and establish new precedent for the confirmation process.

Over 40 newspapers from across the country have published editorials advocating that the Senate give Mr. Estrada a vote. Even the Washington Post, which is not exactly a bastion of conservatism, published an editorial last week entitled, ''Just Vote.'' In that editorial, the Post correctly characterized the Democrats obstructionist efforts. With regard to the Democrat request for the internal memos Mr. Estrada drafted while he was in the Solicitor General's Office, the Post said

that this filibuster of Mr. Estrada goes beyond the normal political confirmation games, because,

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.

I agree with the Post:

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

I make a unanimous consent request that this Washington Post editorial, ''Just Vote'' be printed in the RECORD after my statement.

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

[See exhibit 1.]

Mr. GRASSLEY. Those denying the Senate an up-or-down vote on Mr. Estrada's nomination claim that he has not answered questions or produced documentation, and so he should not be confirmed to the Federal bench. I can think of a number of Democratic nominees who did not sufficiently answer question that I submitted to them, but that did not lead me to filibuster. As far as I know, Mr. Estrada has answered all questions posed to him by the Judiciary Committee members.

His opponents claim that he has refused to hand over certain in-house Justice Department memoranda. What actually is happening is that the Democrats on the Judiciary Committee have requested that the Department of Justice submit to the Committee, internal memoranda written by Miguel Estrada when he was an attorney in the Solicitor General's Office. These internal memos are attorney work product, specifically appeal, certiorari, and amicus memoranda, and the Justice Department has rightly refused to produce them.

The Department of Justice has never disclosed such sensitive information in the context of a Court of Appeals nomination. These memoranda should not be released, because they detail the appeal, certiorari and amicus recommendations and legal opinions of an assistant to the Solicitor General. This is not just the policy of this administration, the Bush administration, a Republican administration. This has also been the policy under Democratic Presidents.

The inappropriateness of this request prompted all seven living former Solicitors General to write a bipartisan letter to the Committee to express their concern regarding the Committee's request and to defend the need to keep such documents confidential. The letter was signed by Democrats Seth Waxman, Walter Dellinger, Drew Days III and Republicans Ken Starr, Charles Fried, Robert Bork and Archibald Cox. The letter notes that when each of the Solicitors General made important decisions regarding whether to seek Supreme Court review of adverse appellate decisions and whether to participate as amicus curiae in other high profile cases, they:

relied on frank, honest and thorough advice from [their] staff attorneys like Mr. Estrada . . .

and that the open exchange of ideas which must occur in such a context

Simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure.

The letter concludes that

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

The Democratic committee member's request has even drawn criticism from the editorial boards of the Washington Post and Wall Street Journal. On May 28, 2002, in an editorial entitled ''Not Fair Game'' the Washington Post editorialized that the request

For an attorney's work product would be unthinkable if the work had been done for a private client. . . . [and] legal advice by a line attorney for the federal government is not fair game either.

According to the Post editorial

. . . In elite government offices such as that of the solicitor general, lawyers need to speak freely without worrying that the positions they are advocating today will be used against them if they ever get nominated to some other position.

On May 24, 2002, the Wall Street Journal in an editorial entitled ''The Estrada Gambit'' also criticized the request, calling it ''one more attempt to delay giving Mr. Estrada a hearing and a vote.'' The Journal further criticized the Committee's request in a later editorial, entitled ''No Judicial Fishing'', calling the request ''outrageous'' and noting that the goal of the request ''is to delay, trying to put off the day when Mr. Estrada takes a seat on the D.C. Circuit Court of Appeals.''

Mr. President, I ask unanimous consent that these two editorials also be printed in the RECORD after my statement.

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

[See exhibit 2.]

Mr. GRASSLEY. Mr. Estrada is not the only former deputy or assistant to the Solicitor General nominated to the Federal bench. In fact, there are seven others now serving on the Federal Courts of Appeals. None had any prior judicial experience, and the committee did not ask the Justice Department to turn over any confidential internal memoranda those nominees prepared while serving in the Solicitor General's Office. The seven nominees were: Samuel Alito on the 3rd Circuit, Danny Boggs on the 6th Circuit, William Bryson and Daniel Friedman on the Federal Circuit, Frank Easterbrook and Richard Posner on the 7th Circuit, and A. Raymond Randolph on the D.C. Circuit. Why should Mr. Estrada be treated any differently?

During Mr. Estrada's hearing, Judiciary Committee Democrats alleged that the committee has reviewed the work product of other nominees, including memos written by Frank Easterbrook, by Chief Justice Rehnquist when he served as a clerk to Justice Jackson, and by Robert Bork when he was an official at the Justice Department.

For the record, there is no evidence that the Department of Justice ever turned over confidential memoranda prepared by Frank Easterbrook when he served in the Solicitor General's Office. There also is no evidence that the committee even requested such information.

During Robert Bork's hearings, the Department did turn over memos Judge Bork wrote while serving as Solicitor General, but none of these memos contained the sort of deliberative materials requested of Mr. Estrada and the Justice Department. The Bork materials include memos containing Bork's opinions on such subjects as the constitutionality of the pocket veto, and on President Nixon's assertions of executive privilege and his views of the Office of Special Prosecutor. None of the memos contain information regarding internal deliberations of career attorneys on appeal decisions or legal opinions in connection with appeal decisions. Moreover, the Bork documents reflected information transmitted between a political appointee, namely the Solicitor General, and political advisors to the President, rather than the advice of a career Department of Justice attorney to his superiors, as is the case with Mr. Estrada.

You see, the Judiciary Committee has never requested and the Department of Justice has never agreed to release the internal memos of a career line attorney. To ask that Mr. Estrada turn over his memos is unprecedented, and frankly unfair. No Member of this body would ever condone a request to turn over staff memos. What my staff communicates to me in writing is internal and private. I am sure every other Senator feels the same way as I do. This Democrat fishing expedition needs to stop. Miguel Estrada is a more than well qualified nominee and he deserves a vote on his nomination, today.

