

Testimony of
The Honorable Orrin Hatch

September 26, 2002

Statement of Senator Orrin G. Hatch
Ranking Republican Member
Before the United States Senate Committee on the Judiciary
Hearing on the Nominations of:

Miguel Estrada, to be United States Court of Appeals Judge for the D.C. Circuit
Stanley Chesler, to be United States District Court Judge for the District of New Jersey
Daniel Hovland, to be United States District Court Judge for the District of North Dakota
James Kinkeade, to be United States District Court Judge for the Northern District of Texas
Linda Reade, to be United States District Court Judge for the Northern District of Iowa
Freda Wolfson, to be United States District Court Judge for the District of New Jersey

"I have a separate statement concerning Miguel Estrada's nomination to the D.C. Circuit, so I would now like to welcome our District Court nominees here today and say a few words about them. We have a very impressive line-up here today.

"Magistrate Judge Stanley Chesler, our nominee to the U.S. District Court of New Jersey, worked his way through St. Johns Law School as a teacher. He graduated magna cum laude and first in his class. His commitment to legal public service dates back to 1974, when he was an Assistant District Attorney in Bronx, New York. He then became a Special Attorney and later a Assistant United States Attorney in New Jersey, working for the Newark Organized Crime Strike Force. In these positions, he was awarded both the Special Commendation and Special Achievement Awards by the U.S. Department of Justice. In 1987, he was selected to become U.S. Magistrate Judge, for the District to which he has now been nominated. His hard work and well thought-out legal recommendations were recognized by his reappointment to this position.

"Daniel Hovland, our nominee to the U.S. District Court for the District of North Dakota, is an accomplished trial attorney, having handled a wide variety of civil matters during the last two decades. His government experience has included excellent service as an assistant Attorney General in the North Dakota Office of the Attorney General, administrative law judge for North Dakota's Office of Administrative Hearings, and member of the North Dakota Parole Board. With a reputation for being one of North Dakota's finest and most thoughtful attorneys, Mr. Hovland promises to render excellent service on the federal bench.

"Judge James Kinkeade is a distinguished Justice for the Texas 5th District Court of Appeals. Upon graduation from Baylor University School of Law, Judge Kinkeade began work in private practice, representing a large number of closely held businesses and acting as local counsel for several national corporations. In addition, he had an active domestic relations and criminal

practice. Judge Kinkeade also served as an Associate Municipal Judge for the City of Irving for four years. In 1981, Judge Kinkeade left private practice and became a judge for the County Criminal Court in Dallas, Texas. Later that same year, he became a judge for the 194th District Court of Texas. Since 1988, Judge Kinkeade has served on the State of Texas, 5th District Court of Appeals. In addition, he has served as an adjunct professor for over ten years at the Texas Wesleyan School of Law. He received the Outstanding Adjunct Professor award four times while teaching Professional Responsibility. He will undoubtedly add a great deal to his new bench.

"Judge Reade has been an important contributing member of the Iowa legal community since she graduated with Honors and Order of the Coif from Drake University Law School in 1980. During her legal career, Judge Reade has amassed a full range of legal experience. She has worked in both the public and private sectors, in both federal and state courts, and on both civil and criminal matters. Judge Reade spent the first six years of her legal career in private practice at Des Moines area law firms. In 1986, she moved to the U.S. Attorney's Office in the Southern District of Iowa, where she began as an Assistant U.S. Attorney and was later promoted to Chief of the Criminal Division. In 1993, she became an Iowa State District Court Judge in Des Moines and has presided over a full range of civil and criminal matters. While her professional experience is impressive enough on its own, Judge Reade's leadership abilities and commitment to serving the local legal community truly make her an exceptional choice for the position. She is a member of numerous bar associations - local, state, and national - on many of which she has assumed board and other leadership positions. She has also served on the Board of Directors of the League of Women voters, is a member of both the Trial Lawyers of America and the Trial Lawyers of Iowa and is a frequent lecturer to practitioner groups and students on various areas of the law.

