Dr. Ana Juarez Ph.D., Assistant Professor, STSU, San Marcos, TX.

Dr. Antonia Castaneda, Ph.D., Associate Professor of History, St. Mary's University, San Antonio, TX.

Dr. Estevan Flores, Ph.D., Executive Director, University of Colorado, Denver, CO.

Dr. Jorge Huerta, Ph.D., Chancellor's Associates Professor of Theatre, University of California, San Diego, La Jolla, CA.

Dr. Leticia Flores, Ph.D., Psychology Department, Southwest Texas State University, San Marcos, TX.

Dr. Gloria Contreras, Ph.D., Professor, Dept. of Teacher Education, University of North Texas, Denton, TX.

Dr. Jose Centeno, Ph.D., Dept. of Speech, Communication Sciences, & Theatre, St. John's University, Jamaica, NY.

Dr. Ayse Yonder, Ph.D., Associate Professor and Chair Pratt Institute, Graduate Center For Planning and the Environment, Brooklyn, NY.

Dr. Roberto Calderon, Ph.D., Department of History, University of North Texas, Denton, TX.

Dr. Vivian Tseng, Ph.D., Department of Psychology, CSU Northridge, Northridge, CA.

Dr. Mario Gonzales, Ph.D., Assistant Professor of Anthropology, Southwestern University, Georgetown, TX.

Dr. Ray Leal, Ph.D., Department of Criminal Justice, St. Mary's University, San Antonio, TX.

Dr. Rebecca Blum-Martinez, Ph.D., College of Education, University of New Mexico, Albuquerque, NM.

Dr. Domenico Maceri, Ph.D., Professor of Spanish, Allan Hancock College, Santa Maria, CA.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

EXECUTIVE SESSION

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

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

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

Mr. REID. Madam President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally among the two sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. Madam President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. The pending question is the Estrada nomination. The Senator has 12 minutes under his control.

Mr. LEAHY. I thank the distinguished Presiding Officer.

Madam President, the Senate Judiciary Committee is meeting. I spoke to our distinguished chairman, Senator HATCH, who is still there, and, by mutual agreement, I have come to the Chamber to speak now, and then he will, of course, have his time preserved.

Before I start, I thank both the Democratic leader and the assistant leader, Senator REID, for their efforts to safeguard our Constitution and to protect the special role of the Senate in ensuring that our Federal courts have judges who will fairly interpret the Constitution and laws passed by Congress. We pass these statutes for the sake of all Americans, not just for Republicans, not just for Democrats—all Americans. I also thank all the Democratic Senators who have spoken on the floor or who have joined together to preserve the integrity of the confirmation process.

What is at stake in this nomination is a lifetime appointment to the second highest court in the country. Most of the decisions issued by the DC Circuit in the nearly 1,400 appeals filed per year are final because the Supreme Court now takes fewer than 100 cases from all over the country. Our DC Circuit has special jurisdiction over cases involving the rights of working Americans, as well as the laws and regulations intended to protect our environment, safe workplaces, and other important Federal regulatory responsibilities. This is a court where privacy rights will either be retained or lost, and where thousands of individuals will have their final appeal in matters that affect their financial future, their health, their lives, and their liberty, as well as the lives of their children and generations to come.

If a nominee's record or responses raises doubts or concerns, these are matters for thorough scrutiny by the Senate, which is entrusted to review all of the information and materials relevant to a nominee's fairness and experience. No one should be rewarded for stonewalling the Senate and the American people. Our freedoms are the fruit of too much sacrifice to fail to assure ourselves that the judges we confirm will be fair judges to all people and in all matters. No one should have a lifetime appointment as a gift because they stonewalled the Senate.

It is unfortunate that the White House and some Republicans have insisted on this confrontation rather than working with us to provide the needed information so we could proceed to an up-or-down vote.

Some on the Republican side are having too much fun playing politics, seeking to pack our courts with ideologues or leveling baseless charges of bigotry, to work with us to resolve the impasse over this nomination by providing requested information and proceeding to a fair vote.

I was disappointed that Mr. BENNETT, the distinguished Senator from Utah, in his honest colloquy with the distinguished Senator from Nevada, Mr. REID, and me on February 12, which pointed to a solution, was never allowed to go forward by hard-liners on the other side. I am disappointed all my efforts, and those of Senator DASCHLE and Senator REID, have been rejected by the White House. The letter that Senator DASCHLE sent to the President on February 11 pointed the way to resolving this matter. The responses we got showed me that they would rather engage in politics at the White House.

The Republican majority is wedded to partisan talking points that are light on facts but heavy on rhetoric. There has often been an absence of fair and substantive debate and a prevalence of name calling that has offended many. At the outset of this debate, I called for an apology for remarks calling Democrats ''anti-Hispanic'' and I urged debate on the merits. Unfortunately, the Republican name calling continued, and those attacks were extended to include members of the Congressional Hispanic Caucus, some of the highest and most respected Hispanic elected officials in the Nation, and other Hispanic organizations and leaders that oppose this nomination. That is extremely disappointing.

Our sincere concerns have been distorted and then dismissed. So in these closing moments before the cloture vote, let me puncture some of the Republican myths about this nomination and this process.

First, Republicans rely on a letter from former Solicitors General stating a policy preference that did not acknowledge past precedent. Republicans claimed, in fact, that our request for memos written by this judicial nominee was unprecedented. That is false. And, during the course of this debate, even the administration had to concede their claim was false.

The smoking gun was a letter from the Reagan Department of Justice asking the Judiciary Committee to return similar memos written to the Solicitor General by lower level attorneys that had been provided ''to respond fully to the Committee's request and to expedite the confirmation process.'' This was done in another nomination but refused in this one. In fact, buried in the current administration's rejection of Senator DASCHLE's good-faith effort to resolve this impasse was the belated concession that other administrations had produced Solicitor General Office work papers and other legal memos in other nominations.

But notwithstanding having admitted that, they misstated that precedent. They continued to misstate the precedent, claiming incorrectly that disclosures were predicated on allegations of misconduct by those past

nominees. But past letters and records prove that the Senate requested, and the Reagan administration provided, internal documents such as Justice Department legal memos to and from William Rehnquist relating to civil rights and civil liberties, appeal recommendations by other attorneys to Robert Bork in civil rights cases as well as other internal legal or policy memos he wrote, and a wide range of civil rights memos in Brad Reynold's nomination for a short-term appointment at the Justice Department. These were requested due to the Senators' interest in examining those writings and better understanding the nominees' views and approach to interpreting the laws as executive branch employees. The Senate's interest in examining those documents was not predicated on allegations of misconduct, and that interest was not diminished in any way by the opportunity to review other writings. Justice Rehnquist had written judicial opinions and dissents for 15 years, and Judge Bork had served for 6 years on the bench.

