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Senate

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

PRAYER

The guest Chaplain offered the following prayer:

Creator God, Source of all that is, that has been, and that is yet to be.

We begin this new day with gratitude and thanksgiving for in You we live and move and have our being. Thus acknowledging our dependence on You, we can do no other than to thank You for our very lives and for the multiple blessings that come to us both as a nation and as individuals.

Knowing that You count us as Your precious children, we are bold to ask Your grace and further blessing on this new day, which is like no other day, for this day has not yet been lived. Enable each of us then, and in particular the women and men of the United States Senate, to live this day with the sure knowledge that Your presence is alive within us and Your Spirit is actively engaged in guiding us.

Touch our hearts that we may act in love. Touch our minds that we may act in wisdom. Touch our souls that we may act with tolerance. Touch our eyes that they may see Your will with clarity. Touch our ears that they may listen with understanding. Touch our tongues that they may speak with integrity.

And so, O God, on this new day, in these troubled times, let each one of us and especially these, our Nation's leaders, assume our responsibilities with courage, good hope and an abiding faith in You, our protector and preserver. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HARRY REID, a Senator from the State of Nevada, led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will be in a period of morning business to allow Senators to make statements. Yesterday, along with Members from both sides of the aisle, we had the honor to lead a Senate delegation to Houston for the memorial service for the *Columbia* astronauts. It was a touching and fitting tribute to those proud pioneers, to those proud heroes, and today we continue to grieve along with their families and their friends—many of them we had the opportunity, as a delegation, to visit with yesterday.

Later today, the Senate will adopt a resolution that will express the Senate's gratitude and appreciation for these heroes. A rollcall vote is expected on that resolution at approximately 12:15 or 12:30 today.

Today, by previous consent, the Senate will begin debate on the nomination of Miguel Estrada to be a circuit judge for the DC court. Debate will begin at 2:15. I know a number of Senators are prepared to come to the floor to debate and discuss this nomination. I hope that we can, after a full debate, reach an agreement as to when the Senate can vote on that particular nomination. I will be working with the Democratic leader in an effort to find a time for that vote to occur.

As a reminder, the Senate will be in recess from 12:30 to 2:15 today for the weekly party caucuses to meet.

Finally, this week, the Senate will need to act on another continuing resolution. I anticipate that we will receive a continuing resolution tonight or tomorrow morning from the House. I am unaware of any requests for a rollcall vote, and we may be able to clear that continuing resolution by consent when it arrives.

I thank all Members.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Nevada is recognized.

Mr. REID. Mr. President, I have a couple of questions for the majority leader. Does the leader expect a vote on the resolution that is before the Senate today?

Mr. FRIST. Mr. President, I believe at this point we plan a rollcall vote between 12:15 and 12:30.

Mr. REID. The other question I have for Members is this. I spoke to the leader earlier this morning. There are a number of people who did not go to the memorial service yesterday and are going to go to one at the National Cathedral tomorrow. Does the leader expect any votes in the morning?

Mr. FRIST. No. In response to the question, we will be in session tomorrow. There are a number of memorial services that have been conducted over the last 3 days and will continue through the week. Out of respect, we did close down yesterday so that a number of people could go to Houston.

Tomorrow the Senate will be in session. We expect no rollcall votes, but we will be in session. We can talk about what time to come in tomorrow morning, but I think we will be in until about 12 noon tomorrow, and we will not be in for the remainder of Thursday or Friday.

Mr. REID. Mr. President, I have one additional question. We are in morning business now until 12:30, or whenever the leader calls for the vote. I am wondering—because yesterday it got a little awkward—if we can have an agreement that the time would alternate—one Republican, one Democrat, back and forth. That way people have an idea of what to do when they come here. If there are two Republicans here

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

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and no Democrats, OK. I don't think we need to do that in the form of an agreement, but at least the Chair would recognize we are going to do that.

Mr. FRIST. Mr. President, I think that would be very much something we will agree to and appreciate. We have a lot to do in morning business over the course of today and tomorrow. To be able to use that time efficiently, alternating back and forth is certainly fine.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for morning business not to extend beyond the hour of 12:30 p.m., with the time to be equally divided between the two leaders or their designees.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

COMMEMORATING THE ''COLUMBIA'' ASTRONAUTS

Mrs. HUTCHISON. Mr. President, I send a resolution to the desk on behalf of myself, Senator NELSON of Florida, Senator FRIST of Tennessee, Senator DASCHLE of South Dakota, Senator CORNYN of Texas, and Senator GRAHAM of Florida, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 45) commemorating the Columbia astronauts:

Whereas the United States of America and the world mourn the seven astronauts who perished aboard the Space Shuttle Columbia on February 1, 2003, as they re-entered Earth's atmosphere at the conclusion of their 16-day mission;

Whereas United States Air Force Colonel Rick D. Husband, Mission Commander; United States Navy Commander William ''Willie'' McCool, Pilot; United States Air Force Lieutenant Colonel Michael P. Anderson, Payload Commander/Mission Specialist; United States Navy Captain David M. Brown, Mission Specialist; United States Navy Commander Laurel Blair Salton Clark, Mission Specialist; Dr. Kalpana Chawla, Mission Specialist; and Israeli Air Force Colonel Ilan Ramon, Payload Specialist were killed in the line of duty during the 113th Space Shuttle Mission;

Whereas we stand in awe of the courage necessary to break the bonds of Earth and venture into space, with full knowledge of the perils and complexities inherent in such an endeavor;

Whereas the people of the United States and the world have enjoyed rich benefits from the space program including technological advances in medicine, communications, energy, agronomy, and astronomy;

Whereas we in the Congress of the United States recognize that curiosity, wonder and the desire to improve life on Earth has inspired our exploration of space and these traits epitomize the intrinsic dreams of the human race;

Whereas, despite these lofty goals, we realize that our reach for the stars will never be without risk or peril, and setbacks will always be a part of the human experience;

Whereas we recognize our solemn duty to devote our finest minds and resources toward minimizing these risks and protecting the remarkable men and women who are willing to risk their lives to serve mankind; and

Whereas we will always hold in our hearts the seven intrepid souls of Columbia, as well as those explorers who perished before, including those aboard Apollo I and the Space Shuttle Challenger: Now, therefore, be it

Resolved, That—

(1) the tragedy which befell the Space Shuttle Columbia shall not dissuade or discourage this Nation from venturing ever farther into the vastness of space;

(2) today we restate our firm commitment to exploring the planets and celestial bodies of our Solar System, and beyond;

(3) we express our eternal sorrow and heartfelt condolences to the families of the seven astronauts;

(4) we convey our condolences to our friends and allies in the state of Israel over the loss of Colonel Ilan Ramon, the first Israeli in space;

(5) we will never forget the sacrifices made by the seven heroes aboard Columbia; and

(6) we shall learn from this tragedy so that these sacrifices shall not have been in vain.

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. I thank the Chair.

Mr. President, today I rise to honor the memory and the sacrifice of the seven astronauts whose lives were tragically cut short in pursuit of the newest frontier—space.

America is a word, a country, and a people. America is also a spirit, an indomitable spirit of adventure and courage, one that defies complacency and accepts challenge. The American spirit knows no bounds.

Israeli astronaut Ilan Ramon also had that spirit, and so did Kalpana Chawla, who was born in India and made America her home. It is that spirit which President Kennedy harnessed in 1961 when he made the bold claim: Within a decade, America would put a man on the Moon and return him safely home.

That same spirit enabled us to fulfill a great mission and make space travel seem routine, although it was never routine.