In conclusion, we are again seeing an attack on another very talented, very principled, highly qualified legal mind. It all boils down to this, Mr. Estrada's opponents refuse to give him a vote because they say they do not know enough about him. They further contend that the Justice Department memos, which they know will never be released, are the only way they can find out what they need to know about Mr. Estrada. It is a terrible Catch–22.

These obstructionist efforts are a disgrace and an outrage. We must put a stop to these inappropriate political attacks and get on with the business of confirming to the Federal bench good men and women who are committed to doing what judges should do, interpret law as opposed to making law from the bench, because it is our responsibility to make law as members of the legislative branch.

I yield the floor.

EXHIBIT 1

[From the Washington Post, Feb. 18, 2003]

JUST VOTE

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.

EXHIBIT 2

[From the Wall Street Journal, May 24, 2002]

THE ESTRADA GAMBIT

Senate Judiciary Chairman Patrick Leahy keeps saying he's assessing judicial nominees on the merits, without political influence. So why does he keep getting caught with someone else's fingerprints on his press releases?

The latest episode involves Miguel Estrada, nominated more than a year ago by President Bush for the prestigious D.C. Circuit Court of Appeals. Mr. Estrada scares the legal briefs off liberal lobbies because he's young, smart and accomplished, having served in the Clinton Solicitor General's office, and especially because he's a conservative Hispanic. All of these things make him a potential candidate to be elevated to the U.S. Supreme Court down the road.

Sooner or later even Mr. Leahy has to grant the nominee a hearing, one would think. But maybe not, if he keeps taking orders from Ralph Neas at People for the American Way. On April 15, the Legal Times newspaper reported that a ''leader'' of the anti-Estrada liberal coalition was considering ''launching an effort to obtain internal memos that Estrada wrote while at the SG's office, hoping they will shed light on the nominee's personal views.''

Hmmm. Who could that leader be? Mr. Neas, perhaps? Whoever it is, Mr. Leahy seems to be following orders, because a month later, on May 15, Mr. Leahy sent a letter to Mr. Estrada requesting the ''appeal recommendations, certiorari recommendations, and amicus recommendations you worked on while at the United States Department of Justice.''

It's important to understand how outrageous this request is. Mr. Leahy is demanding pre-decision memorandums, the kind of internal deliberations that are almost by definition protected by executive privilege. No White House would disclose them, and the Bush Administration has already turned down a similar Senate request of memorandums in the case of EPA nominee Jeffrey Holmstead, who once worked in the White House counsel's office.

No legal fool, Mr. Leahy must understand this. So the question is what is he really up to? The answer is almost certainly one more attempt to delay giving Mr. Estrada a hearing and vote. A simple exchange of letters from lawyers can take weeks. And then if the White House turns Mr. Leahy down, he can claim lack of cooperation and use that as an excuse to delay still further.

Mr. Leahy is also playing star marionette to liberal Hispanic groups, which on May 1 wrote to Mr. Leahy urging that he delay the Estrada hearing until at least August in order to ''allow sufficient time . . . to complete a thorough and comprehensive review of the nominee's record.'' We guess a year isn't adequate time and can only assume they need the labor-intensive summer months to complete their investigation. (Now there's a job for an intern.) On May 9, the one-year anniversary of Mr. Estrada's nomination. Mr. Leahy issued a statement justifying the delay in granting him a hearing by pointing to the Hispanic group's letter.

These groups, by the way, deserve some greater exposure. They include the Mexican American Legal Defense and Educational Fund as well as La Raza, two lobbies that claim to represent the interests of Hispanics. Apparently they now believe their job is to help white liberals dig up dirt on a distinguished jurist who could be the first Hispanic on the U.S. Supreme Court.

The frustration among liberals in not being able to dig up anything on Mr. Estrada is obvious. Nam Aron, president of the Alliance for Justice, told Legal Times that ''There is a dearth of information about Estrada's record, which places a responsibility on the part of Senators to develop a record at his hearing. There is much that he has done that is not apparent.'' Translation: We can't beat him yet.

Anywhere but Washington, Mr. Estrada would be considered a splendid nominee. The American Bar Association, whose recommendation Mr. LEAHY one called the ''gold standard by which judicial candidates have been judged,'' awarded Mr. Estrada its highest rating of unanimously well-qualified. There are even Democrats, such as Gore advisor Ron Klaim, who are as effusive as Republicans singing the candidate's praises.

When Mr. Estrada worked in the Clinton-era Solicitor General's office, he wrote a friend-of-the-court brief in support of the National Organization of Women's position that anti-abortion protestors violated RICO. It's hard to paint a lawyer who's worked for Bill Clinton and supported NOW as a right-wing fanatic.

We report all of this because it reveals just how poison judicial politics have become, and how the Senate is perverting its advise and consent power. Yesterday the Judiciary Committee finally to help fellow Pennsylvania Brooks Smith.

Mr. Estrada doesn't have such a patron, so he's fated to endure the delay and documentfishing of liberal interests and the Senate Chairman who takes their dictation.

Ms. MIKULSKI. Mr. President, I rise in opposition to the nomination of Miguel Estrada to the United States Circuit Court of Appeals for the District of Columbia.

The President has the right to make judicial nominations. The Senate has the Constitutional responsibility to advise and consent. I take this responsibility very seriously. This is a lifetime appointment for our nation's second most important court. Only the Supreme Court has a greater impact on the lives and rights of every American.

The District of Columbia Circuit is the final arbiter on many cases that the Supreme Court refuses to consider. That means it's responsible for decisions on fundamental constitutional issues involving freedom of speech, the right to privacy and equal protection.

In addition, the D.C. Circuit has special jurisdiction over Federal agency actions. That means the D.C. Circuit is responsible for cases on issues of great national significance involving labor rights, affirmative action, clean air and clear water standards, health and safety regulations, consumer privacy and campaign finance. The importance of this court highlights the importance of placing skilled, experienced and moderate jurists on the court.

I base my consideration of each judicial nominee on three criteria: competence, integrity and commitment to core Constitutional principles.

I don't question Mr. Estrada's character or competence. He is clearly a skilled lawyer. Yet the Senate does not have enough information to judge Mr. Estrada's commitment to core Constitutional principles.