The real double standard here is that the President selected Mr. Estrada based in large part on his work for 4½ years in the Solicitor General's Office, as well as for his ideological views. But then, having been picked because of his ideological views, the administration said the Senate may not find out what those views are. The administration also sought to deny access to the type of legal memos that had been provided in the past. The administration said the Senate could not examine Mr. Estrada's written work from that office making recommendations of what the law is or should be, even though these papers would shed the most light on his unvarnished views. They asserted that the Senate should not consider the very ideology it took into account in selecting a 39-year-old, with no academic writings as a lawyer or judicial opinions that would provide insights into his views, for a lifetime seat on the country's second highest court.

This is a nominee well known for having very passionate views about judicial decisions and legal policy, well known for being outspoken, but he has refused to share his views with the very people charged with evaluating his nomination. There seems to be a perversion of values to require the Senate to stumble in the dark about his views, when he shares his views quite freely with others—certainly with insiders and people in the administration, and he has been selected for the privilege of this high office and for a lifetime position based on those same views that they want to keep hidden from the Senate. We are not asking him to pledge how he would rule but we cannot let a new bar be set that one cannot share views with the Senate without reading briefs, listening to oral arguments, conferring with colleagues and doing independent research. I think any concerned citizen or first year law student could mention a Supreme Court decision from the past 200 years that may trouble him or her, but Mr. Estrada refused to answer even this question, among many, many others.

This points to a second myth: That Mr. Estrada cannot answer questions about his views without violating judicial ethics. However, as Justice Scalia—one of President Bush's favorite Supreme Court Justices—wrote for a majority of the court just last summer, ''Even if it were possible to select judges who do not have preconceived views on legal issues, it would hardly be desirable to do so. 'Proof that a Justice's mind at the time he joined the Court was complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias.''' *Republican Party of Minnesota* v. *White*, 122 S. Ct. 2528 (2002). This quote is from the majority opinion in a case about whether judicial candidates could share their views. This is a case that the Republican Party took all the way to the Supreme Court and won. Prior to this decision there may have been some ambiguity for judicial candidates about whether they could share their views, but this decision last year by Justice Scalia makes clear that judicial ethics do not prevent sharing of views.

Third, Republicans have claimed that this debate on a judicial nomination was unprecedented. That is false as well. Republicans not only filibustered the Supreme Court nomination of Abe Fortas, they filibustered the nominations of Judge Stephen Breyer, Judge Rosemary Barkett, Judge H. Lee Sarokin, Judge Richard Paez and Judge Marsha Berson, among others. The truth is that filibusters and cloture votes on nominations and legislative matters and extended debate on judicial nominations, including circuit court nominations, have become more and more common through Republican actions. Of course, when they are in the majority, Republicans have more successfully defeated judicial nominees by refusing to proceed on them and then not publicly explaining their actions, and by allowing holds by one or a handful of Republicans to determine a nominee's fate, preferring to act in secret under the cloak of anonymity.

The nomination of Judge Paez, a Mexican American nominated to the Ninth Circuit, illustrates quite clearly that the last filibuster of a circuit court nominee occurred on the Republican watch during the last administration. Judge Paez was first nominated in 1996 and Republicans refused to allow him an up or down vote on the floor of the Senate until he was finally confirmed in 2000, after his nomination had been pending for more than 1,500 days. In fact, his nomination had waited on the floor for an up or down vote for more than 20 months, 20 times longer than Mr. Estrada's nomination. After Republicans lost a cloture vote on March 8, 2000, they moved ''to indefinitely postpone'' his nomination. Chairman Hatch noted that such a motion was unprecedented following a cloture vote to end what he then acknowledged was a ''filibuster'' of Judge Paez's nomination. Despite his concerns, 31 Republicans—many of whom have been on this floor demanding an immediate up or down vote on Mr. Estrada's nomination and claiming that delaying a vote is unconstitutional—voted to postpone, in essence, forever a vote on Judge Paez's circuit court nomination. I think this recent example punctures the Republican myths about floor votes and filibusters.

Fourth, Republicans claim that the debate on this nomination has held up other business of the Senate, blaming Democrats. That is false. The truth is that Republicans objected to turning to the economic stimulus package and funding for first responders when Senator DASCHLE sought that action last week. Instead, Republicans have been focused on ensuring a lifetime job for one man rather than addressing the need to stimulate the creation of good jobs for many Americans. During the course of this debate, Democrats have willingly proceeded to confirming a number of other judicial nominees of this President—including a Hispanic nominee to the district court in California—passing the omnibus appropriations bill, passing short-term continuing resolutions to fund the government, passing the Hatch-Leahy PROTECT Act against child pornography, and now debating the Moscow treaty. The reason the Senate has not done more is because Republicans have not asked the Senate to turn to such matters as Senator BIDEN's bill to grant asylum to Iraqi scientists and other bills.

Fifth, Republicans have tried to create the impression that those who oppose this nomination are anti-Hispanic. That is false and they know it. The members of the Congressional Hispanic Caucus are not anti-Hispanic, nor are the Mexican American Legal Defense and Education Fund, the Puerto Rican Legal Defense and Education Fund, the Latino labor leaders, the Southwest Voter Registration and Education Project, the California Chapter of the League of United Latin American Citizens (LULAC), the 75 Latino professors, the 15 former presidents of the Hispanic National Bar Association, the AFL-CIO, the Sierra Club, Dolores Huerta—the cofounder of the United Farm Workers of America—Mario Obledo, Professor Paul Bender or the hundreds of other Americans who called or written in opposition to this nomination.

Democratic Senators are not anti-Hispanic. This charge is as baseless now as it was when my religion, and the religion of other Democratic members on the Senate Judiciary Committee, was attacked by some of the Republican leadership. We ought to understand that people do not have these biases, baseless biases, that are being ascribed by some in their zeal to win at

any cost, just as we should not be attacking each other's religion. Democratic Senators have pressed for the confirmation of many Hispanics over the past ten years, including the confirmation of Judge Paez, Judge Sonia Sotomayor, Judge Julio Fuentes, Judge Kim Wardlaw, and Judge Jose Cabranes, just to name a few of the other Hispanics appointed to the circuit courts by Democratic or Republican presidents, in addition to Judge Hilda Tagle, Judge James Otero, and Judge Jose Linares, just to name a few of the Hispanic district court nominees over these years. In fact, Democratic Senators also pressed for Senate confirmation of Enrique Moreno, Jose Rangel, and Christine Arguello, who had been nominated to the circuit courts, and for many other outstanding judicial candidates on which the Republican Senate majority refused to proceed when they were nominated or renominated by President Clinton. Baseless Republican charges of bias prompted LULAC, an organization that initially endorsed the Estrada nomination, to disassociate itself from Republican statements.