It is that spirit which fueled the hearts and minds of those seven men and women who launched into the sky on January 6, 2003.

On Saturday, we were reminded of the high price we sometimes pay for reaching new horizons. Our thirst for knowledge led us to explore space. Our curiosity, sense of wonderment, and desire to improve life on Earth prompted us time and again to defy the odds. Those heroes did not take their task lightly, but they undertook it with joy.

Ilan Roman, the first Israeli astronaut, who was on that fated flight, wrote the following words from space:

The world looks marvelous from up here, so peaceful, so wonderful and so fragile.

His serene vision came to a catastrophic end on Saturday morning, and that moment when the world awoke to the news that seven astronauts disappeared into the skies will be one etched in our collective memories forever.

In recent years, America has borne too much tragedy and experienced too much grief, but our collective loss still sears our souls and the pain is never easier to bear. Today, just 4 short days after they vanished into the crystal blue skies of Texas, we pause to remember them and thank them from our hearts: Rick Husband, Kalpana Chawla, Laurel Clark, Ilan Roman, William McCool, David Brown, and Michael Anderson.

And though the families' loss cannot be diminished, their pain and grief is shared around the world and our prayers are with them.

Their sacrifice will never be forgotten. Their lives were not lost in vain. We will send more brave astronauts into the cosmos to learn and discover. We will continue to explore the vast sky that envelops the Earth and their names will forever be etched into the history of space flight.

Rick Husband, a spiritual man, a Texan, the commander of the Space Shuttle *Columbia*, often signed photos referencing Proverbs 3:5–6:

Trust in the Lord with all your heart and lean not on your own understanding; acknowledge Him in all your ways and He will direct your paths.

Throughout history, our young Nation has experienced great heartache and tragedy. Each time, we have overcome adversity with boldness and tenacity. We have come back stronger than ever.

With steely resolve and a firm determination, we rose from the ashes and embers of Ground Zero more resolute than ever before.

Christina Rossetti, the 18th century poet, wrote a poem called ''Remember.'' She could never have envisioned what this poem would come to represent, but it did bring me some solace in this time of tragedy in my home State of Texas. She wrote:

Remember me when I am gone away,
Gone far away into the silent land;
When you can no more hold me by the hand,
Nor I half turn to go yet turning stay.
Remember me when no more day by day
You tell me of our future that you planned;
Only remember me; you understand
It will be late to counsel then or pray.
Yet if you should forget me for a while
And afterwards remember, do not grieve:
For if the darkness and corruption leave
A vestige of the thoughts that I once had,
Better by far you should forget and smile
Than that you should remember and be sad.

We will hold these seven souls in our hearts and eventually we will smile

again. We will rise from the ashes in the fields of Texas, Louisiana, and Arkansas. The quest for space exploration will not end with this tragedy. It will live on, it will prosper, for it is our duty, our calling, and our destiny.

Yesterday, like so many Members of the Senate and House, along with the President of the United States and our First Lady, I attended a beautiful ceremony where we saw firsthand the families and the realization of their personal loss. We were uplifted by seeing the greatness of what these astronauts had done and what they are doing for the future of our country and our world. It is much bigger than just those seven astronauts, which I think their families and they themselves believed. They know this was a higher calling and that their sacrifices will lay the groundwork for a better space shuttle, a better space station, America staying preeminent in the world in national security and in medical research. I think they knew they were contributing to the future of our country.

The ceremony yesterday really began our time of closure, our time to pay the respects to those brave young men and women who were willing to make this sacrifice for their children and their future generations, and to say that America is going to renew our commitment. America is going to stay in the forefront, because we know if a country is static it will begin to fall behind. We know we have been the first to reap so many benefits from space exploration, which we have shared with the world. We know there are many more innovations to come and that America will be there to find those discoveries.

On behalf of myself and Senator NELSON of Florida, who is the only Member of the Senate today who has been in space, he will come later to also make a statement and then we will look forward to having a vote on the resolution.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, today I join my colleagues and millions around the world to express our enormous sorrow at the loss of the crew of the Space Shuttle *Columbia* and to extend sympathy to the crews' families and friends.

This tragedy, like the loss of the Space Shuttle *Challenger* 17 years ago, has left an empty space in our hearts. We struggle for the words that might help to make sense of the events we witnessed last Saturday.

A return to Earth that we have come to view as ''routine,'' instead has reminded us of the fragility of life. We are all subject to the flaws of man and the vagaries of nature. Yet these seven brave men and women accepted great risk as they strove to expand the intellectual capital of all mankind.

For thousands of years, the heavens have inspired, intrigued, and called us to explore their boundaries. This unending quest for knowledge is the very essence of what makes us human. It is a flame that burns so bright. It burns so bright that not even the depth of this tragedy or the shock of our loss can quench the desire to learn, to seek and to explore.

There is no doubt in my mind that we will move forward to expand and strengthen America's space program. And through the investigation that has just begun, we will find out what caused this accident and then we will fix it. But today, we mourn for those whom we have lost and offer comfort to those who have been left behind.

The astronauts who fly the space shuttle are a unique and unparalleled breed of men and women. They inspire us with courage and intellect, and they sacrifice in service to their country and profession. But perhaps their greatest service of all is rendered when they reach out to future generations and plant the seeds of curiosity in a young student's mind.

I have visited classrooms in the company of astronauts to see faces of children alive with wonder and awe. Like any one of us, our children want to know what it is like in space, what it is like to be a scientist, what it is like to be an explorer.

Seventeen years ago when the *Challenger* was lost, among the seven astronauts was a teacher from New Hampshire, Christa McAuliffe, who was dedicated to nurturing and inspiring students not just in New Hampshire but all across the country. Her spirit and enthusiasm has been captured for future generations in the Christa McAuliffe Planetarium in Concord, NH.

Each time I visit the planetarium, I am reminded that a child's curiosity grows into a lifetime search for answers to the great questions of our age. As long as we have astronauts to engage this curiosity, the quest for knowledge will endure and our space program will thrive.

Generations of Americans have been inspired by their courage and vision, but today, thoughts and prayers of millions are with the families and friends of *Columbia*'s crew. The sadness of this moment may well one day fade, but the memory of these seven heroic figures will remain forever strong.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SUNUNU. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SUNUNU. Mr. President, I ask unanimous consent during the allotted morning business period, the time used in quorum calls be charged evenly against each side.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, this morning's morning business has been dedicated to the *Columbia* tragedy which occurred over the weekend. I want to take a few moments to speak from the heart about my experience yesterday, traveling to Houston to be there for the service that honored these seven brave men and women who gave their lives in the *Columbia* tragedy.

It was a bright and sunny day in Houston, a day which brought out literally thousands of people as they stood at the Space Center on the grass and waited for hours for the moments of tribute to the fallen astronauts and to their families. It was a military service, as those who followed it on television know, in the tradition primarily of the Navy. There was that touching moment where the bell was struck seven times for the loss of seven lives.

It also was a service which brought out, I thought, the very best in our Nation in terms of coming together in the grief that has really clouded our lives since last Saturday morning.

There were moments yesterday which I will not forget. The most compelling moments involved the arrival of families. You come to realize that these astronauts leave behind husbands and wives, children, parents, and many who loved them who will struggle for a long time to understand what happened. Most of them, six of the seven, were in the military—of the United States and of Israel. They understood the risk that was involved in their service to our country, as did the seventh astronaut. But with the success of so many space missions, I am certain they went into this flight believing the odds were on their side—and they certainly were. But they knew the danger, too, that was associated with it.