He has refused to answer even the most basic questions during his hearing in Senate Judiciary Committee. For example, he was asked to give examples of Supreme Court decisions with which he disagreed. He refused to answer. He was asked basic questions on his judicial philosophy. He refused to answer.

The Constitution gives the Senate the responsibility to advise and consent on judicial nominations. This consent should be based on rigorous analysis. The nominee doesn't have to be an academic with a paper trail. Yet the nominee must be open and forthcoming. He or she must answer questions that seek to determine their commitment to core Constitutional principles.

This is a divisive nomination—at a time when our Nation should be united. Our Nation is preparing for a possible war in Iraq. We are already engaged in a war against terrorism. We are also facing a weak economy. Americans are stressed and anxious. The Senate should be working to reduce this stress—to make America more secure; to strengthen our economy and to deal with the ballooning cost of health care.

I urge the administration to nominate judicial candidates who are moderate and mainstream—and to instruct those nominees to be forthright and forthcoming with the Senate so the Senate can address the significant issues that face our Nation today.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Oklahoma.

Mr. NICKLES. Madam President, I ask unanimous consent to proceed as if in morning business.

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

(The remarks of Mr. NICKLES pertaining to the introduction of S. 2 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, one of our most important responsibilities as Senators is the confirmation of Federal judges. Federal judges are appointed for life, and they will be interpreting laws affecting the lives of all our citizens for many years to come. Yet my colleagues across the aisle suggest that something far less than a full review of a nominee's record is warranted. Republican Senators pretend that by seeking additional information to help us understand Mr. Estrada's views and judicial philosophy, we are upsetting the proper constitutional balance between the Senate and the executive branch. They claim the Senate has to consent to the President's judicial nominees, as long as they have appropriate professional qualifications.

In fact, the Constitution gives a strong role to the Senate in evaluating nominees. The role of the Senate is fundamental to the basic constitutional concept of checks and balances at the heart of the Federal Government. And when we say ''check'' we don't mean blank check.

The debates over the drafting of the Constitution tell a great deal about the proper role of the Senate in the judicial selection process. Both the text of the Appointments Clause of the Constitution and the debates over its adoption make clear that the Senate should play an active and independent role in selecting judges.

Given recent statements by Republican Senators, it is important to lay out the historical record in detail. The Constitutional Convention met in Philadelphia from late May until mid-September of 1787. On May 29, 1787, the Convention began its work on the Constitution with the Virginia Plan introduced by Governor Randolph, which provided ''that a National Judiciary be established, to be chosen by the National Legislature.'' Under this plan, the President had no role at all in the selection of judges.

When this provision came before the Convention on June 5, several members were concerned that having the whole legislature select judges was too unwieldy. James Wilson suggested an alternative proposal that the President be given sole power to appoint judges.

That idea had almost no support. Rutledge of South Carolina said that he ''was by no means disposed to grant so great a power to any single person.'' James Madison agreed that the legislature was too large a body, and stated that he was ''rather inclined to give [the appointment power] to the Senatorial branch'' of the legislature, a group ''sufficiently stable and independent'' to provide ''deliberate judgements.''

A week later, Madison offered a formal motion to give the Senate the sole power to appoint judges and this motion was adopted without any objection. On June 19, the Convention formally adopted a working draft of the Constitution, and it gave the Senate the exclusive power to appoint judges.

July of 1787 was spent reviewing the draft Constitution. On July 18, the Convention reaffirmed its decision to grant the Senate the exclusive power. James Wilson again proposed ''that the Judges be appointed by the Executive'' and again his motion was defeated.

The issue was considered again on July 21, and the Convention again agreed to the exclusive Senate appointment of judges.

In a debate concerning the provision, George Mason called the idea of executive appointment of Federal judges a ''dangerous precedent.'' The Constitution was drafted to read: ''The Senate of the United States shall have power to appoint Judges of the Supreme Court.''

Not until the final days of the Convention was the President given power to nominate Judges. On September 4, 2 weeks before the Convention's work was completed, the Committee proposed that the President should have a role in selecting judges. It stated: ''The President shall nominate and by and with the advice and consent of the Senate shall appoint judges of the Supreme Court.'' The debates, make clear, however, that while the President had the power to nominate judges, the Senate still had a central role.

Governor Morris of Pennsylvania described the provision as giving the Senate the power ''to appoint Judges nominated to them by the President.'' The Constitutional Convention adopted this reworded provision giving the President the power, with the advice and consent of the Senate, to nominate and appoint judges.

The debates and the series of events proceeding adoption of the ''advise and consent'' language make clear, that the Senate should play an active role. The Convention having repeatedly rejected proposals that would lodge exclusive power to select judges with the executive branch, could not possibly have intended to reduce the Senate to a rubber stamp role.

The reasons given by delegates to the Convention for making the selection of judges a joint decision by the President and the Senate are as relevant today as they were in 1787. The framers refused to give the power of appointment to a ''single individual.'' They understood that a more representative judiciary would be attained by giving members of the Senate a major role.

From the start, the Senate has not hesitated to fully exercise this power. During the first 100 years after ratification of the Constitution, 21 or 81 Supreme Court nominations—one out of four—were rejected, withdrawn, or not acted on. During these confirmation debates, ideology often mattered. John Rutledge, nominated by George Washington, failed to win confirmation as Chief Justice in 1795.

Alexander Hamilton and other Federalists opposed him, because of his position on the controversial Jay Treaty. A nominee of President James Polk was rejected because of his anti-immigration position. A nominee of President Hoover was rejected because of his anti labor view. Our Republican colleagues are obviously aware of this. Their recent statements attempting to downplay the Senate's role stand in stark contrast to the statements when they controlled the Senate during the Clinton administration. At that time, they vigorously asserted their right of ''advice and consent.''

Indeed, while public debate and a demand to fully review a nominee's record is consistent with our duty of ''advice and consent,'' many of the actions by Republicans were damaging to the nominations process. Democrats have made clear our concerns about whether Mr. Estrada has met the burden of showing that he should be appointed to the DC Circuit, but Republicans resorted to tactics such as secret holds to block President Clinton's nominees. For instance, it took four years to act on the nomination of Richard Paez, a Mexican-American, to the Ninth Circuit. Senate Republicans repeatedly delayed floor action on Judge Paez through use of anonymous holds.