I urge the White House and Senate Republicans to end the political warfare and join with us in good faith to make sure the information that is needed to review this nomination is provided so that the Senate may conclude its consideration of this nomination. I urge the White House, as I have for more than two years, to work with us and, quoting from the column published yesterday by Thomas Mann of the Brookings Institute, submit ''a more balanced ticket of judicial nominee and engag[e] in genuine negotiations and compromise with both parties in Congress.'' The President promised to be a uniter not a divider, but he has continued to send us judicial nominations that divide our nation and, in this case, he has even managed to divide Hispanics across the country, unlike any of the prior judicial nominees of both Democratic and Republican Presidents.

Madam President, I do not see others seeking the floor except for Senator SCHUMER. I ask unanimous consent that he be allowed 3 minutes.

Mr. REID. Madam President, reserving the right to object, I want to say on behalf of all the Senators on this side of the aisle how much we support the ranking member of the Judiciary Committee, what a difficult job he has had, and what a tremendous job he has done. Senator LEAHY has set an example for how a Senator should act. He has been a statesman through this and other battles. Speaking on behalf of Senator DASCHLE and for me, I am sure every Democratic Senator, we can't say enough that is good. I will let the RECORD rest on the fact that we are totally supportive of what you have done and how you have handled this, and we are proud of what you have done.

If there is no one here, I certainly ask unanimous consent that Senator SCHUMER be allowed to speak until someone shows up for the Republican side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from New York.

Mr. SCHUMER. Madam President, let me add my accolades to our colleague and leader of the Judiciary Committee, Senator LEAHY, who has done a terrific job. I thank Senator LEAHY as well as Senator DASCHLE and Senator REID for the remarkable unity in the Democratic caucus when, frankly, some of us felt we had to do something here and didn't really think it would come to fruition.

Let me say the vote today boils down to one issue more than any other: Should the Senate have any role in the selection of judges to the Federal bench? It is that simple. It boils down to the simple fact that there has been an attempt here to obliterate the advise and consent process which the Founding Fathers regarded as one of the most important in the Constitution.

This is not an argument about one man. This is not an argument about any particular issue. This is not even an argument about something I believe strongly, whether somebody's views should be taken into account before that person is appointed as a Federal judge.

What has happened in the last several months has made a mockery of the advise and consent process.

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

Mr. SCHUMER. I am happy to yield.

Mr. REID. Would the Senator agree with the statement made by 75 Hispanic leaders around the country in a letter stating as follows:

> We want more representation from our community in the courts, but not at such a high price. We accept liberal and conservative thinkers among us, but Mr. Estrada is much more than a conservative, he is an ideologue. We cannot support the confirmation of an ideologue to such an important position in our society. The cost is too high. We urge you and the members of the Senate to oppose Mr. Estrada's confirmation.

Does the Senator from New York agree with that sentence?

Mr. SCHUMER. I thank my colleague for asking the question. My view is yes. I don't want ideologues on the court, whether they be far right or far left. What ideologues tend to do is make law and not interpret the law. The bottom line is there are many people who know Mr. Estrada who say he is a mainstream conservative and he is not an ideologue who will try to bend the law to the direction of his beliefs; there are many others who say he is an ideologue who will bend the law to the direction of his beliefs.

Going back to my first point, we have no way of ascertaining that one way or the other because Mr. Estrada has refused to answer in any kind of elucidating and forthright way questions that were asked of him throughout 9 hours of hearings, which I chaired, and because the only other place we can find what his views are is in his work papers at the Solicitor General's Office, which are being withheld even though there is no privilege. And those papers have not been withheld by any other nominees who have sought to be justices and garner other positions in the Government.

Unless we wish to make the Senate simply a detective agency to find some useful indiscretion and eliminate a nomination or oppose a nomination, for that reason, then we should oppose Mr. Estrada.

I say to my colleagues that the position of being on the Court of Appeals in the DC Circuit is one of the most important positions in the Government. Many might argue that those judges have more power than individual Senators. Can you imagine if we ran for reelection and we said we refused to answer questions about our views? Can you imagine how the public would react? They would say, whatever your views are, you have an obligation to tell us if you want to achieve a high office.

If you read the papers of the Founding Fathers, the advise and consent process was the very way that views of nominees were to be ascertained. In fact, as Senator KENNEDY elucidated in the Chamber the other day, for a long time the Constitutional Convention wanted the Senate to choose the judges but believed that the ability to choose would be too disparate, and instead they came to the decision that the President should choose them.

But nowhere is it believed that the Senate should be a rubberstamp. Nowhere is it believed that the Senate should simply be a detective agency to find out if someone did something wrong. Our job is to figure out what kind of judge Mr. Estrada would be. We know he is a very bright man. That has never been disputed. We know he has a story of advancement. That has not disputed. But far more important than either of those things, do we know what his views are on the first amendment or the commerce clause? Do we know how he would approach cases that affect the environment, or workers' rights to organize, where the District of Columbia Circuit Court of Appeals is paramount? We don't want him to tell us how he would rule on a specific case, but the American people are certainly entitled to the views of this man in terms of how he would be a judge.

Some on the other side say it is simply good enough for any nominee to say, I will follow the law. If that were the case, we wouldn't be here; we wouldn't need the advise and consent process; the debate in Constitution Hall about how to choose judges would have been totally overruled.

This is a historic moment in a very real sense. It is a moment when we are going to see if a third branch of Government—the one unelected branch of

Government, which has awesome power—is going to be responsible to the people. To simply have Presidents choose judges is not what this country needs nor what the Founding Fathers intended, yet we are getting to that point right now.

I urge my colleagues. I want to join my plea with Senator LEAHY's. We have tried on this side. I have tried to understand. The Presidents are going to get their way almost all of the time. I have voted for 100 of the 106 judges who came before us. I daresay their philosophical views about government and all of these issues are quite different from mine. But as long as they are not out of the mainstream, as long as they won't approach being judges from an ideological point of view where they are making law rather than interpreting law, they deserve to be on the bench, if they have the other qualifications. We have no way of knowing right now. The American people have no way of knowing what kind of judge Mr. Estrada will be in terms of his views.

For that reason, reluctantly, but firm in the conviction that we are right, we must oppose the nomination of Miguel Estrada, or at least oppose his moving forward until we get the kind of information that is necessary to determine what kind of judge he will be that is necessary in terms of the precepts of what the Founding Fathers outlined for this country.

I yield the floor.

Mr. LEAHY. Mr. President, some Republicans have stated that only two or a handful of editorials or op-eds support Democrats in their concerns about Mr. Miguel Estrada's nomination to the second highest court in the country. I would like to set the record straight by listing the 55 editorials and op-eds to date that express concerns about this nomination.

Here is a list of the 22 editorials published to date expressing concerns about the Estrada nomination for a lifetime appointment to the D.C. Circuit:

Straight Answers Would End Estrada Confirmation Delay, (Daytona Beach News-Journal, 4/5/2003)

(''As conservatives scream foul, they should remember that the vacancy Estrada would fill exists because Republicans blocked two of President Clinton's nominees. Neither was a liberal ideologue. . . . [Estrada] has no judicial experience. His views are unpublished since law school. He has little experience in administrative law, none in environmental law, although those areas make up the bulk of the D.C. Court's docket.'')