I am sure most people can recall where they were when they heard of this tragedy. I was sitting with my wife in our kitchen in Springfield, IL, listening to NPR when they interrupted it and mentioned the shuttle radio transmission had been lost. It was clear something terrible may have occurred. Then, of course, in the moments following, we heard the details.

I ran into a number of people in Illinois, both downstate in Springfield and in Chicago, before I came back to Washington and then went off to Houston, and all of them were touched by this tragedy, as they should have been. Some of them said to me: Senator, don't forget also the four soldiers who lost their lives last week in a helicopter crash in Afghanistan—and they

were right. Our prayers should be not just for the astronauts and their families but for all the men and women who have given their lives in service to this country. I know they are in our hearts and prayers.

A lot of hard questions will have to be asked and answered in the weeks ahead. We will have to find out what caused this crash, to make certain that it never happens again. There will be a lot of recriminations and people pointing fingers as to whether or not everyone did their job as they should have, including Congress, this President, and the previous President. But that is the nature of an open society—an open debate, an honest debate to try to come to some closure as to the reason for this tragedy.

Larger questions will be asked, and I hope answered, about the space program itself. This is a program which has been generally accepted by America as part of who we are and why we come together as a nation. We want to lead the world in the pursuit of science and knowledge and understanding. Our space program has been part of that. We will have to step back now and assess whether we are doing the right thing. We will have to ask and answer questions about manned space flight and the future of the space station, whether the shuttle is the best approach to serving that station, and our future needs. All of these are difficult but timely questions.

Having said all that, that is the working of government. That is the working of the people of the United States, responding to this disaster in a rational, measured, linear way.

But yesterday it was about much more. It was about these astronauts and their families.

Ilan Ramon was the first Israeli astronaut. I read about him. I have heard suggestions that he was a man who was destined to be part of the space program. No one in his country had ever done it. He is a great source of pride in Israel and to the people who followed his career.

Yesterday, some of the prayers delivered by the Rabbi and others were in Hebrew, as they should have been. They hearkened back to the origins of the Judeo-Christian culture that also contributed to this great man.

Also, Kalpana Chawla, Indian—the important thing to recall is not just how good she was—and that story was repeated over and over again—but to recall that she was an immigrant to this country.

I think that is something we should remind ourselves over and over. Immigrants to America throughout our history have made us a better and stronger Nation and have given us a special identity in the world. She contributed to that heritage, and her courage has to be recognized.

The list of the astronauts involved—those who had been on previous missions and those who were on their first—is a roster of excellence and courage. Now it is up to us not just to mourn their loss and to comfort their families but to remember why they made their sacrifice and why they were prepared to run this risk. They were prepared to do more than most of us do in our daily routines. But they understood it was to meet a calling—a calling to which, frankly, all of us should aspire, to show the courage and to step forward to look to the future, to say that we each have to do something that is risky and on the edge so that tomorrow may be better for our children, for their families. We extend not only our sympathy but also our pledge to stand by them at this time of loss because they are part of the American family, an American family deep in mourning over the loss of these great men and women.

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

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

The Democratic leader.

Mr. DASCHLE. Mr. President, in 1920, H.G. Wells wrote:

> Life, forever dying to be born afresh, forever young and eager, will presently stand upon this earth as upon a footstool, and stretch out its realm amidst the stars.

We have long since realized that vision, voyaging from our planet, putting men and women and machines beyond the reach of the Earth, traveling the ''airless Saharas'' of space, exploring new worlds.

What we have been able to do requires the best minds of science, an audacity of imagination, and people explorers of uncommon bravery.

Today, we mourn seven of those brave explorers. These men and women stood upon our Earth as a footstool, stretched out our realm amidst the stars, set out on a voyage of discovery—and did not return.

I can only hope that our words, our prayers, and a world's shared sorrow will help bring peace to their families and loved ones.

This space shuttle *Columbia*—like all space shuttles—was named for a sailing ship. The *Columbia* was the first American vessel to circumnavigate the globe.

The crew of this *Columbia* were pioneers of the first order as well.

There was Rick Husband, the Air Force Colonel and commander of the *Columbia*. He was dedicated to God, his family, and his crew. While in space, he sent an e-mail saying: ''I'm so proud of my crew, I could pop.''

There was William McCool, the man at the controls of *Columbia*. He was an Eagle Scout, second in his class at the Naval Academy. Friends describe him as someone who always did everything perfectly but never developed the arrogance that comes with such success.

There was Michael Anderson, who, as a child, dreamed of piloting his bunk bed to the moon. Michael Anderson never got to the moon, but he got a lot closer than most of us.

There was David Brown, a physician, gymnast, and one-time circus performer. For all of his many skills, as his mother said: ''flying was his life.''

There was Laurel Clark, the medical doctor and mission specialist who offered this advice for aspiring astronauts: ''Do what it is you love to do. You'll do a really good job at it because you love it.''

There was Ilan Ramon—the child and grandchild of Holocaust survivors—who rode into space carrying with him the hope of a war-weary country.

Sadly, most of us are getting to know most of them only now.

Back in Rapid City, SD, there are dozens of schoolchildren who got to know—and be inspired by—Kalpana Chawla.

Three years ago, I asked then-NASA Administrator Dan Goldin if he would be willing to keynote a technology exhibition in Rapid City.

At the last minute, NASA called to say that they would have to send a substitute. They said: ''But the good news is she's even better. She's an astronaut, and she's brilliant.''

Dr. Chawla enchanted everyone who listened to her that day.

She stayed for a long time after her talk to sign autographs and pose for pictures with children.

A lot of those children in South Dakota are probably looking at those pictures today—and looking at how she signed them, for above her name she wrote: ''reach for the stars.''

I can only hope that the excitement Dr. Chawla inspired in those children will never be diminished by her loss.

Inspiring the awe of discovery in others, that is what all of the members of the crew of *Columbia* lived for, and it is what they gave their lives for.

Yesterday, many of us were in Houston to honor their memories.

In the days ahead, I hope we can create a living memorial by continuing to strive for the stars.

In 1961, a satellite called Traac was launched from Cape Kennedy. Inscribed in an instrument panel of that satellite was a poem written by Professor Thomas Bergin, from Yale University. It was the first poem to be launched into orbit around the Earth.

I want to read a few lines of it now:

> And now 'tis man who dares assault the sky
> And as we come to claim our promised place,
> Aim only to repay the good you gave,
> And warm with human love the chill of space.

The seven astronauts of *Columbia* represented different races, different religions, different backgrounds, and, in one case, a different country. But they were united by their desire to solve the mysteries of the universe and to make life better for all people.

In living that hope—and dying with it—their lives will forever inspire us.

And their memories will warm the chill of space.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to offer some comments in response to the *Columbia* shuttle disaster that we all learned about last Saturday. Since then, we Americans and most of the rest of the world really have been in a state of grief again, a state of mind and heart that many of us, of course, have experienced both personally and nationally before. Once again, in this case of public grief, television became our common touchstone, binding us through the ether, informing us with gripping yet familiar scenes and words.

And once again, we learned things we wished we had known and thought before the great loss. We learned of the astronaut whose aunt and uncle had lost a son on September 11 at the World Trade Center. Once again, they share a personal loss with the whole Nation. We learned of the Israeli astronaut who was part of the mission that destroyed an Iraqi nuclear reactor in 1981, an act that we now know saved the world from the menace of Saddam Hussein with his finger on a nuclear button.