Republicans voted to indefinitely postpone action on Judge Paez's nomination. Finally, in March 2000, 4 years after his nomination and with the Presidential election on the horizon, Judge Paez was confirmed, after cloture was invoked.

Reviewing Mr. Estrada's nomination is our constitutional duty. We take his nomination particularly seriously because of the importance of the DC Circuit, the Court to which he has been nominated. The important work we do in Congress to improve health care, protect workers rights, and protect civil rights mean far less if we fail to fulfill our responsibility to provide the

best possible advice and consent on judicial nominations. Tough environmental laws mean little to a community that can't enforce them in our federal courts. Civil rights laws are undercut if there are no remedies for disabled men and women. Fair labor laws are only words on paper if we confirm judges who ignore them.

What we know about Mr. Estrada leads us to question whether he will deal fairly with the range of important issues affecting everyday Americans that came before him.

Mr. Estrada has been actively involved in supporting broad anti-loitering ordinances that restrict the rights of minority residents to conduct lawful activities in their neighborhoods. Mr. Estrada has sought to undermine the ability of civil rights groups like the NAACP to challenge these broad ordinances which affect the ability of minority citizens to conduct activities such as drug counseling and voter outreach in their communities.

Information we need to know about Mr. Estrada's record has been hidden from us by the Department of Justice. Democratic Senators have asked for Mr. Estrada's Solicitor General Memoranda. We have moved for unanimous consent to proceed to a vote on his nomination, after those memoranda are provided. Yet, the White House refuses to provide any of Mr. Estrada's memos, even though there is ample precedent for allowing the Senate to review these documents.

Even as Republicans refuse to allow us to see Mr. Estrada's memos from his time in public office—and even as Mr. Estrada declined to answer many basic questions about his judicial philosophy and approach—Republicans repeatedly make clear that they are familiar with Mr. Estrada's views and judicial philosophy.

Since his nomination, Republican Senators have repeatedly praised Mr. Estrada as a ''conservative.'' A recent article from Roll Call states that the Republican Party is confident that Mr. Estrada will rule in support of big business. The article also states that the Republican Party has asked lobbyists to get involved in the battle over Mr. Estrada's nomination.

I have spoken in recent days about the importance of the DC Circuit and it's shift to the right in the 1980s and 1990s. In the 1960s and 1970s, the DC Circuit had a significant role in protecting public access to agency and judicial proceedings, protecting civil rights guarantees, overseeing administrative agencies, protecting the public interest in communications regulation, and enforcing environmental protections. In the 1980s, however, the DC Circuit changed dramatically because of the appointment of conservative judges. As its composition changed, it became a conservative and activist court—striking down civil rights and constitutional protections, encouraging deregulation, closing the doors of the courts to many citizens, favoring employers over workers, and undermining federal protection of the environment.

It seems clear that Mr. Estrada has been nominated to the DC Circuit in the hope that this court will continue to be more interested in favoring big business than in protecting the rights of workers, consumers, women, minorities, and other Americans.

Mr. Estrada's nomination is strongly opposed by those concerned about these rights. Republicans repeatedly praise Mr. Estrada as a Hispanic—but many Hispanic groups oppose his nomination. The Congressional Hispanic Caucus, the Mexican American Legal Defense Fund, the Southwest Voter Registration Project, 52 Latino Labor Leaders representing working families across the country, the California League of United Lationo Citizens, the California La Raza, the Puerto Rican Legal Defense Fund and fifteen past presidents of the Hispanic National Bar Association, whose terms span from 1972 until 1998 have stated their opposition to Mr. Estrada. As these Presidents write:

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 enought reasons to conclude that Mr. Estrada's candidacy falls short. [These] reasons include: his virtually non-existent written record, his verbally expressed and un-rebutted extreme views, his lack of judicial or academic teaching experience (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his poor judicial temperament, his total lack of connection whatsoever to, or lack of demonstrated interest in the Hispanic community, his refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to other straightforward questions of Senate Judiciary Committee Members.

I would like to include in the RECORD statements at the end of my remarks of two of the past National Presidents of the League of United Latin American Citizens opposing Mr. Estrada's nomination. The first statement is from Belen Robles, a native Texas who has a long and active involvement in the Latino civil rights community. He writes that he is ''deeply troubled with the nomination of Miguel Estrada.'' He is troubled by the positions that Mr. Estrada has taken on racial profiling, and on whether the NAACP had standing to put forward the claims of African-Americans arrested under an anti-loitering ordinance.

Mr. Robles writes:

As a former National President of LULAC, I know very well that on many occasions LULAC has been a champion of the rights of its membership in civil rights cases. We asserted those rights on behalf of voters in voting cases in Texas, and in many other civil rights cases. Under his view, Mr. Estrada could decide that a civil rights organization such as LULAC would not be able to sue on behalf of its members. NO supporter of civil rights could agree with Mr. Estrada's confirmation.

Ruben Bonilla, an attorney in Texas who is also a past National president of LULAC, opposes the confirmation of Mr. Estrada.

Mr. Bonilla writes:

I am deeply troubled with the double standard that surrounds the nomination of Mr. Estrada. It is particularly troubling that some of the Senators have accused Democrats or other Latinos of being anti-Hispanic, or holding the American dream hostage. Yet, these same Senators in fact prevented Latinos appointed by the Clinton Administration from ever being given a hearing. Notably, Corpus Christi lawyer Jorge Rangel, and El Paso attorney Enrique Moreno, and Denver attorney Christine Arguello never received hearings before the judiciary committee. Yet, these individuals who came from the top of their profession were schooled in the Ivy League, were raised from modest means in the Southwest, and in fact truly embodied the American Dream. These highly qualified Mexican-Americans never had the opportunity to introduce themselves and their views to the Senate, as Mr. Estrada did.