"Last but certainly not least, Judge Wolfson is a distinguished United States Magistrate Judge in New Jersey. After graduating from Rutgers University School of Law, Judge Wolfson entered private practice, where she remained for six and one-half years focused on commercial litigation, environmental litigation, and defense of ski areas. She also frequently appeared before the New Jersey Casino Control Commission in connection with casino licensing hearings. Judge Wolfson left private practice in 1986 when she was appointed as a United States Magistrate Judge in New Jersey. Since 1990, Judge Wolfson has earned a reputation for hard work and legal excellence while presiding over her busy docket and additionally handling 32 civil trials, 18 jury trials, 14 bench trials, and conducting 4 criminal trials.

"I am confident that all five of these fine nominees have the skills, aptitude, experience, and temperament for service on the federal courts to which they have been nominated. I look forward to hearing from them today and to working with my colleagues to bring their nominations to timely votes for confirmation."

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Statement of Senator Orrin G. Hatch
Ranking Republican Member
Before the United States Senate Committee on the Judiciary
Hearing on

Miguel Angel Estrada for the U.S. Court of Appeals for the District of Columbia Circuit

Mr. Chairman, let me first of all thank you for chairing this hearing for Miguel Angel Estrada who is nominated for the D.C. Circuit Court of Appeals.

There are many people who have been waiting for this event and many more people who are watching today for the first time as we display our American institutions and the value we give to the independence of our judiciary. The fact that this hearing comes near the beginning of Hispanic Heritage Month is surely not lost on all my colleagues on this Committee. I am hopeful that this Committee will join me in seeking that the confirmation of the highly qualified lawyer before us today will occur before Hispanic Heritage Month is over.

As a very special matter, I would like to welcome to this hearing The Honorable Mario Conahuati, the Ambassador of Honduras to the United States, who is with us today. Thank you very much for coming Mr. Ambassador. We are honored to have you with us.

I would also like to welcome the leaders of the many Hispanic communities and organizations in the United States who are here to express support for this nomination as well the Senators from Virginia, the members of the Republican Senate leadership and my good friend Senator Domenici of New Mexico who has worked tirelessly for Hispanics in this country.

Mr. Chairman, I would like to make a general comment on the context of judicial confirmations in which this hearing is being held. For over a year, we have had a very troubling debate over issues that we thought our founding fathers had settled long ago with our Constitution. I am heartened to read the scores of editorials all across this country that have addressed the notion of injecting ideology into the judicial confirmation process, because this notion has been near-universally rejected -- except, of course, for a handful of law professors, the well-paid lobbyists in the back of this room, and a few diehards.

It seems to me that the only way to make sense of the advice and consent role that our Constitution's framers envisioned for the Senate is to begin with the assumption that the President's constitutional power to nominate should be given a fair amount of deference, and that we should defeat nominees only where problems of character or inability to follow the law are evident.

In other words, the question of ideology in judicial confirmations is answered by the American people and the Constitution when the President is constitutionally elected. As Alexander Hamilton recorded for us, the Senate's task of advice and consent is to advise and to query on the judiciousness and character of nominees, not to challenge, by our naked power, the people's will in electing who shall nominate.

To do otherwise, it seems to me, is to risk making the federal courts an extension of this political body. This would threaten one of the cornerstones of this country's unique success - an independent judiciary.

We must accept that the balance in the judiciary will change over time as Presidents change, but much more slowly. For the Senate, to do otherwise is to ignore the Constitution's electoral

process and to usurp the will of the American people. To attempt to bring balance to courts in any other way is to circumvent the Constitution yet again, without a single vote of support being cast by the American people.

These are not just my views. This is our Anglo-American judicial tradition. It is reflected in everything that marks a good judge, not least of which is Canon 5 of the Code of Judicial Conduct of the American Bar Association that expressly forbids nominees to judicial duty from making "pledges or promises of conduct in office [or] statements that commit or appear to commit the nominee with respect to cases, controversies, or issues that are likely to come before the courts." I should expect that no Senator on this Committee would invite a nominee to breach this code of ethics, and it worries me that we are come close.

Now I am glad to welcome today Miguel Estrada. I would like to speak a little on why Miguel Estrada is here before us today, beyond the obvious fact that the President nominated him. Miguel Estrada is here today because he deserves to be here under any standard that any disinterested person could devise.