We learned of a woman who emigrated from India to the United States, became an American citizen, and then an astronaut. Surely that is one of the most vibrant and exciting realizations of what we call the American dream I have ever heard.

I am sorry I did not know all this before the terrible news of last Saturday. That is both a testament to the success of the space program and a mark of how easy it is for all of us to forget the risks others have taken and are taking to advance the frontiers of our knowledge. The fact is, we take too much for granted, and it is sad it does take tragedy to shock us into an awareness of the sacrifices that are constantly being made by others on our behalf.

That was certainly true about the role of our firefighters and police and emergency medical and health personnel after September 11. It is true when our military men and women go into combat to protect our security. The loss of the Black Hawk crew in Afghanistan this past week is again a reminder of how much danger other Americans face on our behalf.

It is true also with regard to the *Columbia*, when the loss of that shuttle has caused us once again to stop and think about the men and women who climb on top of rockets and head into the coldness of outer space to advance the leading edge of human experience from which all of us benefit. We owe those seven brave souls our gratitude. We owe the same to those who fly today aboard the International Space Station and to those who are preparing to fly back and forth in the months and years to come.

Amidst the painful familiarity of the moment we are experiencing come the calls for a thorough accounting of what happened; how did it happen. There are some who say we should have done this and others who say we should not have done that. Others will say we should abandon space, echoing a refrain we have heard intermittently now for more than 4 decades. Skepticism about space exploration, combined with the economic restraints faced by our Nation for many of the years of the past 4 decades, has, in fact, lowered our sights and diminished our momentum in space.

We must and we will investigate what happened to *Columbia*. No holds should be barred and every step should be taken to discover exactly what went wrong and to set about making it right so people will never again look aloft to see a fiery comet signalling the destruction of a spacecraft with its historic crew.

Yet we must be realists. No human advance comes without risk. In the history of human space flight, in fact, we have lost the crew of *Apollo 1*, *Soyuz 1* and *11*, the *Challenger*, and now *Columbia*. This is the most difficult, dangerous, and daunting work I can imagine. That in part is why we do it.

President Kennedy said more than 40 years ago:

> We choose to go to the Moon in this decade and do the other things, not because they are easy but because they are hard.

There is no acceptable number of spacecraft lost in pursuit of what is hard and what is unknown. Obviously just one loss is too many. But we must recognize that the sacrifice of those who have died has not been in vain. The space program has yielded enormous results. It has also given our Nation and people throughout the world a sense of wonder that cannot be easily recounted in mere dollars and cents.

Our gross spiritual product, if you will, GSP, is higher than it would otherwise have been thanks to the efforts of the astronauts, the scientists, and all who make the exploration of space a noble part of our civilization.

We must emerge from this investigation of the *Columbia* tragedy and from our introspection about it resolved to do more, not less, to think bigger, not smaller, to aim higher, not lower. Just as we must build something great and beautiful where the World Trade Center towers once stood, a fitting tribute to the men and women of the *Columbia* is not really to fix what went wrong but to do what is right, to do what is characteristically American, to continue—indeed, to expand—their mission and to lift our sights to the heavens once again and pursue new missions—as Charles Krauthammer has written—''to the moon and beyond.''

We should do so not because we know what knowledge and benefits that pursuit of those goals will achieve; we should do so because we do not know. Yet we can be confident, based on our experience, that the effort will prove more than worth our while.

That is the wonder of exploration, to go beyond the next bend in the river, over the next mountain, beyond the far horizon, not because we know what is there, but because we do not and want to find out.

Most great feats of exploration in human history have yielded benefits far in excess of what anyone could have predicted when they began. Surely we will find something on the Moon or Mars or elsewhere in the cosmos that will astonish us and transform the way we live. Surely we will discover things about ourselves in the process of mounting those great missions that will change our lives.

Spend the money here on Earth, some will say. Our problems are too great here to waste money in space or on the Moon or Mars.

First remember that not one single dollar will actually be left in space, on the Moon, or on the surface of the red planet. Every dollar invested in space is invested here on Earth, circulating throughout our economy, creating a multiplier effect as the jobs and discoveries associated with the space program lift in time our GDP, our gross domestic product.

Our new missions in space should be as the International Space Station is: American-led but international in scope. People and resources of many nations can and should be pooled to ensure that the great space missions of the 21st century are global projects that make sense, because success is more likely, of course, if we tap the best minds of the broad community of nations, not just our own. The investment needed can best be realized through contributions from many peoples, not just the American people.

Such a common venture also has other salutary effects. As President Clinton has said, We need a world with more friends and fewer terrorists. And what better way to expand our circle of friends than to invite them to join us on an inspiring voyage together into the unknown wonders of space. What better way to showcase our own unique values and technological advances than to lead a team of many nations whose citizens will share with us a stake in the outcome and a share of the pride.

Finally, embarking on a bold new age of discovery will help revive the American spirit. In the midst of terrorist threats from abroad, a shaken sense of security here at home, a troubled economy, and shocks to our system such as those we faced on September 11 and after from the anthrax and now from the loss of the *Columbia*, the American people may be feeling uncertain about our future. These have been tough times. But I am confident we are at heart an optimistic people and that for us the best truly is yet to come.

We have to find ways to strengthen our can-do spirit, to unleash our optimism and give us a stronger sense of national purpose and greater hope in a better future. No single enterprise can accomplish that goal. I do not mean to suggest that a visionary space program alone will turn the national tide. There

are other missions to consider as well that are closer to Earth—great missions—which together we can accomplish to cure cancer, make our Nation energy independent, and defeat the scourge of AIDS.

But remember that the American dream is not a zero-sum game. We can do more than we realize. We can expand opportunity and vision and hope if we set our minds, our hearts, and our national will to the task.

We have all been reminded in recent days of all that President Kennedy set in motion with his brief words to the Congress in 1961 when he committed America to land a man on the Moon before that decade was out. We should remind ourselves, too, of how far we have come in the hundred years since the Wright Brothers flew at Kitty Hawk. We cannot know how far and how fast mankind, humankind, will travel across the country or the universe by this century's end. That is the wonder of it. But if we fail to heed the call to explore, we will only succeed in stifling an astounding revolution that is bound to occur sooner or later.

Centuries ago, William Shakespeare wrote:

> Our doubts are traitors and make us lose the good we oft might win by fearing to attempt.

We must not let our doubts make us lose the good we can win by venturing further into this special frontier in space of which we are aware.

In words that are more American than Shakespeare's, Mark Twain captured that same sensibility in one of the great American novels—maybe the greatest—''The Adventures of Huckleberry Finn,'' where Huck, with Jim, on the raft delighted always in approaching the next bend in the river, not knowing what they would find around the bend, but never fearful, always excited, and always confident of their ability to deal with whatever they found. In those last sentences of that great novel, Huck says:

> I reckon I got to light out for the Territory ahead of the rest.

So he did, and so have we Americans before and since. We will not—those of us who are blessed to be citizens of this great country now—reap all that we sow, not in our lifetimes. Yet we will find nourishment for our national spirit in the effort itself and from the knowledge that we are working to make a better tomorrow for those who will follow us as citizens of this country and the world, whose faces we will not live to see, whose names we cannot know, but whose lives we can touch for the better by what we do today.

We do know the names of Rick Husband, Will McCool, Michael Anderson, Kalpana Chawla, David Brown, Laurel Clark, and Ilan Ramon. May God have mercy on them, their families, and friends, and may their souls be embraced in eternal life. May they, like modern-day angels, experience forever the peace, joy, and beauty of space flight. And may we never turn back from the journey of discovery that inspired these heroes and must still inspire our Nation and the world to ever greater heights.