Mr. President, the Senate is entitled to see Mr. Estrada's full record. Both the Constitution and historical practices require us to ignore the Administration's obvious ideological nominations. Judicial nominees who come before the Senate should have professional qualifications and the right temperament to be a judge. They should be committed to basic constitutional principles. Many of us have no confidence that Mr. Estrada has met this burden. I urge the Senate to reject this nomination.

I ask unanimous consent that supporting material be printed in the RECORD.

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

HNBA'S PAST PRESIDENTS' STATEMENT,
FEBRUARY 21, 2003

We the undesigned past presidents of the Hispanic National Bar Association write in strong opposition to the nomination of Miguel A. Estrada for judgeship on the Court of Appeals for the District of Columbia Circuit.

Since the HNBA's establishment in 1972, promoting civil rights and advocating for judicial appointments of qualified Hispanic Americans throughout our nation have been our fundamental concerns. Over the years, we have had a proven and respected record of endorsing or not endorsing or rejecting nominees on a non-partisan basis of both Republican and Democratic presidents.

In addition to evaluating a candidate's professional experience and judicial temperament, the HNBA's policies and procedures governing judicial endorsements have required that the following additional criteria be considered: The extent to which a candidate has been involved in, supportive of, and responsive to the issues, needs and concerns or Hispanic Americans, and the candidate's demonstrated commitment to the concept of equal opportunity and equal justice under the law.

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. We believe that for many reasons including: his virtually non-existent written record, his verbally expressed and un-rebutted extreme views, his lack of judicial or academic teaching experience, (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his

poor judicial temperament, his total lack of any connection whatsoever to, or lack of demonstrated interest in the Hispanic community, his refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to the other straightforward questions of Senate Judiciary Committee members, and because of the Administration's refusal to provide the Judiciary Committee the additional information and cooperation it needs to address these concerns, the United States Senate cannot and must not conclude that Mr. Estrada can be a fair and impartial appellate court judge.

Respectfully submitted,

JOHN ROY CASTILLO, ET AL.

[From The Oregonian, Feb. 24, 2003]

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 worker's 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!

STATEMENT OF RUBEN BONILLA, IN OPPOSITION TO THE CONFIRMATION OF MIGUEL ESTRADA

I write to join other Latinos in opposing the confirmation of Miguel Estrada to the DC Circuit Court of Appeals. I have a long history of involvement in the Latino civil rights community. I am an attorney in Corpus Christi, Texas, and am a past National President of LULAC. I am deeply concerned with the betterment of my community.

I am deeply troubled with the double standard that surrounds the nomination of Miguel Estrada. It is particularly troubling that some of the senators have accused Democrats or other Latinos of being anti-Hispanic, or holding the American dream hostage. Yet, these same senators in fact prevented Latinos appointed by the Clinton Administration from ever being given a hearing. Notably, Corpus Christi lawyer Jorge Rangel, and El Paso attorney Enrique Moreno, and Denver attorney Christine Arguello never received hearings before the judiciary committee. Yet, these individuals who came from the top of their profession were schooled in the Ivy League, were raised from modest means in the Southwest, and in fact truly embodied the American Dream. These highly qualified Mexican Americans never had the opportunity to introduce themselves and their views to the Senate, as Mr. Estrada did.

In addition to my concerns regarding this double standard. I am also concerned that Mr. Estrada showed himself unwilling to allow the Senate to fully evaluate his record. He was not candid in his responses. Yet, Mr. Estrada, as every other nominee who is a candidate for a lifelong appointment, must be prepared to fully answer basic questions, particularly where there is no prior judicial record or scholarly work to scrutinize. By declining to give full and candid responses, he frustrated the process. Individuals with values should be called to explain those values honestly and forthrightly. We can demand no less from those who would hold a lifelong appointment in our system of justice.

Finally, I am also concerned with some of the answers that Mr. Estrada did give when he was pressed. For example, I understand that as an attorney he argued that the NAACP did not have legal standing to press the claims of African Americans who had been arrested under a particular ordinance. As a former National President of LULAC, I know that on many occasions LULAC has represented the rights of its membership in voting cases, and in other civil rights matters. I would be troubled that if he were confirmed, Mr. Estrada would not find a civil rights organization to be an appropriate plaintiff, and would uphold closing the courthouse door on them.

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

STATEMENT OF BELEN ROBLES IN OPPOSITION TO THE CONFIRMATION OF MIGUEL ESTRADA

I write to join other Latino leaders and organizations in opposing the confirmation of Miguel Estrada to the DC Circuit Court of Appeals. As a native Texan, I have a very long and active involvement in the Latino civil rights community and have worked hard to ensure that Latinos have real choices about their lives. I am a past National President of the League of United Latin American Citizens (LULAC).

I am deeply troubled with the nomination of Miguel Estrada. I am very troubled with the positions he seems to have taken about our youth being subjected to racial profiling. As I understand his position, he does not believe that racial profiling exists, and has many times argued that the Constitution gives police officers unbridled authority and power. In our communities, racial profiling does exist and our children have been subjected to it. This is an issue that Latino organizations, including LULAC have long cared about. In all of the years that I was involved with civil rights, LULAC always stood to protect our community, including our youth when law enforcement exceeds their authority.

I am also concerned that Mr. Estrada did not allow the Senate to fully evaluate his record. He was not open in his responses, but instead was evasive. Yet, anyone appointed to a lifelong position has to be willing to answer questions fully. The American people have a right to know who sits in our seats of justice. And to demand that the person be fair.

Mr. Estrada has also taken actions against organizations that make me believe that he would not be fair. For example, as an attorney he argued that the NAACP did not have legal standing to put forward the claims of African Americans who have been arrested under a particular ordinance. As a former National President of LULAC, I know very well that on many occasions LULAC has been a champion of the rights of its membership in civil rights cases. We asserted those rights on behalf of voters in voting cases in Texas, and in many other civil rights cases. Under his view, Mr. Estrada could decide that a civil rights organization such as LULAC would not be able to sue on behalf of its members. No supporter of civil rights could agree with Mr. Estrada's confirmation.

I oppose the confirmation of Mr. Miguel Estrada.