Mr. Estrada graduated from Columbia University magna cum laude and as a Phi Beta Kappa. He went on to Harvard Law School where he graduated again magna cum laude and after serving as Editor of the Harvard Law Review. He went on to clerk for the Second Circuit Court of Appeals in New York, and then he was chosen to clerk for Associate Justice Anthony Kennedy at the United States Supreme Court.

Mr. Estrada later served as Assistant U.S. Attorney and Deputy Chief of the Appellate Section in the U.S. Attorney's office for the Southern District of New York. Then between 1992 until 1997, Mr. Estrada returned to Washington to work for the Clinton administration as Assistant to the Solicitor General in the Department of Justice. He has argued 15 cases before the Supreme Court and is today one of America's leading appellate advocates.

It is evident that Miguel Estrada is here today for no other reason than this -- he is qualified for the position for which President Bush has nominated him. I know it, and after today's hearing, so will the American people.

But notwithstanding all of Mr. Estrada's hard work and unanimous rating of highly qualified by the American Bar Association, he has been subjected -- so far -- to the piñata confirmation process with which we have all become familiar this year. The extreme left-wing Washington groups go after judicial nominees like kids after a piñata. They beat it and beat it until they hope something comes out that they can then chew and distort.

In the case of Mr. Estrada, the ritual has been slightly different. They have been unable to find anything they can chew on and spit out at us, so they now say that we simply do not know enough about Mr. Estrada to confirm him. Well, it's not that we do not know enough. We know as much about him as we have known about any nominee. Their complaint is that we know all there is and the usual character destroyers haven't found anything to distort.

But surely, we should not expect to hear it suggested today that Mr. Estrada does not have enough judicial experience. Only 3 of the 18 Democrat appointed judges on the D.C Circuit

Court had any prior judicial experience before their nominations. These include Ruth Bader Ginsburg and Abner Mikva. Likewise, judicial luminaries such as Louis Brandeis and Byron White had no judicial experience before being nominated to the Supreme Court. And Thurgood Marshall, the first African American on the Supreme Court, had no judicial experience before he was nominated to the Second Circuit. I could go on and on.

I would like to address another aspect of Mr. Estrada's background. I know Miguel Estrada and I know how proud he is, in ways that he is unable to express, about being the first Hispanic nominated to the D.C. Circuit Court of Appeals. So I will express it. This is a matter of pride for him for the same reason that it is for any of us, not just because Mr. Estrada is a symbol for Hispanics in America, but because Miguel Estrada's story is the best example of the American dream of all immigrants. He and I are proud because we love this great country and the future it continues to promise to young immigrants.

In fact, I have never seen any Hispanic nominee whose nomination has so resonated with the Latino community. Here you are on the cover of Washington Hispanic, right above Kathleen Kennedy and next to Colin Powell, I might add.

Miguel Estrada was born in Tegucigalpa, Honduras. He was so bright at an early age that he was enrolled at a Jesuit school at the age of 5. He was raised in a middle class family. At age 17, he came to live with his mother who had immigrated to New York knowing very little English. Today he sits before the Senate of the United States waiting to be confirmed to one of the greatest courts in the land.

I am embarrassed, therefore, by the new lows that some have gone to attack Mr. Estrada. Detractors have suggested that because he has been successful and has had the privilege of a fine education, he is somehow less than a full-blooded Hispanic.

Even more offensive, it seems to me, are the code words that some of his detractors use about him,-- code words which perpetuate terrible stereotypes about Latinos, --- used in effect to diminish Miguel Estrada's great accomplishment and the respect he has from colleagues of all political persuasions.

As Chairman and founder 13 years ago of the nonpartisan Republican Hispanic Task Force - which, despite the name, is made up of both Republican and Democratic members -- I have tried to achieve greater inclusion of Hispanics in the federal government.

And I am concerned by the obstacles they face. One new obstacle Hispanics face today is the fear that many liberals in this town have that there could be role models for Hispanics that might be conservative - despite the fact that polls show that the great majority of Hispanics are conservative. But surely, the advancement of an entire people cannot be dependent on one party being in power.