Partisan Warfare, (Rutland Daily Herald, 2/24/2003)

(''It is [the Senators'] duty to advise and consent on judicial, nominees, and Estrada has given them no basis for deciding whether to consent. . . . [F]or the Senate to merely rubber stamp the nominees sent their way by the White House would be for the Senate to surrender its constitutional role as a check on the excesses of the executive.'')

Stealth Nominees Should Be Held Back, (The Post-standard (Syracuse), 1/30/2003)

(''Estrada helped George W. Bush win the presidency after the disputed vote in Florida. At the Justice Department, he wrote memos and opinions for the U.S. solicitor general. he is a member of the arch-conservative Federalist Society and reportedly mirrors Supreme Court Justice Antonin Scalia's hard-right views.'')

Weighing Miguel Estrada, (Staten Island (NY) Advance, 2/25/2003)

''(Presidents have long sought to extend their party's political influence by packing the courts, to the extent possible, with ideological soul mates. A good Senate grilling and some foot-dragging are about the only tools available to lessen the chance that those ideologues most capable of mischief don't make it through the process to become permanently ensconced on the bench. Mr. Estrada wouldn't be up for nomination at all if the Republicans hadn't seen to it that two of President Clinton's nominees were rejected. . . . [H]e should not be allowed to ascend to the federal bench until we know who and what he is. All he needs to do is speak up and put himself on the record.'')

Arkansas Times Editorial, (Arkansas Times, 2/21/2003)

(''Like Thomas, Miguel Estrada is a member of a minority group who would not have been nominated if he were not also an extremist. He arrogantly refused to discuss his views with the Senate Judiciary Committee, and the administration blocked the release of records pertaining to his government work that could shed light on his biases.'')

Judicial Power Trip, (The Oregonian, 3/3/2003)

(''Democrats mustn't cave on this. The fairness and credibility of the nation's courts depend on senators' finding a reasonable compromise. Moderates within the president's party should also reconsider their lockstep loyalty.'')

Partisanship Is A Democratic Duty, (Minnesota Daily Editorial 2/18/03)

(''Estrada's filibuster is not merely an expression of partisan politics, it is a crucial link to maintaining the viability of the Constitution.'')

Rush To Judges, (Boston Globe Editorial, 2/15/03)

(''It's crucial to evaluate candidates based on their merits and the needs of the country. Given that the electorate was divided in 2000, it's clear that the country is a politically centrist place that should have mainstream judges, especially since many of these nominees could affect the next several decades of legal life in the United States.'')

Keep Talking About Miguel Estrada, (New York Times editorial, 2/13/03)

(''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. . . . Mr. Estrada embodies the White House's scorn for the Senate's role'')

Editorial: Battling over Federal Courts, (Milwaukee Journal Sentinel, 2/27/2003)

(''Bush is filling vacancies left open by the Republicans' refusal to act on Clinton's nominees.'')

Answers, Please: Nominee Estrada Refuses to Disclose Judicial Views, Philosophies to the Senate, (Omaha World-Herald Editorial, 2/13/03)

(''Most judicial candidates won't, and shouldn't, give their personal views on a broad-brush basis. . . . But Estrada . . . went beyond that—refusing to discuss well-known prior cases because, he said, he had no first-hand knowledge. Judicial philosophy is important as senators consider an appointment to the court that has been called the second most important in the land after the Supreme Court.'')

Straight Answers Would End Estrada Confirmation Delay, (Daytona Beach News-Journal Editorial, Mar. 5, 2003)

(''This fight isn't over his ethnicity. It's not about his resume. It's about Bush's hard-nosed political machinations, which thrust a nominee with no judicial record but a bad case of lockjaw at Senate Democrats on the gamble that other right-wing judicial appointees could be sneaked through the confirmation process during the distraction. The strategy worked at first but has since backfired.'')

Evasive Estrada: Democrats Are Right To Balk at bush's Uncooperative Choice for a Key Appellate Judgeship, (Newsday Editorial, 2/13/03)

(''With so little to go on, Democrats in the Senate are right to balk at rubber-stamping Estrada's nomination.'')

The Argument About Estrada, (Dallas Fort Worth Star Telegram, 2/13/2003)

(''President Bush has prolonged the animosity. His nominees for appellate court posts have included legal theorists and lower court judges whose positions have raised legitimate concerns aside from the political squabbling. Sen. Orin Hatch of Utah, now the Judiciary Committee chairman, promised to improve the process when Republicans took control of the Senate. His ''improvement'' was to schedule three appellate court nominees for a single condensed hearing even though he knew that Democrats wanted to question all of them at length.'')

Judicial Alarm: Without More Answers, Nominee Deserves Filibuster, (Detroit Free Press Editorial, 2/11/03)

(''Judges require evidence before they render verdicts. Senate Democrats are equally entitled to more evidence of Estrada's fitness before giving him the green light for the second highest court in the land—and positioning him for the U.S. Supreme Court.'')

Streamrolling Judicial Nominees, (The New York Times Editorial, 2/6/03)

(''[T]he federal courts are too important for the Senate to give short shrift to its constitutional role of advice and consent. . . . [T]he administration should [not] be allowed to act without scrutiny, and pack the courts with new judges who hold views that are out of whack with those of the vast majority of Americans.'')

More Judicial Games From GOP, (Berkshire Eagle Editorial, 2/1/03)

(''Senate Democrats . . . should not be bullied into approving unqualified nominees and they shouldn't hesitate to filibuster poor nominations if necessary.'')

An Unacceptable Nominee, (New York Times Editorial, 1/29/03)

(''Senators have a constitutional duty to weigh the qualifications of nominees for the federal judiciary. But they cannot perform this duty when the White House sends them candidates whose record is a black hole. . . . The very absence of a paper trail on matters like abortion and civil liberties may be one reason the administration chose him. It is also a compelling—indeed necessary—reason to reject him.'')

Bush's Full-Court Press, (L.A. Times Editorial, 1/13/03)

(''The Republican Party has long tried to have it both ways on Race: ardently courting minority votes while winking at party stalwarts who consistently fight policies to establish fairness and opportunity for minorities. [M]any [of Bush's nominees], including Texas Supreme Court Justice Priscilla Owen, lawyers Miguel Estrada and Jay S. Bybee . . . share a disdain for workers' rights, civil liberties guarantees and abortion rights. Their confirmations would be no less a disservice to the American people than that of Pickering. . . . '')

A Fair Hearing (St. Petersburg Times, 9/30/2002)

(''At the age of 41 [Estrada] has limited work experience and has not been a judge before, yet he is up for one of the most important seats on the federal bench. His views on appeal, certiorari and friend of the court recommendations would provide insight into the way he interprets the law and the rigor of his legal analysis.'')