HISPANIC BAR ASSOCIATION OF PENNSYLVANIA,
Philadelphia, PA, January 28, 2003.

Hon. Senator EDWARD M. KENNEDY,
Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR HONORABLE SIR: I am writing on behalf of the Hispanic Bar Association of Pennsylvania (HBA) to inform you that we oppose the appointment of Miguel Angel Estrada to the United States Court of Appeals for the District of Columbia Circuit. For the reasons

that follow, we urge you to vote against Mr. Estrada's confirmation.

The HBA recognizes that Mr. Estrada's nomination was pending for some time prior to his hearing before the Senate Judiciary Committee on September 26, 2002. Nevertheless, it was the Hispanic National Bar Association's public endorsement of this candidate that prompted our organization to initiate its own evaluation of Mr. Estrada.

To that end, the HBA created a Special Committee on Judicial Nominations to develop a process for reviewing and potentially endorsing not only Mr. Estrada, but also all future candidates for the Judiciary. As part of the process, we contacted Mr. Estrada, asked to interview him, and invited him as a guest of the HBA to meet the members of our organization. Mr. Estrada, for stated good cause, declined our invitations. Notwithstanding Mr. Estrada's non-participation, the Committee completed its work and reported its findings to the HBA membership on November 14, 2002. Following the Committee's recommendation, the membership voted not to support Mr. Estrada's nomination.

The HBA recognizes and applauds Mr. Estrada for his outstanding professional and personal achievements. Indeed, the HBA adopts the American Bar Association's rating of ''well-qualified'' with regard to Mr. Estrada's professional competence and integrity. However, employing the ABA's seven established criteria for evaluating judicial temperament, the HBA finds Mr. Estrada to be lacking. Our organization could find no evidence that Mr. Estrada has demonstrated the judicial position. In addition, the HBA seeks to endorse individuals who have ''demonstrated awareness and sensitivity to minority, particularly Hispanic concerns.'' Sadly, we also could find no evidence of this quality in Mr. Estrada.

The HBA shares the concern of the president of the Judiciary Committee that only the best-qualified and most suitable individuals be appointed to the federal bench. Furthermore, the HBA appreciates the efforts, as evidenced by Mr. Estrada's nomination, to consider and promote members of the rapidly growing Latino population to positions of high visibility and importance. However, we believe that there are a myriad of other well-qualified Latinos whose integrity, professional competence, and judicial temperament would be beyond reproach and who would therefore be better suited for this position.

The Hispanic Bar Association of Pennsylvania regrets that it cannot support the nomination of Mr. Estrada to the United States Court of Appeals for the District of Columbia Circuit. We respectfully request that you oppose the confirmation of his nomination.

Respectfully submitted,

ARLENE RIVERA FINKELSTEIN,

President, and the Special Committee on Judicial Nominations on behalf of the Hispanic Bar Association of Pennsylvania.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CRAPO). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LAUTENBERG. Mr. President, today is the 12th day, as remarkable as that seems, that the Senate is debating this nomination instead of doing what it has to for the important business of the American people, as I see it. It is quite clear the other side is just not going to get cloture on this nomination. So the choice is either bring forward a cloture motion or move on to other business.

The Nation's Governors are in Washington meeting with President Bush and Members of Congress to discuss critically important issues, such as homeland security, rising unemployment, and increasing State deficits. These are serious issues that need attention, but we are delaying tending to the needs of the American people with endless debate on a judicial nominee who is refusing to tell the Senate almost anything about his judicial philosophy or decisionmaking process.

This hide-the-ball strategy being used by Mr. Estrada, frankly, I think is an affront to the Senate and the American people. We have the right to get complete and thoughtful answers to legitimate concerns about his approach to his interpretation of the U.S. Constitution and the laws of the country.

I was formerly a businessman. Sometimes there are processes that are not dissimilar to our functions here. One of them is to be able to understand what a nominee or an appointment of a high-ranking executive might include and a review of that person's potential, that person's experience, that person's attitude before you put him to work.

My fellow Senators on the other side of the aisle would have the Senate, considered the most deliberative body in world history—and, I assume, also considered one of the most thoughtful places in the world in terms of Government and deliberative bodies—vote to confirm a nominee to a lifetime—lifetime, and it is important people realize that means you cannot be fired from the job; this means you can go as long as you want to, and when you are finished with your service, your salary continues at exactly the same level it did when you went to work every day—a lifetime appointment without disclosure of what I and my colleagues consider required information.

In the business world, this practice would have been unheard of, and the American people deserve better. If someone were seeking a post and they appeared before a congressional committee or a department head and said, I would like the job, but I am not willing to answer that questionnaire, that would make that aspirant unacceptable under any condition. It should be a requirement when a lifetime-tenured job is under discussion, something so important as the circuit court of appeals where people, after getting a decision from district court, go to get the judgment of wise and experienced people. His unwillingness to answer questions, to talk about what he stands for, and what he believes is a shocking disregard for appropriate behavior.

Responsible business owners do not hire senior managers without first conducting a complete and thorough review of that candidate's job application. The candidate would answer questions that give interviewers an opportunity to measure the candidate's decisionmaking process and views on work-related issues. A candidate cannot simply refuse to answer important questions of fitness, philosophy, or temperament. No business executive would hire a candidate who refused to answer basic inquiries. These are not private matters. They become the matters of the employer, be it government or business. Those in business would put their businesses at risk and leave themselves susceptible to future lawsuits based on negligent hiring practices.

No one is doubting the fact Mr. Estrada is bright and intelligent, but his repeated refusal to provide the Senate with any insight into his views on the law and the U.S. Constitution is incomprehensible. I just cannot understand it. How can we make an informed decision about a judicial nominee if the nominee refuses to provide the Senate with sufficient information about his judicial philosophy and, therefore, his temperament?

The questions being asked are not prohibited by law or judicial or professional ethics codes. Instead of entertaining continuing with these dilatory tactics, the Senate should simply move on to the important business of the American people concerned about the protection of their homeland; move on to repair a hemorrhaging Federal budget that under this administration has been converted from a $5.6 trillion surplus into a 2.$1 trillion deficit; move on to provide States that are experiencing dire economic conditions with more Federal assistance that would help them weather the storms during these times of increasing unemployment, threatening war with Iraq, and a sustained fear of potential terrorist acts.