Let's light out for the territory ahead of the rest, and today that territory is beyond the sky. For that is the stuff of the American dream and the heart of the human soul. It must be our choice today, for surely it is our destiny.

I thank the Chair. I yield the floor and 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. COLEMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, it was my sad privilege to attend the memorial service for our great astronauts in Houston yesterday. As best I could, I carried the love and prayers of Minnesotans to that solemn occasion. It was heartbreaking; yet it was awe inspiring at the same time. There was a lot of love in Houston yesterday that surrounded the families of the brave astronauts.

I should note how blessed we are to have the President we have at times such as this. His words are good and true, but it is his heart that communicates to the hearts of Minnesotans.

How much we all owe to the explorers, the inventors and the pioneers. In Minnesota, we marvel at the thought that a Charles Lindberg from Little Falls, a small town on the Mississippi, was the one who opened a new door by traveling solo across the Atlantic. For almost every one of us, our presence in this country is a reality because some brave souls conquered their fears and headed off to an unknown place with the only hope that it meant a better life for their families.

The pain of this tragedy is made more acute because of the purity of the sacrifice of these seven extraordinary and ordinary folks. They did not climb into that rocket to get rich or to gain power or to become celebrities. They assumed the risk to their lives for science, for discovery, for the pushing out of the horizons of mankind.

As we mourn, may we in this Chamber and throughout this society seek that purity of motive and courage to take risks on behalf of others and in pursuit of a better future. May we express our appreciation far more freely for all those who take enormous risks on our behalf. May we embrace a spirit of service and sacrifice for others rather than idealize safety and security for ourselves.

Thousands of years ago, an ancient Hebrew writer put down these words, expressed as a prayer:

> Where can I go from your spirit?
> Where can I flee from your presence?
> If I go up to the heavens, you are there;
> If I make my bed in the depths, you are there.
> If I rise on the wings of the dawn,
> If I settle on the far side of the sea,
> Even there your hand will guide me,
> Your right hand will hold me fast.

We pray for that comfort, we pray for that embrace for the families who are enduring this loss and that encouragement for all as we move on from here.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, it is with an especially heavy heart that I join Senator HUTCHISON of Texas as a sponsor of S. Res. 45 commemorating the fallen astronauts on the *Columbia* mission and to express the Senate's support for continuing their legacy.

I, along with a number of other Senators and Members of the House and various parts of the NASA family, gathered yesterday in Houston. It is getting to be a gathering that is not pleasant, for we had a similar gathering 17 years ago—17 years ago, almost to the day—when we lost another space shuttle from a series of mistakes.

Oh, there were the technical reasons about why the Space Shuttle *Challenger* exploded, the technical reasons that the cold weather had stiffened the rubberized gaskets, called the O-rings, in the field joints of the solid rocket boosters, and that stiffened O-ring allowed the hot gases of the SRBs to pass through those creases—those field joints—of the SRBs. It just happened to burn out right where the strut was that held that SRB to the external tank. When that strut burned at the bottom, it caused that SRB to rotate and puncture the big external tank. Seventy minutes into the flight, miles high in the Florida sky, it was a shock to the Nation that the symbol of America's technological prowess would disintegrate right in front of our eyes through a television camera.

NASA realized its mistakes, and its mistakes were not only technical. Arrogance had set in at NASA.

A basic fundamental of information is that it should flow both ways, not only from the top to the bottom but from the bottom to the top. Because of arrogance it had not. As the count proceeded the night before, there were two engineers at Morton Thiokol in Utah who were begging their management to stop the count because they knew the frigid weather was going to stiffen those O-rings.

When we did the investigation, both in the Presidential Commission and in the committee I chaired at the time in the House of Representatives, the

Space Subcommittee of the full committee, the Science, Space and Technology Committee, what we found was that although those engineers were begging their management to send this information along, the information never got passed on to the NASA management.

There were mistakes of communication, there were mistakes of attitude, and there were mistakes as a result of arrogance that caused the destruction of the Space Shuttle *Challenger*. The NASA family went to work and really started improving on that.

The fact is, space flight is a risky business. When I flew 17 years ago, our flight returned to Earth only 10 days before *Challenger* launched. When I flew, there were 1,500 parts on the space shuttle called ''critical one'' parts—any one of which, if it were to fail, would mean the end of the mission. It was catastrophe.

So when one goes through a very unforgiving environment and returns in an unforgiving environment, there is risk. Probably the riskiest part is all of those parts have to work on the ascent. The ascent is only 8½ minutes to orbit, but in order to defy the bounds of gravity and go Mach 25, 17,500 miles an hour, which is orbital velocity, and to have that energy that puts the spacecraft in a position to punch out of the Earth's atmosphere and insert into orbit, it is risky. So, too, upon reentering the Earth's atmosphere, that is risky.

About an hour before landing, the orbiter is turned around and a thrust for 4 minutes of the two OMS engines, not the main engines but the OMS engines, is given to slow the orbiter a little from Mach 25. That slowly allows gravity to start pulling the spacecraft back to Earth. For about the next half hour, the spacecraft is basically in freefall still going about 17,000 miles an hour, traveling about a third of the way around the Earth, and at 400,000 feet the spacecraft starts encountering the Earth's atmosphere.

At that point, the computers have to be working perfectly. The orbiter has been turned around and the angle of attack has to be exactly perfect in order that those silicon tiles on the bottom of the orbiter are repelling the heat which on the underside of the wings has risen to 2,000 degrees Fahrenheit and on the leading edge of the wing has raised to 3,000 degrees Fahrenheit.

If those computers are not working perfectly to keep that angle of attack so that the heat is repelled, the orbiter will burn up. If the nose gets too low, it will burn up. If the tail gets too low, it will burn up. Or if there is a ripping off of the aluminum skin, these protective tiles that have been put there with a very high technology type of glue—one or two tiles, the structure is going to be invaded but it is not going to cause a catastrophe for the mission, but if many tiles are ripped off or if tiles have been damaged so that they are not smooth on the surface and are now rough, causing new turbulence as the orbiter comes crashing through the Earth's denser atmosphere, as it gets lower and lower, turbulence will be created and there will be an additional opportunity for silicon tiles to rip off. If they rip off, there is going to be a catastrophe.

We still do not know what the initial cause was for the destruction of *Columbia*. We do know that one of the suspects is a piece of insulation came off of the huge external tank on launch. That insulation is like a foam, like a consistency of Styrofoam in a Styrofoam cooler and it could have been more hardened by ice having formed on the outside of that supercooled external tank which has the liquid hydrogen and the liquid oxygen that fuels the main engines. It could have been harder because of ice having formed on that Styrofoam-type mixture, and that could have caused the initial damage or roughing up of some tiles, but we do not know at this point.

Some event started to occur as the shuttle was over California for debris was first seen high in the skies coming off the shuttle over California and then over New Mexico before the shuttle started to come apart over Texas.

We will find the cause and we will fix it, and we will get back to flight. Lord help us that we are not down for 2½ years as we were after *Challenger* and it took us 2½ years to feel safe enough to fly the first flight. I say, ''Lord help us'' because we have two astronauts and a cosmonaut in the space station right now. They are safe. They have a lifeboat up there of a Russian Soyuz craft that can bring them home, but we do not want to have to bring them home. We want to send a replacement crew so we can keep science and experiments going in that magnificent structure of a laboratory in the heavens called the International Space Station.

We are going to find the problem, we are going to fix it, and hopefully we are going to be able to fix it soon. If it is a massive failure of a thermal protection system, which is the tiles, then it is going to take us awhile.