Picking Judges; Democrats Must Brace to Resist Bush and GOP's Ideological Crusade, (Post-Standard Editorial (Syracuse, NY), 11/20/02)

(''. . . An upcoming test will focus on nominee Miguel Estrada, a bright, relatively young lawyer who worked on Bush's successful Supreme Court case in the 2000 election. He is rumored to be in line for the next vacancy on the U.S. Supreme Court. While Estrada has no record as a judge, he has a long resume as an ideologically drive, partisan conservative. . .'')

The Courts' Wrong Turn, (Daytona Beach News-Journal Editorial, Nov. 12, 2002)

(''The last thing Democrats should do is whimper off and let the slim majority have its way. Forty-seven senators out of 100 is a minority by definition only. It is in fact a solid block that Democrats can use—if they live up to their mandate as an opposition party—to slow down the rightward drift of the U.S. Supreme Court and the federal judiciary as a whole.'')

Here is a list of the 33 op-eds to date expressing concerns about Estrada's nomination for a lifetime appointment to the second highest court in the country:

Estrada Tactics Show Bush Arrogance, (Arizona Daily Star, 3/1/2003)

(''Nominees now come with an ideological stamp that preordains their votes on important social issues. Bush has brazenly crusaded to stack the federal bench with conservatives who will tilt the law rightward far into the future.'')

Don't Let Mum Be the Word for Estrada, By Tisha R. Tallman and Charles T. Lester Jr., (Atlanta Journal and Constitution, 3/6/2003)

(''It is also extremely hypocritical coming from Republican senators who blocked several Hispanic judicial nominees from even getting a hearing or a vote during the Clinton administration. Clinton nominee Richard Paez was forced to wait for four years; others, such as Enrique Moreno (Harvard Law School 1982) and Jorge Rangel (Harvard Law School 1973), never even had a committee hearing. Where was the outcry from Estrada's friends during that blockade against good Hispanic lawyers and judges? Under the Constitution, the Senate has a very important role in confirming a president's nominees for lifetime jobs as federal judges. It is an essential part of our constitutional system of checks and balances. When you have a White House that refuses to cooperate with senators of both parties and resists any efforts to reach agreement on a compromise plan for appointing more mainstream moderate judicial nominees, senators must take a stand.'')

Estrada Caught in 'Poisonous' War Based on Ideology, By Thomas E. Mann, (Roll Call, 3/5/2003)

(''The only way to break this cycle of escalation is for Bush to take pre-emptive action by submitting a more balanced ticket of judicial nominees and engaging in genuine negotiation and compromise with both parties in Congress. That seems most unlikely.'')

Are Estrada's Opponents Anti-Latino?, By Eduardo M. Penalver, (Chicago Tribune 3/4/2003)

'''Republican politicians have struggled to paint Estrada's opponents as anti-Latino. . . . [T]here is not the least bit of merit to the argument that to oppose Estrada's nomination is to oppose the interests of the Latino community.'')

Time for a Bigger Audience: Bench Nominees Who Tell the White House Their Views Should Tell the Senate, Too, By Alan B. Morrison, (Legal Times, 3/3/2003)

(''[N]ominees should be obliged to tell the Senate whatever they have already told the White House and Department of Justice during the vetting process. That's only fair. And it's also legal, as a very recent Supreme Court case indicates.'').

Justice Should Be Blind, Not A Mystery, By Nick Huggler, (The Daily Barameter, 3/2/03)

(''[T]he Democratic filibuster is not only justified, but crucial, to ensure that Miguel Estrada is the man he says he is and is not just a wild card shuffled into the deck. . . . It's all about trying to stack the federal judiciary with hard right-wingers and picking a Latino because Bush thought it would be more palatable to senators and groups concerned about who this guy might be and what he might do as a judge.'')

Estrada Tactics Show Bush Arrogance, By Marianne Means, (Arizona Daily Star, 3/1/03)

(''The court to which Estrada has been nominated is one of the most influential in the country and is seen as a stepping stone to the high court. There is no special case to be made for Estrada beyond the president's insistence that the Senate approved anybody he wants. Estrada is smart, but so are hundreds of other lawyers. He has never been a judge or a law professor. He refuses to express his views on important legal issues, hiding extremist opinions he was known to hold in prior legal posts. . . . If the Democrats don't hold firm on this, their political goose will be cooked if Bush gets to pick a Supreme Court justice.'')

Here's What Less Experience Gets You, By Michael J. Gerhardt, (The Washington Post, 3/2/03)

(''[N]o one is entitled to be a federal judge simply because he or she overcame adversity, attended a fine law school and collected some solid work experience. Senators have the legitimate authority to weigh the judgement of a nominee who, if confirmed, will for years be entrusted with the final word on many of the important regulatory and constitutional questions that routinely come before the Nation's second-most powerful court.'')

No Free Pass To The Bench, By O. Ricardo Pimentel, (Arizona Republic, 3/2/03)

(''For the Bush administration, this isn't about trying to get diversity on the court. That would be affirmative action, a points system, a racial preference and a big no-no, according to Bush. it's all about trying to stack the federal judiciary with hard right-wingers and picking a Latino because Bush thought it would be more palatable to senators and groups concerned about who this guy might be and what he might do as a judge.'')

Bush's Court Appointments: Key To Stealth Attack on Environment, (Daytona Beach News-Journal, 3/2/2003)

(''The nomination of Miguel Estrada to a lifetime seat on the U.S. Court of Appeals for the D.C. Circuit. . . . a stealth candidate who could roll back major environmental and public health safeguards. The difference party affiliation and ideology have made in D.C. Circuit decisions, coupled with the Bush administration's eagerness to unravel environmental protection, should worry anyone who cares about public health and the environment.'').

Circuit Breaker: If You're Worried About Conservative Control of the Federal Judiciary Keep Your Eyes on the District of Columbia, By Chris Mooney, (The American Prospect, 3/1/2003)

(''[G]iven the importance of the D.C. Circuit, those appointed to the court should, at the very least, receive more attention than judges named to other federal appellate courts.'')

A Defense of the Estrada Filibuster: A Judicial Nominee That the Senate Cannot Judge, By Kevan R. Johnson, (Findlaw.com, 2/27/2003)

(''In the face of this stonewalling, a filibuster is entirely appropriate. Indeed, it's fitting. Using a procedural tool against a nominee who thwarts minimal confirmation procedures, is only right. If Estrada wants the Democrats to stop talking, he should offer to start. As a nominee, that's what's required of him.'')

Informed Consent of Judgeships, By Jon S. Corzine, (The Star-ledger (Newark) 2/26/03)

(''This is about the White House asking the Senate to toss aside its constitutional duty to take the measure of a judicial nominee and make an informed decision about the knowledge and character of a person asked to sit on the nation's second-most important court.'')