This past week I met with a number of leaders of Hispanic organizations from all across the country. I asked them what they think about the subtle prejudices that Mr. Estrada is facing and they agree. Perhaps, they are more offended than I could ever be.

The Hispanic experience, in fact, sheds new light on the debate we have been having about ideology in judicial confirmations. Many new Hispanic-Americans have left countries without independent judiciaries. And they are all too familiar with countries with political parties that claim cradle-to-grave rights over their allegiances and futures.

I have a special affinity for Hispanics and for the potential of the Latin culture in influencing the future of this country. Polls show that Latinos are among the hardest working Americans. That is because like many immigrant cultures in this country, Hispanics often have two and even three jobs. Surveys show they have strong family values and a real attachment to their faith traditions and they value education as the vehicle to success for their children.

In short, they have reinvigorated the American dream, and I expect that they will bring new understandings of our nationhood, that some of us might not fully see with tired eyes.

Without trumpeting the over-used word "diversity," I have made it my business to support the nominations of talented Hispanics for my entire career in the Senate. I hope that the desire for diversity that many of my Democrat colleagues say they share with me will trump the reckless and destructive pursuit of injecting ideology into the judicial confirmations process as we move forward on this particular nomination.

In Spanish speaking churches all over this country and in every denomination, Hispanics sing a song called DE COLORES. This means OF MANY COLORS. It celebrates the many colors in which we all are created.

Hispanics come in many colors, with all kinds of backgrounds. They enjoy among themselves a wide diversity already. And they left behind countries filled with ideologues that would chain them to single political parties. Latinos share a common sense appreciation of each other's achievements in this country without any regard whatsoever to ideology, over which some Americans have the luxury of obsessing.

Any political party's attempt to control a group and to bar independent thought and belief, in effect to disallow diversity of thought within the Hispanic community, is simply wrong and no people should stand for that.

For months I have been sounding the alarm of the influence of the special interest groups in the nominations process. While the game plan is unvaried, the quarterbacks change, and now it is the two or three liberal Hispanic groups on the field. They too demand that Hispanics think and live a certain way.

Well, I have news for them, Hispanic-American -- like all Americans, have liberals and conservatives. No one should be so arrogant as to demand that a whole community should think as they do. They ought to be ashamed of themselves. They have sold out the aspirations of their people just to sit around schmoozing with the arrogant power elite in Washington.

But let's be clear, these liberal groups are only two or three in number, and they are basically surrogates for the Democrat Party - some would say henchmen. They are marginalized given the large number of Hispanic organizations that have come out in support of Mr. Estrada. I should

note that Mr. Estrada's supporters include LULAC, the League of United Latin American Citizens, -- the largest and oldest Latino organization in this country.

Mr. Chairman., like President Bush, I think it is high time that a talented lawyer of Hispanic descent sits on the second most prestigious court in the land. Miguel Estrada is that man. I thank you again and ask to put letters of support for Mr. Estrada into the record.

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September 26, 2002 Contact: Margarita Tapia, 202/224-5225

Hatch Remarks on Paul Bender
Responds to Bender's Allegations Regarding Miguel Estrada

Washington - Sen. Orrin G. Hatch (R-Utah), ranking Republican member of the Senate Committee on the Judiciary, issued the following remarks at the nomination hearing for Miguel Estrada, President George W. Bush's nominee for the U.S. Court of Appeals for the District of Columbia Circuit.

"As far as I can tell, Mr. Estrada's primary critic is Paul Bender, who supervised Mr. Estrada at the Clinton Solicitor General's Office. I want to caution my Democratic colleagues that, before they rely too heavily on Mr. Bender to make their case against Mr. Estrada, there are many reasons why Mr. Bender's allegations lack credibility.

"First of all, Mr. Bender is an extremist by even the most liberal standards, as his thirty-year history of hostility to federal efforts to regulate pornography illustrates.

"From 1968 to 1970, Mr. Bender served as the Chief Counsel to the President's Commission on Obscenity and Pornography.

"As such, Mr. Bender was the architect of the Commission's report, which recommended the abolishment of all federal, state, and local laws interfering with the rights of adults to obtain and view any type of pornography, including hard-core pornography.