In the most recent CNN Gallup poll, 50 percent of Americans believe the economy is the most pressing issue confronting the Nation. Thirty percent of Americans believe the war with Iraq is the most important issue, second to jobs and the economy.

The nomination of Mr. Estrada did not make the list of important concerns facing the Nation. Since January 2001, the number of unemployed Americans has increased by nearly 40 percent, with nearly 8.3 million Americans out of work.

Since President Bush took office, 2.3 million private sector jobs have been lost and the unemployment rate for Latinos by way of example has increased 33 percent. According to the Department of Labor, there are now 2.4 jobseekers for every job opening. So rather than focusing on creating jobs for 8.3 million Americans, the Senate is targeted on the job of one attorney, a very successful attorney who made a lot of money. But how does that influence what the American people see as their need?

This is the same thinking that has produced an economic stimulus package that overwhelmingly favors the top 1 percent of American taxpayers while giving very little to those who really need some economic help.

The Senate needs to move on to the important work of protecting the homeland. CIA Director Tenet and FBI Director Mueller have both testified that America is still vulnerable to terrorist attack, and we keep on hearing alarms described in different colors. The American public does not understand what the difference between red and yellow is. They just know it scares them. It panics them. They do not know what to do. I get phone calls from people in New Jersey asking, Should we stay out of New York City? Should we not take our children on a trip? Should we stay home? The answer to all of those is that we do not really know, but we ought to get on with finding out.

The omnibus appropriations bill provides less than half of the $3.5 billion in funding promised to law enforcement people, firefighters, and emergency medical personnel. Meanwhile, America's ports, borders, and critical infrastructure remain dangerously unprotected.

Once again, instead of focusing on protecting the homeland and funding our first responders, the work of the Senate is being delayed in order to secure the appointment of a judicial nominee who refuses to share his views with the American people.

I do not intend to demean or diminish the importance of this nomination. It is very important. To the contrary, the nomination at issue is to the U.S. Court of Appeals for the DC Circuit, which is the most powerful intermediate Federal appellate court, second only to the U.S. Supreme Court. The DC Circuit is more powerful, it is observed, than other Federal courts because it has exclusive jurisdiction over a broad array of far-reaching Federal regulations that enforce critical environment, consumer, and worker protection laws.

As history has shown, DC Circuit Court judges are often tapped to serve on the Supreme Court. Presently, three of the nine Supreme Court Justices—Justices Antonin Scalia, Clarence Thomas, and Ruth Bader Ginsburg—previously served on the DC Circuit.

The Senate has a constitutional responsibility. The constitutional judicial confirmation process grants authority to the President of the United States to make the nominations and gives the Senate an equally significant role to agree by advising and consenting with the President's recommendation before a nominee can sit on the Federal bench. These important, mutually coexisting roles of the President and the Senate are central to the democratic system of separation of powers and checks and balances.

Mr. Estrada must provide the Senate with a full and complete understanding of his views of the law and the Constitution, including important civil rights laws that protect all Americans, especially minorities, women, the elderly, and the disabled. However, if he is unwilling or the White House is unwilling to nominate judicial nominees who are willing to answer reasonable, nonintrusive, and legitimate inquiries of the Senate, then these nominees should not be confirmed.

The role of the Senate in the confirmation process is advise and consent. It does not say anyplace to rubberstamp all Presidential nominations. The Senate should not abdicate its responsibility to thoroughly review judicial nominations. It is a responsibility, it is an obligation, for each one of us. Rather, the Senate is dutybound to ensure that each nominee maintains the utmost commitment to upholding the Constitution of our country—following precedent, listening to arguments without fear or favor, and rendering judgment without personal bias. Miguel Estrada has failed to respond to legitimate inquiries to the Senate and the American people.

As I said before, it is time to move on to the important work of the American people, and let this appointment fall as it should unless Mr. Estrada has a reckoning with himself and his obligation and comes to the Senate to discuss his views in response to questions posed by the Senate.

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

Mr. LAUTENBERG. Yes.

Mr. REID. The Senator is from the State of New Jersey. Of course, the State of New Jersey is very aware of the news that is put out in the New York Times and the editorials put out in the New York Times. Is that a fair statement?

Mr. LAUTENBERG. It is a very important paper, yes.

Mr. REID. I do not know if the Senator is aware that I read into the RECORD this morning a New York Times editorial from last fall dealing with Estrada. I ask the Senator if he is aware of the first paragraph of an editorial written February 13, 2003, in the New York Times?

Is the Senator also aware that last night the majority read into the RECORD a number of editorials from around the country?

Mr. LAUTENBERG. I am aware of that.

Mr. REID. Does the Senator from New Jersey know the circulation of the New York Times?

Mr. LAUTENBERG. I do not know precisely, but it is in the——

Mr. REID. It is in the millions.

Mr. LAUTENBERG. I am sorry?

Mr. REID. It is over a million.

Mr. LAUTENBERG. Over a million certainly on the weekends.

Mr. REID. Yes, I am sure it is.

Is the Senator aware of this editorial that says, paragraph No. 1, ''The Bush administration is missing the point in the Senate battle over Miguel Estrada, its controversial nominee to the powerful DC 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''?

Mr. LAUTENBERG. I am. I am also aware of the fact that there are Latino organizations that are unalterably opposed to this nomination.

Mr. REID. If the Senator will yield for a question, is he aware that it is led by the Congressional Hispanic Caucus?

Mr. LAUTENBERG. I am aware of all that.

Mr. REID. If the Senator will yield for a further question, it would be difficult, would it not, to say that the Congressional Hispanic Caucus was anti-Hispanic?

Mr. LAUTENBERG. I absolutely agree that there would typically be a determination by them to support the nomination, but they are not. If the Senator will help sharpen my memory, I think they said keep on talking in the close of that editorial piece.

Mr. REID. We are going to find out. If the Senator would yield for another question?

Mr. LAUTENBERG. I would be happy to.