Close Look at Estrada Reveals an Ideologue, By Teresa Leger de Fernandez, (Albuquerque Journal, 2/26/02)

(''[W]here Estrada's views are known, he has proven himself to be an idologue who has such strong personal views against recognizing fundamental constitutional and civil rights that he could not serve as a fair an impartial judge. . . . Defeating Estrada's nomination would not send a message to Hispanics that ''only a certain kind of Hispanic need apply.'' On the contrary, it would send the message that everyone in America is judged by the same standard. If you can not be fair and protect the basic constitutional rights of the common person, you do not deserve to sit in a judicial appointment.''

The Estrada Facade: Behind The Starched Nominee, By Philip Klint, (Tom Paine.com, 2/26/03)

(''[W]hen White House counsel Alberto Ganzales appears on Fox network and warns that the Democrats will lost the support of the Latino community because of their filibuster, he insults the hard-working Hispanic men and women who have seen first-hand the effects of President Bush's ''compassion conservatism,'' and who will likely see through the attractive packaging to the ugly politicking that loom behind Miguel Estrada's starched-shirt stroll down Nomination Street U.S.A.'')

Benching Congress: The Rising Power Of The Judiciary, By Chris Mooney, (Tom Paine.com, 2/25/03)

(''In the past decade we have witnessed an unprecedented push among conservative judges to invalidate acts of Congress on the basis of a radical reinterpretation of the constitutional relationship between the states and the federal government. . . . Why shouldn't Senators try to wrest some of that power back? They can start with Miguel Estrada.'')

Republicans' Phony Fight for Estrada, By Craig Hines, (Houston Chronicle, 2/25/03)

(''[T]he Democrats' opposition is not wholly about payback. It is about enough time to spotlight how Estrada fits into President Bush's manifest determination to remake the federal courts into flying squadrons of ideological buzz bombers ready to drop their payloads on the Constitution . . .''.'')

Estrada Would Destroy Hard-Fought Victories, By Dolores C. Herta, (The Oregonian, 2/24/03)

(''[J]udges 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 . . . Members of the Congressional Hispanic Caucus met with Miguel Estrada and came away convinced that he would harm our community as a federal judge.'')

Estrada Fight's True Victor? Democracy, By Jay Bookman, Deputy Editor, (Atlanta Journal-Constitution, 2/24/03)

(''What's going on in Washington is a wonderful thing, absolutely necessary and absolutely healthy. We are seeing the U.S. Constitution at work, producing a struggle between two branches of government—Congress and the president—that in the end should have a moderating influence on the third major branch.'')

The Democrats and Mr. Estrada, By Robert Ritter, (Washington Post, 2/23/03)

(''The Feb. 18 editorial ''Just Vote,'' which criticized Senate Democrats' tactics in trying to derail the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit, was misguided. It is impossible for a senator to properly give ''advice and consent'' without information pertinent to Mr. Estrada, which has not been provided by either the nominee or the White House. For this reason alone, the nomination should be defeated.'')

Stealth Attack On Environmental Court Decisions, By Doug Kendall & Phillip Clapp, (Bangor Daily News, 2/21/03)

(''The difference party affiliation and ideology have made in D.C. Circuit decisions, coupled with the Bush administration's eagerness to unravel environmental protection, should worry anyone who cares about public health and the environment.'')

They Started It, By E. J. Dionne Jr., (Washington Post, 2/21/03)

(''It's not good enough to say that the way out of this politicized process is for Democrats to ignore the past and cave in to the Republicans. To do that would be to reward a determined conservative effort to control the courts for a generation.'')

Symmetry in Judicial Nominations, By Al Hunt, (Wall Street Journal, 2/20/03)

(''[A]s former Clinton Solicitor General Walter Dellinger declares, 'Whatever factor a President may properly consider, senators, should also consider.' Since ideology clearly is the guiding force behind the slate of Bush circuit court nominees, it's perfectly appropriate for Senate Democrats to use the same standard.'')

How the Miguel Estrada Nomination Illustrates Our Out-of-Control Confirmation Process, And What We Can Do to Improve the System, By Edward Lazarus, (FindLaw.com, 2/20/03)

(''The President, as the first mover in the nomination and confirmation process, started the problem. He is therefore more culpable in creating the current stalemate, and accordingly should back down.'')

Judicial Extremism: a German Antidote, By Bruce Ackerman, (L.A. Times, 2/19/03)

(''[T]he Democrats should make it clear that they will filibuster any nominee to the U.S. Supreme Court of similar youth and inexperience to [to Estrada's]. They should insist on justices with the maturity and record of moderation needed to keep the court within the mainstream of American constitutional values.'')

Latino Would Set Back Latinos, (LatinoLA Forum, 2/11/2003)

(''Individuals appointed to the federal bench, a lifetime appointment, must meet basic requirements such as honesty, open-mindedness, integrity, character and temperament.... Estrada is an ideologue who hides his views and who is so lacking in experience, we have little choice but to oppose the nomination.'')

Estrada's Omertà, By Michael Kinsley, (Washington Post and Slate, 2/13–14/03)

(''Obviously, Estrada's real reason for evasiveness is the fear that if some senators knew what his views are, they would vote against him....[But] Hiding your views doesn't make them go away.'')

Stealth Attack On Environmental Court Decisions, By Doug Kendall & Phillip Clapp, (Providence Journal, 02/27/2003)

(''The difference party affiliation and ideology have made in D.C. Circuit decisions, coupled with the Bush administration's eagerness to unravel environmental protection, should worry anyone who cares about public health and the environment.'')

Dems Must Stop Judge Picks, By Judy Ettenhofer, (The Capital Times, 2/10/03)

(''[R]eproductive choice is by no means the only right at risk if all of Bush's right-wing judicial nominees are confirmed. At a time when the president seems intent on dismantling federal environmental laws, we need judges who will not bow to corporate polluters. At a time when the rights of immigrants are under attack...we need judges who will rule with fairness and justice as their standards, not conservative or religious ideology.'')

Blind About Justices, By Robert F. Jakubowicz, (The Berkshire Eagle Thursday, 2/6/2003)

(''[S]enators who do not try to find out the views of judicial nominees which will color their opinions as future judges are neither performing their constitutional duty nor serving the best interests of their constituents.'')

Latino Would Set Back Latinos, By Antonio Hernandez, (The Los Angeles Times, 2/5/03)

(''Individuals appointed to the federal bench, a lifetime appointment, must meet basic requirements such as honesty, open-mindedness, integrity, character and temperament....Estrada is an ideologue who hides his views and who is so lacking in experience, we have little choice but to oppose the nomination.'')

Justice Estrada—an Oxymoron?, By Matt Bivens, (The Nation, 2/4/03)

(''Estrada's unwillingness to come clean is indeed reason enough to reject him.'')

Torpedo Judicial Activist (Arizona Daily Star, 2/3/03)

(''[T]here is no way that Miguel Estrada, a Washington, D.C. lawyer, should win nomination to the U.S. Court of Appeals. Estrada, just one of the judge-activists that President George W. Bush plans to appoint to the federal bench.'')