"The report was so controversial that in 1970, the Senate voted 60-5 for a resolution rejecting it, with nine additional Senators announcing that if they had been present they would have supported the resolution. No current Member of the Senate supported Mr. Bender's views.

"One Democratic Senator noted during the debate on the resolution that "the Congress might just as well have asked the pornographers to write the report, although I doubt that even they would

have had the temerity and effrontery to make the ludicrous recommendations that were made by the Commission."

"Then, in 1977, Mr. Bender testified before this Committee against tough anti-child pornography laws in hearing entitled "Protection of Children Against Sexual Exploitation."

"In his testimony, he rejected the notion that Congress could prohibit child pornography in order to protect children from harm because "the conclusion that child pornography causes child abuse involves too much speculation in view of the social situation as we know it, and the fact that it seems that most kids who act in these films probably are doing these acts aside from the films anyway"

"Then again, in 1993, Mr. Bender advanced his agenda on pornography while serving as Principal Deputy Solicitor General, forcing President Clinton and the United States Congress - including nine of my ten Democratic colleagues on this Committee - to publicly reject his views.

"Mr. Bender's opportunity came in the form of the case of United States v. Knox.

"Mr. Bender approved a brief in that case that sought to overturn the conviction of a repeat child pornographer and known pedophile.

"His brief represented a reversal of the first Bush Administration's policy of liberally interpreting the Child Protection Act to define as child pornography any materials which showed clothed but suggestively posed young children.

"In response, on November 3, 1993, the United States Senate voted 100-0 for a resolution condemning Mr. Bender's position in the case. The House passed a similar resolution by a vote of 425-3.

"Mr. Bender's brief prompted President Clinton to write Attorney General Reno that the Department's new interpretation of the Child Protection Act left the child pornography law too narrow and emphasized that he wanted "the broadest possible protections against child pornography and exploitation."

"Each of my Democratic colleagues on this Committee who were Members of Congress at the time voted for either the Senate or House resolutions rejecting Mr. Bender's views. Yet, they inexplicably put full faith - lock, stock, and barrel - in his opinion of Mr. Estrada.

"In addition to Mr. Bender's extreme views, his public statements criticizing Mr. Estrada lack credibility when they are compared to his contemporaneous statements praising Mr. Estrada's work as an Assistant Solicitor General.

"At the request of the Committee, Mr. Estrada provided copies of his annual performance evaluations during this tenure at the Solicitor General's office.

"The evaluations show that during each year that Mr. Estrada worked at the SG's Office, he received the highest possible rating of "outstanding" in every job performance category.

"The rating official who prepared and signed the performance reviews for 1994 to 1996 was Mr. Bender.

"Let me read a few excerpts from the evaluations that Mr. Bender signed. They say that Mr. Estrada:

- "states the operative facts and applicable law completely and persuasively, with record citations, and in conformance with court and office rules, and with concern for fairness, clarity, simplicity, and conciseness."
- "is extremely knowledgeable of resource materials and uses them expertly; acting independently, goes directly to point of the matter and gives reliable, accurate, responsive information in communicating position to others."
- "all dealings, oral, and written, with the courts, clients, and others are conducted in a diplomatic, cooperative, and candid manner."
- "all briefs, motions or memoranda reviewed consistently reflect no policies at variance with Departmental or Governmental policies, or fails to discuss and analyze relevant authorities."
- "is constantly sought for advice and counsel. Inspires co-workers by example."

"These comments unmask Mr. Bender's more recent statements, made after Mr. Estrada's nomination, for what they are: A politically motivated effort to smear Mr. Estrada and hurt his chances for confirmation.

"The performance evaluations also confirm what other Clinton Administration lawyers, and virtually every other lawyer who knows Mr. Estrada, have said about him: That he is a brilliant attorney who will make a fine federal judge.

"Ron Klain, former chief of staff to Vice President Gore, praised Mr. Estrada, saying that he would be able to "faithfully follow the law."

"Former Solicitor General Drew Days opined of Mr. Estrada, "I think he's a superb lawyer."

"Another Clinton era Solicitor General, Seth Waxman, called Mr. Estrada an "exceptionally well-qualified appellate advocate."