In the early 1980s, we even looked at the possibility of going out on an EVA—that is a space walk—to fix damaged tiles. It was concluded in the 1980s that it was too much of a risk. First, we did not have the kind of glue that, in the vacuum of space, could fix those tiles, and then the risks of an astronaut going over the side where there was no communication in sight were considered so high. Remember, all of our space walks are outside of the open cargo bay where we have instant communication and sight with our space walkers. The basic problem was the EVA suit weighs 300 pounds and the boots are another 15 or 20 pounds. What happens if that space walker gets out of control? He will damage the tiles already there on the underside.

We are going to see if technology has advanced enough so we can repair those delicate silicon tiles on the underside of the space shuttle if they are damaged on ascent and we can see significant damage. We will have to look at that. We did look at it in the early 1980s and we said we could not do it.

We were in Houston yesterday. NASA is a family. When a family member is taken, that family grieves. It was well known the commander of this mission, Rick Husband, had a deep and abiding faith. That had been spoken about quite a bit throughout the service, in sidebar conversations, in the remarks of the President, and today in a major feature article in the Washington Post. That does not help relieve or eliminate the grief. It does help console those who are grieving.

I saw a lot of macho, grizzled astronauts yesterday giving a lot of hugs. Those seven astronauts who died over Texas made the ultimate sacrifice in exchange for the benefits that their courageous exploration of the heavens will realize for all of mankind. It is with the greatest respect and gratitude to the families of those fallen that we say what we can—and we really cannot say anything that in the big picture is meaningful—to ensure their cause will continue.

To a man and a woman in this Senate, there is a determination that cause will continue. It will continue certainly as a memorial to those before them, all of those names that are on that significant astronaut memorial at the Kennedy Space Center, astronauts who have died in the line of duty—not just the ones you know about—the Apollo fire on the pad, the *Challenger 7*, and now the *Columbia 7*.

Not only will it continue as a memorial, but this program will continue because it is a reflection of the character of the American people. We are by nature explorers and adventurers. That is a part of our character. It began when Europeans left the continent and crossed the oceans. It is deep within our soul to be explorers and adventurers. When we settled this land known as New America, we had a frontier, and it was westward. We still have a frontier, and it is upward.

I believe in my lifetime we will see an international crew from planet Earth go to the planet Mars. We may well go back to the Moon and establish a lunar base. We might be mining things on the surface of the Moon, like helium 3. A cargo bay type load of helium 3 could generate the electrical power for the entire United States for 1 year. Those are the technologies that hold promise. We already see so many of the technologies developed in the space program, particularly when we went to the Moon. We had to have materials that were light in weight, small in volume, and highly reliable. In developing those for space exploration to go to the Moon, the spinoffs have been incredible. This watch is a part of the spinoff. So is an artificial heart. So is a kidney dialysis machine. So is much of our modern-day materials and alloys.

We will continue exploration, not only in the memory of our fallen comrades but for what it reflects as a character of the American people and the American spirit as well as the many benefits we derive from space exploration, not the least of which is to find out about that magnificent creation out there called the universe.

That is why I rise to join with Senator HUTCHISON in sponsoring this resolution commemorating our fallen brethren and sisters.

I yield the floor and suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. CORNYN. Mr. President, I ask unanimous consent that the vote on adoption of the pending resolution on the *Columbia* occur at 2:20 today, with 5 minutes prior to the vote equally divided between Senators HUTCHISON and NELSON for closing remarks.

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

Mr. CORNYN. Mr. President, I rise today to pay tribute to the seven men and women of the Space Shuttle *Columbia* who dedicated their lives to the future of this Nation and our Nation's space program. In particular, seven men and women who knew the risk of strapping themselves on top of a rocket, leaving the Earth behind and exploring the heavens. Seven men and women who knew what they were doing but, nevertheless, volunteered for an extremely dangerous but critically important mission: Shuttle Commander Rick Husband, Pilot William McCool, Payload Commander Michael Anderson, Mission Specialist Kalpana Chawla, Mission Specialist David Brown, Mission Specialist Laurel Blair Salton Clark, and Payload Specialist Ilan Ramon.

These brave seven showed the Nation, indeed they showed the entire world that our thirst for knowledge and exploration is not yet quenched and, God willing, will never be. These brave seven are shining examples of the courage, enthusiasm, and awe that runs through the veins of all of the men and women associated with our space program, as well as the eager children across this Nation who look to the stars and see the beginning, not the end, of their dreams.

These brave seven and their colleagues throughout the space program inspire not only our Nation and our children, they inspire the entire world. Their actions, bravery, and achievement are a challenge to all humankind, a challenge to dream more, to achieve more, and to reach farther than ever thought possible.

As we know and as the President observed yesterday, high achievement is inseparable from great risk. These seven proved that in a terrible and tragic way.

I would also like to take a moment to honor the men and women in my State of Texas—the police, fire, and emergency services, as well as thousands of local volunteers who have worked so hard on the ground in the aftermath of this terrible disaster to prevent further tragedy. In addition, they are in the process of collecting important evidence that will ultimately, we trust, lead to determination of what caused this terrible tragedy so it will never ever happen again.

Literally within minutes of the tragedy, ordinary Texans did extraordinary things. By working together, they helped to ensure the safety of their neighbors, and they helped speed the investigation so that heroic astronauts on future space missions will return home safely. These volunteers are still on site working together with law enforcement personnel. I want to express my gratitude, as I know the Nation does, for their efforts.

The fact that America and the world delight in every takeoff and hold their collective breath at every landing is a testament to the power and hope embodied in our Nation's space program. The heroes who create, maintain, and fly these amazing machines are a testament to the fact that dreams are the beginning and not the end of the possible.

I would also like to remind my colleagues that more than one nation mourns this tragedy. The nations of Israel and India and the rest of the world share in our grief as they share in our hope for the future.

Our space program inspired a young girl in the small town of Karnal, India to look to the heavens and see her future. Kalpana Chawla came to the United States, studied hard, worked hard, and became part of the greatest exploration force in the history of the world. Her efforts have inspired thousands of schoolchildren, and her example will inspire countless more in the future. She, in particular, has inspired schoolchildren in her hometown to watch in awe as she achieved what they only dreamed.

In Israel, Ilan Ramon was the hope of a nation and the inspiration for the next generation of scientists, fliers, and adventurers in the nation of Israel. And he no doubt inspired many young people in that country to reach beyond what now seems impossible—to dream beyond the unrest in that troubled area of our world and to dream about achieving the impossible. He is a hero, there and here, and an inspiration to all who dream of the stars.

As we mourn these fallen heroes, let us also take the opportunity to look forward to the future when shuttle flights are as common as air travel and the marvels of the space program are missions the mind has yet to imagine.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I rise to pay tribute to the astronauts who perished aboard the Space Shuttle *Columbia* last Saturday, and to their families. It was a terrible tragedy we all suffered with the death of seven astronauts this last Saturday. We have heard many moving and eloquent tributes to those brave souls since the Columbia was lost. We have learned a great deal about the strength and courage and resourcefulness and humanity of each of those astronauts—Rick Husband, William McCool, David Brown, Kalpana Chawla, Michael Anderson, Laurel Clark, and Ilan Ramon. We have heard from the people who knew them best. Clearly, I and most of us here did not know them personally.