Mr. REID. I ask if the Senator from New Jersey agrees with that first paragraph of the editorial that I just wrote—read. I wish I had written it, but I read it.

Mr. LAUTENBERG. I agree with the Senator and wish I had written it as well.

Mr. REID. It is a short editorial. It is only three paragraphs. I will ask the Senator a question if he would yield.

Mr. LAUTENBERG. Yes.

Mr. REID. ''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.''

Does the Senator from New Jersey agree with the statement made in this editorial, second paragraph, by the New York Times?

Mr. LAUTENBERG. I agree with it fully. I read that editorial. I was in total agreement with their logic, coming from New Jersey where we had candidates who were recommended for the

appeals court languish—nothing happening for months and months and months. The protests we hear now from our friends on the other side about the process are a bit shameless because we had a nominee from California, Mr. Paez, who waited, I believe, 1,500 days.

Mr. REID. One thousand five hundred four days.

Mr. LAUTENBERG. Waiting for a review by the committee, and could not get that.

If we talk about obstinate approaches to the process about deliberate obstruction, the record is very clear.

When we presented candidates, when the Democrats were a majority, they could not move them because the Republican side of the Senate would not permit any action at all.

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

Mr. LAUTENBERG. I am happy to yield to my friend from Nevada.

Mr. REID. The final paragraph of this short but powerful editorial, does the Senator from New Jersey agree with this:

> 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.

Would the Senator agree with this statement?

Mr. LAUTENBERG. I agree 100 percent with that statement, and I think we ought to get on with the business of the American people.

Mr. REID. If the Senator will yield for another question before he leaves the floor. The Senator mentioned there were aspirants to be appellate judges, and is the Senator aware that a number of these people were from New York? Is that true?

Mr. LAUTENBERG. Indeed, that is true.

I just got a letter from a district court judge in New Jersey, considered one of the most brilliant and able district court judges, who was recommended for the circuit court of appeals in our district and decided after a long wait that he was not going to get a chance to be heard for a circuit court job. He informs me in his letter that he is going back to the law firm after 10 years on the Federal bench—a distinguished jurist, a great loss. He could not get a hearing, so he decided to withdraw rather than sit there and be dangled like a kite in the wind.

Mr. REID. Is the Senator aware of the names of 79 Clinton judicial nominees who were not confirmed by the Republicans?

Mr. LAUTENBERG. I am fully aware of that. I listened when the distinguished Democratic whip read that list the first time, and I took the liberty of reading the list a second time to make sure it was clearly understood.

Mr. LAUTENBERG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. THOMAS. Mr. President, it is very interesting to hear the discussions. It is very similar to what we have heard now for a couple of weeks. I could not agree more with the Senator from New Jersey who says let's get on with it. I have a suggestion as to how we can do that. There are more than a majority in this Senate who are satisfied with this candidate and ready to vote. All we need to do is have an up-or-down vote. Those who are opposing that are in the minority. They can study as many things as they choose. The fact is, the majority of the people on this floor are satisfied this candidate is the right candidate and it is time to go. I could not agree more.

We have a lot of things to do. We have gone through the hearings, we have gone through all the background, and certainly most of us would like to get away from this delay tactic and get on with our work. I have to say that when the majority is ready to go, that is what we ought to do. I suggest that.

I will discuss another subject for a moment.

THE PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. I thank the Chair.

(The remarks of Mr. THOMAS pertaining to the introduction of S. 475 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. THOMAS. Mr. President, again I hope we find ourselves in a position to move forward. I don't think there is a soul here who would not admit we have talked enough about this judicial nomination. I don't think there is a soul here who would deny we have all made up our minds, we all know exactly what we are going to do. It is very clear that the majority on this floor is prepared to vote for this nominee and we are being held up over here by a minority that simply continues to ask for something that is not necessary because the majority has already been determined. So I hope we can move on and do the business of this country for these people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I rise today to submit a resolution.

(The remarks of Mr. CRAPO pertaining to the submission of S. Con. Res. 11 are printed in today's RECORD under ''Submission on Concurrent and Senate Resolutions.'')

JUDICIARY COMMITTEE ACTION

Mr. DASCHLE. Mr. President, I wanted to come to the floor this afternoon to discuss a matter that occurred in the Judiciary Committee today that is deeply troubling.

During a mark-up of 3 controversial circuit court nominees, the Chairman of the Judiciary Committee refused to observe the long-standing rules of the committee and brought two circuit court nominations to a vote despite the fact that there was a desire by several members of the minority to continue debate.

This situation is very specifically addressed by Committee Rule No. 4, which reads as follows:

> The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bring the matter to a vote without further debate, a rollcall vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.

At the time that the chairman attempted to bring the nominations of John Roberts and Deborah Cook to a vote, objections were lodged by at least 2 members of the committee.

In fact, I believe that this rule was read into the RECORD in an effort to make clear to the chairman that it was not appropriate under the committee rules to bring these matters to a vote.

Despite the fact that this action represented a clear violation of the committee rules, the chairman ended debate on these nominations and conducted a roll call vote.

This reckless exercise of raw power by a chairman without regard to the agreed-upon standards of conduct that members of the committee have agreed to is ominous.

Senate committees either have rules or they do not. It cannot be the case that the rules of a committee will apply unless the chairman deems them inconvenient or an obstacle to a goal he seeks at any given moment.

This body has, for over 200 years, operated on the principle that civil debate and resolution of competing philosophies require rules. If the actions taken today indicate the new standard to which the majority plans to hold itself, then I propose that we simply repeal committee rules altogether and acknowledge that ''might makes right'' and there is no respect for minority interests.

How can we expect the Judiciary Committee to place on the bench individuals who respect the rule of law if the very process that the committee uses to confirm those individuals violates the Senate rules themselves?

I hope that upon reflection the chairman of the Judiciary Committee will reconvene the committee and allow for the committee to report out these nominations in a manner that is consistent with the committee rules.

If not, he must recognize that he is setting a terrible precedent regarding the operation of Senate committees in the future, regardless of which party may be in control.

Mr. President, I am very deeply troubled. This is a body of rules. This is a