"Randolph Moss, former Chief of the Justice Department's Office of Legal Counsel, wrote the Committee "to express my strong support for the nomination of Miguel Estrada Although I am Democrat and Miguel and I do not see eye-to-eye on every issue, I hold Miguel in the highest regard, and I urge the Committee to give favorable consideration to his nomination."

"And Robert Litt, Deputy Assistant Attorney General in the Clinton Justice Department, said, "Miguel has an absolutely brilliant mind. He is a superb analytical lawyer and he's an outstanding oral advocate."

"With all of this glowing support from former high-ranking, well respected Clinton Administration lawyers, you have to wonder why my Democratic colleagues choose to listen instead to the incredible criticisms of Mr. Bender, a liberal extremist whose out-of-the-mainstream views have been twice condemned by the U.S. Senate.

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Hatch Remarks on the Contra Estrada Hearing

Washington - Sen. Orrin G. Hatch (R-Utah), ranking Republican member of the United States Senate Committee on the Judiciary, issued the following statement before the Subcommittee on the Courts hearing on "The D.C. Circuit: The Importance of Balance on the Nation's Second Highest Court" on September 24, 2002.

Statement of Senator Orrin G. Hatch
Ranking Republican Member
Before the United States Senate Committee on the Judiciary
Subcommittee on the Courts
Hearing on
"The D.C. Circuit: The Importance of Balance on the
Nation's Second Highest Court"
September 24, 2002

Thank you, Chairman Schumer. I appreciate the opportunity to say a few words at this subcommittee hearing.

Since the Democrats took over the Senate and the Judiciary Committee last June, my colleague and good friend from New York has been arguing that we on the Committee should be upfront about our role in the advice and consent process - that we should not engage in the slight-of-hand of talking about one issue while voting on another. I agree with him to the extent that we should speak and act forthrightly, and we should not stoop down to the politics of personal destruction in order to justify a vote that is based on something else.

Unfortunately, I think that is where our agreement ends. Several weeks ago on the floor, I had my friend as a captive audience because he was serving as the Presiding Officer, and I explained my view that being honest and open neither requires, nor excuses, the overt injection of raw politics into the advice and consent process. I explained then my opinion, based on 26 years of experience, that the only way to make sense of this process is to begin with the assumption that the President's constitutional power to nominate should be given a fair amount of deference, and that we should defeat nominees only where problems are truly significant.

I believe that to the extent ideology is a question in judicial confirmations, it is a question answered by the American people and the Constitution when the President is constitutionally

elected. The Senate's task of advice and consent is to advise and to query on the judicious character of nominees, not to challenge by our naked power the people's will in electing who shall nominate.

The premise of this hearing reminds me of a nickname that some clever college freshman gave to one of his required first-year courses: Introduction to the Obvious. If the point of this hearing is to show that the D.C. Circuit currently includes four judges appointed by Democrats and four appointed by Republicans, then we hardly need to convene a Senate Subcommittee to figure that out. And, if the further point is made that adding one Republican appointee will result in five Republican appointees and four Democrat appointees, then I still can't imagine the hearing being disrupted by reporters running from the room yelling STOP THE PRESSES.

But I know that we are not here to explore the obvious with a sense of discovery. So I suppose the real question is: What should we do about this? How should the Senate act when faced with courts that have either a balance or an imbalance between the number of Republican and Democrat appointees? Should we refuse to confirm any new judges to those courts unless they belong to the right political party? Should we wait until one of the judges steps down, and then wait even longer for there to be a President who happens to belong to the same political party as the President who appointed that judge? Well, these options seem to be perfectly ludicrous to me.

The only possible answer is to accept the reality that Presidents have the power to appoint judges, and that the balance in the judiciary will change over time as Presidents change, but much more slowly. The variables of Presidential elections, judicial retirements, circuit size, and many other factors will mean that perfect balance will be achieved rarely if ever. That is simply how the system works - and has worked, since the Judiciary Act of 1789. Our role of advice and consent is meaningful, and we must take it very seriously, but it was never intended as the power to second-guess the President or simply to substitute our judgment for his, and in doing so usurping the will of the American people.