However, I want to take just a moment more to speak about one of those astronauts in particular—Laurel Salton Clark. She spent part of her youth in Albuquerque in my home State and she maintained roots there. Her father lives with his wife in Albuquerque. And Laurel's brother, John Salton, is an engineer at Sandia National Laboratories. Laurel attended Hodgin Elementary School and Monroe Middle School, and frequently returned to Albuquerque for visits with family. She was a stellar student throughout her life. Her only B, according to her father, was one she received in high school in the typing class. She was a medical doctor. She was a flight surgeon in the Navy. And she made the astronaut corps when she was 5 months pregnant.

She stood for what is best about our country. She was brave; she was strong; she was full of life. We are all diminished by her loss. We are also, of course, all diminished by the loss of each of the other brave astronauts who perished in that terrible tragedy on Saturday.

I yield the floor and suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KYL. Mr. President, at the height of the Renaissance, Leonardo da Vinci said: ''When once you have tasted flight, you will forever walk the earth with your eyes turned skyward, for there you have been, and there you will always long to return.''

From that day to this, men and women have toiled and sacrificed, even given their lives to the achievement of manned flight. Poems have been penned, speeches have been delivered, and history has been written honoring those men and women who have lived and some, unfortunately, who have died, to achieve our dreams—the dreams of all mankind.

To honor the memory of these gallant seven, we must devote the resources, and the far-reaching inquiry,

needed to find out what happened on February 1, 2003, and achieve the remedy so that this tragic accident will never be repeated.

As a nation we mourn the loss of the crew of *Columbia,* but as members of the family of man, we should celebrate their courage, their dedication, and their desire to better us all.

To the families of these heroes, here and abroad, we pledge to preserve and nurture the enterprise of space exploration. Our quest will continue. They will guide us on our way.

I would like to close with an observation that speaks to the spirit of exploring the unknown. It is from another member of the NASA family, astronaut Michael Collins. He said: ''It is human nature to stretch, to go, to see, to understand. Exploration is not a choice, really: it is an imperative.''

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

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

Mr. CRAIG. Mr. President, I and all of my colleagues, and I think, all Americans, have been in a period of mourning as a result of the situation that occurred about 9:15 or 9:16 this past Saturday, as many of us watched in horror, the Space Shuttle *Columbia* disintegrate over the continental United States.

All of us in the Senate have had the privilege over the years of meeting many of our astronauts, and certainly even serving with some of them right here in the Senate. We have known of the phenomenal dedication and commitment of these men and women who do this very important work. It is a life of pursuing a challenge, and the reward was the service itself. It was not financial, it was not a large trophy. It was the challenge of the service and what they could provide for our country and for all mankind. I think yesterday, as many witnessed the memorial service at the Johnson Space Center in Houston—I was unable to attend—we were reminded once again of the phenomenal caliber and capability of these seven people.

Barbara Morgan from my State has pursued being an astronaut for many years. She was, up until now—and may still be—scheduled to fly into space within the year. She was part of the original teacher's program—one of those on standby and ready to go up when the *Challenger* went up and was lost. I have seen the excitement of being an astronaut and of achieving as an astronaut—for herself, yes, but for the American people—through the eyes and enthusiasm of Ms. Morgan.

So I am reminded through her, and what I know of her, of the caliber and talent of these people who are selected to become our astronauts.

We will now set about trying to find out what went wrong, as we should, because one wonderful thing about our space program from the very beginning, is we always erred on the side of human safety. We were always extremely cautious and we built phenomenal systems of redundancy to assure that the primary role was to guarantee—or at least provide—the optimum safety that we were technologically capable of doing; and something clearly has gone wrong. It is now our job and the job of NASA to be able to find out and to rectify it for future space travel.

I just said future space travel. I am an enthusiast of the space program and always have been. In the 20-plus years I have served in Congress, I have always supported NASA and all of its efforts. It is within this country's capability, and it is within the full character of our country that we do as we have done in the space program, and that is push and explore the unknown. We were founded, we became a country, we discovered our landmass. Some people thought they might fall over the edge of the earth because some who were on that maiden voyage with Columbus thought the earth was flat and surely they would sail off into the unknown and go over the edge, never to be heard from again. It was that kind of daring that made us what we are.

Just a few weeks ago, my wife and I had the privilege of traveling to Monticello for the commencement program of the bicentennial of Lewis and Clark. Of course, I am from Idaho. In those days, they didn't know there was an Idaho; they just knew there was a wilderness out there that nobody had penetrated before. It was the wisdom of Thomas Jefferson on that day in 1803 to have written a letter to Congress asking for $2,500 to put a team together to explore the unknown. Did they ever think they would return? They didn't know it. There was no guarantee. The risks were high. Of course, all the rest is history.

What we witnessed last Saturday morning was a phenomenal reminder of the great spirit of adventure and the challenge that Americans have met for literally centuries. We are also reminded it is not just going down to the airport and getting on a shuttle. We have become relatively complacent that shuttles flew and there was an inherent amount of safety in them simply because they were flying so often—only to find out that simply was not the case. I hope—and I am confident of it—we will find remedies to the obvious problem that took the lives of seven wonderful human beings last Saturday and, in finding that, we will make another major step forward in allowing humans to travel into outer space and explore, or to allow their genius to travel into outer space and explore. For the adventure of it? Sure, but also for the applications of adventure and the tools of exploration that we then apply in our own lives—whether it is, in fact, velcro, or the miniaturization of the electronic equipment that is a direct result of space travel that we use in all of our lives today to allow us to live more efficiently and be more productive.

That is part of the total investment that is the space program—the ability of this great country to push the outer limits and allow the genius of our people the resources to do just that. So we stand in awe of those who travel in outer space. But Saturday and yesterday were reminders that they are human, and that it is a very dangerous and risky business we pursue in the business of adventure, the business of pushing the unknown, and the great reward for accomplishing and succeeding in doing so.

I yield the floor.

Mr. LEVIN. Mr. President, I join my Senate colleagues and our Nation in honoring the seven astronauts who lost their lives as Space Shuttle *Columbia* returned home last Saturday. These brave individuals flew into space in the name of all humanity, and together we mourn their loss.

Those who perished with *Columbia* represented not only the best of our Nation, but the best of humankind. On board was a crew of seven: COL Rick Husband; LTC Michael Anderson; CDR Laurel Clark; CAPT David Brown; CDR William McCool; Dr. Kalpana Chawla; and Ilan Ramon, a colonel in the Israeli Air Force. They left behind 12 children, their spouses, along with numerous family members and friends. The people of the State of Michigan and our Nation share the grief and the pride of those who lost a loved one aboard the shuttle.

When *Columbia* blasted off from the Kennedy Space Center at Cape Canaveral a few weeks ago, the astronauts aboard left earth in relative anonymity. In many ways this is a result of NASA's success: there have now been 144 manned space missions. Consequently, many have come to view spaceflight as routine.

However, the journey of exploration which they shared posed great risk. But the astronauts aboard *Columbia,* like those aboard *Challenger* and in *Apollo I* before them, understood those risks associated with their mission. Last Saturday, our Nation and the world once again received the ultimate and painful reminders that these are still our first steps into space. Nevertheless, space exploration will continue, for exploring our world and the heavens above has been a dream of humanity since long before the namesake of the *Columbia* set out across the Atlantic Ocean seeking a new route to India.

I am confident that in the coming months we will leave no stone unturned in the quest to find the causes of this catastrophe. I am sure the necessary changes will be made to safely transport the heroes of today and those of tomorrow.

A generation ago, the challenge of manned spaceflight inspired thousands

of students to pursue careers in math, science and engineering. We are still benefitting from the innovations that this generation is responsible for. By rededicating ourselves to spaceflight and the wonders of science, we can produce another generation that will tackle new challenges and inspire us with their discoveries.