Don't Let Miguel Estrada On The Bench, (The Hartford Courant, 9/27/2002)

(''President Bush's nomination of...Miguel Estrada...is not about diversifying the federal bench. It is about courting the Latino vote and moving a conservative agenda.'')

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The majority leader is recognized.

Mr. FRIST. Madam President, I wish to at this point to use my leader time.

Madam President, the debate on the Miguel Estrada nomination began February 5, just over a month ago. During that debate, lasting nearly 100 hours, I have sought unanimous consent on 17 separate occasions to bring the nomination to a vote. Regrettably, those requests for consent have been denied—again, on 17 separate occasions.

The Democrats have chosen to filibuster this outstanding nominee, who, as we all know, is a Hispanic immigrant who came to this country not speaking English but, through hard work, dedication, and the virtue of great capacity of study, achieved academic excellence. His peers, the American Bar Association, affirm his high qualifications.

We know a majority in this body will vote to confirm Miguel Estrada if given the opportunity to do what really is our only request, and that is to have an up-or-down vote on this nominee. Yet the minority, even after the extended time of well over a month and nearly 100 hours of factual discussion on the floor, and despite his obvious credentials, the respect he has among his peers, his academic qualifications, his arguments before the Supreme Court, has blocked this simple up-or-down vote on this confirmation.

My friends on the other side of the aisle—and we have heard it again and again—say we are really filibustering because we don't have enough information; we want more information. That is one of the reasons I have tried to be as patient, as reasonable as possible to give that time so that information could be exchanged before resorting to the vote we will undertake in a few minutes. They say they wanted more information, and that is fine. We want to have the appropriate information in order to make a decision in terms of an up-or-down vote. But, repeatedly, this nominee has said: I am available and I am ready, willing, and available to come by your office to discuss with you if there are further questions you might have.

I suggest my colleagues who really feel—putting politics aside—they don't have enough information, pick up the phone and call the nominee and have him come by your office and visit and ask those questions, and then give us an up-or-down vote.

We are about to vote on cloture. I hope it succeeds the first time. That is right. That is just. That is responsible. But if we need to, we will vote on cloture again and again.

Let me be clear. The majority will press for an up-or-down vote on this nominee until Miguel Estrada is confirmed. The fight for justice is just beginning.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

By unanimous consent the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM) is necessarily absent.

The PRESIDING OFFICER (Mr. BURNS). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 55, nays 44, as follows:

[Rollcall Vote No. 40 Ex.]

YEAS—55

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (FL)
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Breaux	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Lott	Thomas
Cornyn	Lugar	Voinovich
Craig	McCain	Warner
Crapo	McConnell	
DeWine	Miller	

NAYS—44

Akaka	Dorgan	Leahy
Baucus	Durbin	Levin
Bayh	Edwards	Lieberman
Biden	Feingold	Lincoln
Bingaman	Feinstein	Mikulski
Boxer	Harkin	Murray
Byrd	Hollings	Pryor
Cantwell	Inouye	Reed
Carper	Jeffords	Reid
Clinton	Johnson	Rockefeller
Conrad	Kennedy	Sarbanes
Corzine	Kerry	Schumer
Daschle	Kohl	Stabenow
Dayton	Landrieu	Wyden
Dodd	Lautenberg	

NOT VOTING—1

Graham (FL)

The PRESIDING OFFICER. On this question, the yeas are 55, the nays are 44. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected.

Mr. REID. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. 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. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. BINGAMAN. Mr. President, I would like to take a few moments to discuss the recent cloture vote in relation to the nomination of Miguel Estrada to the Court of Appeals for the DC Circuit.

The Constitution provides that the President shall nominate candidates for the Federal bench and the Senate shall give advice and consent regarding those candidates. We cannot yet proceed to a vote on this nominee because we take this constitutional obligation—not right, but obligation—seriously. An up-or-down vote on this nominee is premature, because we have yet to get disclosure of critical information regarding this nominee.

I believe that it is our obligation to ensure that—to the best of our knowledge—each judicial nominee is capable of setting aside extreme views that he or she may hold when interpreting the law and deciding cases. We must do our best to ensure that the person will be a fair and impartial judge.

Miguel Estrada may very well be able to do that. But before we can make that determination, we have a right to full disclosure of information that will assist us in ascertaining that this is the case. We have a right to expect the nomineee to be forthcoming in answering our questions, and we have a right to expect the administration to be cooperative in providing any information that is relevant to making our decision. The advice and consent process is not a rubber stamp but a meaningful process.

Mr. Estrada is not a sitting judge and has not published any legal articles. Written judicial decisions and published legal writings often provide us with the evidence that we need to determine whether a nominee will objectively enforce the laws and the Constitution. We have neither here to guide us.

Added to this, we have a situation where a person in the Solicitor General's Office who had direct supervisory authority over the nominee when he worked there, Mr. Paul Bender, has stated that he does not believe Mr. Estrada can be trusted to decide cases without being clouded by his extreme views. He said that Mr. Estrada was so ''ideologically driven that he couldn't be trusted to state the law in a fair, neutral way . . . Miguel is smart and charming, but he is a right-wing ideologue.''

Now this is just one man's opinion and certainly should not be dispositive, but it certainly gives us cause for concern and an even stronger desire to have access to all available information regarding Mr. Estrada's judgment and skills. We could judge for ourselves whether there is any basis for Mr. Bender's assessment of Mr. Estrada by reviewing the work that he did while working at the Solicitor General's Office. If we had the ability to do so, we could judge for ourselves whether the nominee objectively presented the facts and the law while working in that capacity, which would be a good indication of his ability to do so as a judge.

To this end, my colleagues on the Judiciary Committee sought access to the memoranda written by Mr. Estrada to his superiors at the Solicitor General's Office on questions such as whether the United States government should appeal an adverse ruling to the Supreme Court or whether it should file an amicus brief in a case that the Supreme Court has decided to hear. The administration has categorically refused to provide these documents, despite the fact that it is accepted practices to make these types of documents available to the Senate in the context of a nomination inquiry.

Initially, the administration refused to provide any of these work samples, incorrectly stating that it was the practice of the executive branch to do so. When my colleagues were able to point out that in every prior case where similar work samples were requested they were provided, the administration claimed that were not officially provided but ''leaked'' to Congress. When my colleagues were able to demonstrate that in every prior case where similar documents were requested, the Department of Justice officially released them to Congress after an exhaustive search, the administration claimed similar documents were released previously only in order to clear up an allegation of wrongdoing, but again my colleagues on the Judiciary Committee demonstrated that this simply was not true. Prior precedent clearly demonstrates a policy of cooperation with respect to previous requests.

The administration continues to refuse to provide any of the work products from the Solicitor General's Office despite the fact that there is no legal basis for their refusal and despite the fact that similar information was disclosed in every other instance that it was requested. We cannot help but be left with the feeling that there is something to hide in this case.