Mr. Chairman, you know better than anyone that I am sincere about this, and that my track record proves it. Your report issued last Friday to the press shows that I voted against only one nominee in the last ten years. As a matter of fact, you could go back a lot further than that, because that's the only one for at least the last 22 years. And to clarify, I did so not on the basis of politics or ideology, but rather out of respect for the traditional role of home-state Senators in the selection of District Court nominees. When both home-state Senators of that nominee informed me that they were voting no, I felt I had no choice but to respect their judgment. For what it's worth, I think that vote was quite an unfortunate episode, but I nevertheless feel that I acted in accordance with Senate practice.

In keeping with the spirit of openness and honesty, I must say this: although I know how this hearing is being billed, I am left to wonder why we are not having a hearing about the scandalous 9th Circuit, or about the procedural scandals that are plaguing the 6th Circuit. Why, I ask myself, are we having a hearing about the DC Circuit just two days before the nomination of Miguel Estrada. Coincidence? Surely not.

When I was Chairman I ended the practice of having witnesses lined up to eviscerate good nominees. It was clear that the times had changed and that the base art native to the Potomac of

destroying reputations had been too well perfected. I am glad that Chairman Leahy has concurred in this practice. I am disappointed that we are having this hearing because, to be frank, it strikes me that we are regressing, that this subcommittee is a just thinly veiled attempt to lay the foundation to oppose one of the most intelligent, accomplished and respected lawyers ever named to the D.C. Circuit Court. It seems to me that it would have been more forthright to name this hearing what it is: the *Contra Estrada* Hearing.

Now let me express my very real concern for the build up that I see happening to attempt to harm the nomination of a brilliant young man who came to this country at age 17 from another country knowing very little English and who has made his parents proud.

In one sense, I agree that there should be concern for balance on the D.C. Circuit. As Chairman and founder 12 years ago of the nonpartisan Republican Hispanic Task Force - which, despite the name, is made up of both Republican and Democratic Members -- I have long been concerned for the inclusion of Hispanics in the federal government. Without trumpeting the over-used word "diversity," I have made it my business to support the nominations of talented Hispanics for my entire career in the Senate. I am sorry that not even the desire for diversity will trump the reckless pursuit of ideology in judicial confirmations.

I have a special affinity for Hispanics and for the potential of the Latin culture in influencing the future of this country. Polls show that Latinos are the hardest working Americans, that they have strong family values and a real attachment to their faith traditions. In short, they have reinvigorated the American dream and I expect that they will bring new understandings of our nationhood that some of us might not see with tired eyes.

I also know that Hispanics come in many colors and that they have left behind countries filled with ideologues that would chain them to particular political parties. I know that they share a common sense appreciation of each other's achievements in this country without any regard whatsoever to ideology, over which some Americans have the luxury of obsessing.

I am concerned with balance on the D.C. Circuit, but of a real sort, not the kind to be discussed here today. Like President Bush, I think it is high time that a talented lawyer of Hispanic descent is represented on the second most prestigious court in the land. The D.C. Circuit hears federal cases no other court hears, and has a special role in the enforcement of the Voting Rights Act of 1965. Yes, I think that it's time that a Hispanic sat on that court.

I also think it is time that we unmask the way that Miguel Estrada's nomination is being treated, and the lengths that his detractors are going to place hurdles in its path. For months I have been sounding the alarm of the influence of the special interest groups on this Committee. I have been increasingly ashamed of the axis of profits that demands that judicial nominees be voted down for a palimpsest of reasons. While the game plan is unvaried, the quarterbacks change, and now it is the liberal Hispanic groups that are on the field. They ought to be ashamed of themselves. They have sold out the aspirations of their people just to sit around schmoozing with the power elite.

I have repeatedly warned against what is going on behind the scenes. But I have done it so often that perhaps it is time to try it with new words. Well here is a Spanish word:

The word is confabular. It means: when one or more persons come together secretly to invent falsehoods about another. I am afraid that is what we will see this week against Miguel Estrada, and I am sorry, Mr. Chairman, that this hearing is part of the effort.

Thank you, Mr. Chairman.

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