

Testimony of

The Honorable Herb Kohl

January 30, 2003

Statement of Senator Herb Kohl

Senate Judiciary Committee

The Nomination of Miguel Estrada

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Mr. Chairman, it has been said many times that the Senate's constitutional responsibility to advise and consent on judicial nominations is more than a rubber stamp. We are obliged to carefully examine the record and the beliefs of the nominee in question.

When considering Miguel Estrada's nomination, we note that his personal story is an impressive one. He is to be commended for all that he has already accomplished in his life including the time he spent in public service at the Department of Justice.

Unfortunately, his personal story is almost all that we know about Mr. Estrada. Without more, we cannot successfully evaluate his nomination or his fitness for the District of Columbia Circuit, the second highest court in the land. Regrettably, I am forced to vote no.

For most judicial candidates, their record and beliefs become apparent through the nomination process. For sitting judges, we have an opportunity to read their opinions and ask questions about why they decided certain cases in a particular way. Many of the nominees are impressive scholars who have published law review notes or other legal articles that help us determine their qualifications for the bench. Others are experienced lawyers who have argued important cases that are near to their heart for one reason or another and are willing to expound on them before the Committee.

For all of the nominees, we can learn through the give and take of a hearing how they think and approach problems. Most importantly, through this process we can learn whether the nominee will make a good judge.

None of these avenues proved fruitful in our attempt to learn who Miguel Estrada is and what kind of judge he might make. He is not a sitting judge nor has he published any writings for us to consider. Although he has argued many cases, even some before the Supreme Court, he rebutted any attempt we made to attach his personal views to the positions he advocated in those cases. When asked even generally about notable cases or legal issues, he repeatedly chose to side step the questions. When warned that his failure to answer questions would imperil his nomination, he decided nonetheless, to continue to be evasive.

We cannot make an informed decision to support a nominee when there is virtually no information on which to judge him and when he chooses not to answer our questions. There exist numerous examples of Mr. Estrada's unresponsiveness to the questions asked by my colleagues and me. In response to my questions, he refused to provide responsive information to questions ranging from his views on two recent federal court opinions striking down the federal death penalty, to the government's role in balancing protection of the environment against protecting private property, to the advisability of the use of "protective orders" mandating court secrecy in products liability cases. Senator Feinstein asked him to state whether he believed *Roe v. Wade* was correctly decided, and Mr. Estrada refused. In response to inquiries from Senator Schumer, he was unwilling to release the memoranda he wrote while serving in the Solicitor General's Office, and was unable to name even one Supreme Court decision of which he was critical in the last 40 years. He never responded squarely to Senator Edwards's question as to whether he was a "strict constructionist." These are just a few examples of Mr. Estrada's refusal to provide us with the very information we need to evaluate his fitness to service on the crucial D.C. Circuit Court of Appeals.

He has opinions, we can be sure, on any number of issues - opinions that go beyond simple recitation of Supreme Court precedent or pledges to follow the law - but we do not know what

any of them are. The judges who we confirm will be on the bench for life, so it is essential that we know at least the minimum about how they think and approach cases.

In the case of Miguel Estrada, the Senate would simply be voting on the blank slate we have been presented and asked to trust that Mr. Estrada will make a fine judge. Trust is not enough.

Thank you, Mr. Chairman.