We also might be able to make a judgment regarding the nominees's ability to be a fair judge through questioning the nominee regarding his judicial philosophy and regarding his analysis of previously decided cases. These questions are commonly asked of judicial nominees in order to examine whether the nominee's views are outside the mainstream and whether he can set his or her personal views aside in analyzing cases. When my colleagues on the Judiciary Committee pursued this practice, Mr. Estrada refused to provide meaningful answers to their questions. I have carefully reviewed the transcript from that hearing and am quite frankly amazed at Mr.

Estrada's refusal to answer questions that many prior judicial nominees—both those nominated by Democratic and Republican Presidents—have answered as a matter of course.

As I have mentioned before, this refusal is particularly perplexing, given that this same individual admitted that he asked similar questions of candidates for a clerkship with Justice Kennedy in order to ''ascertain whether there are any strongly felt views that would keep that person from being a good law clerk to the Justice.'' This is exactly what my colleagues on the Judiciary Committee sought to do with respect to Mr. Estrada. If this type of information is relevant to the process of hiring a Supreme Court law clerk, isn't it infinitely more important to the process of appointing an appellate judge—someone who has a lifetime appointment to the bench?

It may be the case, that if this information were to be made available, I would support Mr. Estrada. I have voted in favor of 100 of the 103 nominees that President Bush has sent forward to the Senate since he took office. In many of these cases, I did not agree with the nominee's views on many issues. Nevertheless, I had enough information to determine that they were not out of the mainstream of American jurisprudence. I believe we have the right to have access to the information that we need to make that judgment on this nominee.

It is unfortunate that before I finish that I feel I must respond to the allegations of some that the debate surrounding this particular nominee relates to his ethnicity. This is a preposterous notion. It is a smoke and mirrors argument designed to cloud the legitimate debate about the nominee's qualifications for the bench.

To infer—or to outright state as has been the case—that my colleagues would be motivated by the fact that Mr. Estrada is Hispanic is outrageous. One need only look to recent history to see just how wrongheaded that notion is. During the last Democratic administration, over 30 Hispanics were nominated for judgeships. I supported all of them. Unfortunately, approximately one-third of them were not confirmed—and some didn't even get the courtesy of a hearing—due to opposition from some of my Republican colleagues. It was, in fact, during the last Democratic administration that the first Latina to serve at the district court level was confirmed. She continues to serve in my State.

By contrast, this administration has nominated a total of eight Hispanics. Six of them have already been confirmed and are now serving on the bench and the other nominee is expected to move ahead as soon as the necessary paperwork is in order. That leaves only Mr. Estrada, and I have stated the reasons I feel it is inappropriate to go forward with his nomination.

The debate in this case is about preserving the Senate's constitutional role in judicial nominations. It transcends this particular nomination because if we were to proceed to a vote after this nominee has refused to answer routine questions about his views and his judicial philosophy, and after the administration has refused to respond to a routine request for samples of this nominee's work product, we would essentially be conceding that the Senate's role in judicial nominations is that of providing a rubber stamp to the President's nominations. This is clearly not the role envisioned by the Framers of our Constitution.

MOSCOW TREATY

Mr. FRIST. Mr. President, I ask unanimous consent the Senate now resume consideration of the Moscow Treaty and that Senator FEINSTEIN be recognized in order to offer an amendment. I would simply add the chairman is tied up in a committee hearing, but I know he would want the Senator from California to go ahead.

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

The clerk will report.

The legislative clerk read as follows:

Resolution of Ratification to Accompany Treaty Document 107–8, Treaty Between the United States of America and the Russian Federation on Strategic Offensive Reductions.

The PRESIDING OFFICER. The Senator from California is recognized.

AMENDMENT NO. 251

(Purpose: To provide an additional declaration)

Mrs. FEINSTEIN. I send an amendment to the desk on behalf of Senators LEAHY, WYDEN, HARKIN, and myself.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. LEAHY, Mr. WYDEN, and Mr. HARKIN, proposes an amendment numbered 251.

Mrs. FEINSTEIN. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of section 3, add the following new declaration:

(7) STAND-DOWN FROM ALERT STATUS OF FORCES COVERED BY TREATY.—Noting that the Administration has stated that ''[t]he first planned step in reducing U.S. operationally deployed strategic nuclear warheads will be to retire 50 Peacekeeper ICBMs, remove four Trident Submarines from strategic service, and no longer maintain the ability to return the B-1 to nuclear service,'' the Senate—

(A) encourages the President, within 180 days after the exchange of instruments of ratification of the Treaty, to initiate in a safe and verifiable manner a bilateral stand-down from alert status of all United States and Russian Federation nuclear weapons systems that will no longer be operationally deployed under the Treaty, but which the United States and the Russian Federation may keep operationally deployed under the Treaty until December 31, 2012; and

(B) expects a representative of the executive branch of the Government to offer regular briefings to the Committee on Foreign Relations and the Committee on Armed Services of the Senate regarding—

(i) the alert status of the nuclear forces of the United States and the Russian Federation;

(ii) any determination of the President to order a stand-down of the alert status of United States nuclear forces; and

(iii) any progress in establishing cooperative measures with the Russian Federation to effect a stand-down of the alert status of Russian Federation nuclear forces.

Mrs. FEINSTEIN. Mr. President, I rise today to offer this amendment. I recognize that the leadership is not accepting amendments. I accept that. I am a supporter of the treaty, and I am happy to cast my vote for it.

But there is one significant omission from this treaty, and I want to point out that omission. That omission is that we have literally thousands of nuclear missiles on hair trigger alert. The Russian Federation has thousands of nuclear missiles on hair trigger alert. This treaty does not take that into consideration and does not urge or does not certify a reduction of the alert status of these missiles. I believe if we fail to address this issue, we risk the lives of millions of people over what may turn out to be a simple miscalculation.

People hearing me might say, how can that possibly happen? I would like to explain how it can happen.

On the morning of January 25, 1995, the Russian military initially interpreted the launch of a U.S. weather rocket from Norway as a possible nuclear attack on the Russian Federation. That is just 8 years ago. Thankfully, the true nature of the launch became known and a catastrophic mistake was averted. Nevertheless, then-President Yeltsin and his advisers had only minutes to decide whether the launch of a weather rocket was a surprise attack because Russia, like the United States, maintained and continues to maintain thousands of nuclear weapons on high alert status, ready to be launched at a moment's notice.

This was not the only instance in which both countries have come close to the unthinkable. On at least two occasions in the United States and at least one occasion in Russia, false alarms could have led to the accidental launch of nuclear weapons.

Today, Russia and the United States are entering into a new era of relations. We do so with the advent of this treaty. A deliberate nuclear strike by either side is unthinkable. In fact, the administration states the brevity of the Moscow Treaty and the lack of verification, timetables, and a list of specific weapons to be destroyed, is due to the fact that Russia and the United States are no longer strategic competitors but today we are strategic allies. So fear and suspicion have been replaced by trust, cooperation, and friendship.

It is surprising, then, that the United States and Russia continue to maintain their nuclear arsenals on this high