I believe the comment of my friend and our former colleague John Glenn summarizes it best. Following the tragedy of the Space Shuttle *Challenger*, he remarked, ''they indeed carried our hopes and our dreams with them. Let us carry their memory with us.'' The men and women of the Space Shuttle *Columbia* carried with them the dreams of all of us and for that we thank them and hold them in our hearts.

Mr. ROCKEFELLER. Mr. President, this past Saturday, the world once again became painfully aware of the risks inherent in manned space travel. The *Columbia* tragedy has deeply wounded not only members of the NASA community, but also every American and indeed every person around the world who has ever looked up into the night sky and gazed in wonderment.

Of course, space exploration has always been a dangerous venture, and the seven astronauts who gave their lives on Saturday knew this full well and accepted their mission witout reservation. Their long dedication to public service and their willingness to sacrifice, even at the risk of their own lives, in pursuit of knowledge and the betterment of mankind should be celebrated. We honor these American heroes.

At the same time, all of our thoughts and prayers are with the families of the crew during this terrible and difficult time. May they know that every American is forever indebted to their loved ones for their bravery and devotion to the American space program.

As we sort out the causes of this tragedy over the next several months and years, however, we must not fear the exploration of outer space. We must strive to return to space as soon as possible, maybe with different means, maybe unmanned, until we can be most assured of improved safety, for the benefits of the space program are innumerable and irrefutable.

Because of research performed in outer space, people all over the world now benefit from, among other things, improved water and air purification systems, kidney dialysis machines, more efficient solar collectors, artificial hearts and limbs, improved emergency rescue equipment, and fire retardant materials, In fact, more than 100 documented NASA technologies from the space shuttle are now incorporated into the tools we use, the foods we eat, and the biotechnology and medicines used to improved our health.

In addition to these immense practical benefits, we must not forget the power of space flight to inspire and motivate that those who will eventually lead us in the future. In 1957, a group of six boys in my home State of West Virginia observed Sputnik flying high overhead and realized that rocketry was their calling in life. In the 45 years since, the group, now known as the Rocket Boys, has mad space exploration a reality for countless children and adults in West Virginia. Early space flight inspired them, and it inspired space education in West Virginia.

As a result of this inspiration, West Virginia is now the proud home of the NASA Independent Identification and Validation Center in Fairmont where 150 NASA employees and contractors play a critical role in space shuttle mission control software. Our State is also the proud home of the Challenger Learning Center at Wheeling Jesuit University which provides schoolchildren and teachers the chance to experience space simulation and many opportunities for math, science, and technology education.

It is easy to support the space program during times of great success and spectacular achievement. But it is perhaps during times of tragedy and confusion that the program needs our support the most. Just yesterday, President Bush expressed his support for the continuation of the space shuttle program, declaring that the ''American journey into space will go on.''

NASA's remaining astronaut corps, as well as their flight directors and engineers, embody the very same bravery and dedication as their fallen colleagues. It is now up to all of us to echo support for our space program so that this bravery is not wasted, so that the immense benefits of the space program, as well as future astronauts, can be safely brought back to Earth.

● Mr. GRAHAM of South Carolina. Mr. President, all Americans were saddened by the terrible tragedy last weekend involving the Space Shuttle *Columbia*. The world has lost seven incredibly talented people who were striving to make this a better planet for us all. Our hearts go out to the families of the astronauts. I hope God will provide them comfort and healing during this difficult time.

For decades, Americans have been proud of our space program and the brave men and women who have led our explorations in space travel. They have been pioneers seeking a better understanding of our own planet and what lies in the deep, dark expanse of space.

In the coming days and weeks our Nation will mourn for the astronauts of the Space Shuttle *Columbia* as well as the friends and families they left behind. We will also mourn for the thousands of dedicated workers at NASA who are suffering from this painful loss. We will take our time to carefully study and examine what went wrong and then we'll make the necessary corrections and adjustments.

At the appropriate time, we will once again move forward into new frontiers and new missions for space exploration. It is who we are. It is what we do. It is why we are Americans.●

Mr. KENNEDY. Mr. President, together, as a nation, we mourn the loss of the seven extraordinary men and women of the *Columbia* shuttle who gave their lives so unselfishly and courageously for our country. They knew the dangers they faced, but they believed in their mission, and they represent the very best of America.

We know the great loss their families and the whole Nation have suffered, and they are very much in our thoughts and prayers. They were daring and brave explorers. Their extraordinary spirit and courage enabled them to reach for the stars and explore the universe and discover its truths. In serving America so well, they also served all humanity.

The best way for all of us to honor the memory and sacrifice of these brave young men and women is to carry on the work they were part of. The tragedy reminds us again that those who venture into space place their own lives at risk as they try to benefit us all. We can vindicate their faith by keeping faith with them. Those whom we have just lost would be the first to say to us, ''persevere, go forward,'' because they were pioneers in the truest sense and in the greatest of American tradition. They were willing to take risks, even to risk their lives in order to benefit us all.

I know how deeply President Kennedy believed in the space program. He called it, ''the vast ocean of space,'' and he set our Nation firmly on a course to explore it, understand it, and use it in ways that help and protect us all. When America first embarked more than 40 years ago on the great voyage into space, President Kennedy said, ''It will not be one man going to the Moon: it will be an entire Nation.''

He knew that when we reach for the stars, sometimes we fall short. But as he knew so well, the mission must go on. He would have been very proud of these seven astronauts, as all of us are today. Let us honor these seven inspiring heroes by continuing the great enduring mission they were part of, for the benefit of our country, our planet, and all peoples everywhere.

As my brother said on November 21, 1963, the day before he left us, ''This Nation has tossed its cap over the wall of space, and we shall have no choice but to follow it.'' In the quintessential spirit of America, the crew of the *Columbia* have tossed their caps over that wall, too, and we shall never forget them.

I extend my deepest and heartfelt sympathy to the families who have so suddenly lost their loved ones. I ask unanimous consent to have printed in the RECORD an excerpt from President Kennedy's address to Congress on space in 1961, and the poem ''High Flight'' by John Gillespie Magee, Jr., which President Reagan read after the loss of the *Challenger* in 1986.

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

EXCERPT FROM ADDRESS OF PRESIDENT JOHN F. KENNEDY TO A SPECIAL JOINT SESSION OF CONGRESS (MAY 25, 1961)

. . . Now it is time to take longer strides—time for a great new American enterprise—time for this nation to take a clearly leading role in space achievement, which in many ways may hold the key to our future on earth.

I believe we possess all the resources and talents necessary. But the facts of the matter are that we have never made the national decisions or marshalled the national resources required for such leadership. We have never specified long-range goals on an urgent time schedule, or managed our resources and our time so as to insure their fulfillment.

Recognizing the head start obtained by the Soviets with their large rocket engines, which gives them many months of lead-time, and recognizing the likelihood that they will exploit this lead for some time to come in still more impressive success, we nevertheless are required to make new efforts on our own. For while we cannot guarantee that we shall one day be first, we can guarantee that any failure to make this effort will make us last. We take an additional risk by making it in full view of the world, but as shown by the feat of astronaut Shepard, this very risk enhances our stature when we are successful. But this is not merely a race. Space is open to us now; and our eagerness to share its meaning is not governed by the efforts of others. We go into space because whatever mankind must undertake, free men must fully share.

I therefore ask the Congress, above and beyond the increases I have earlier requested for space activities, to provide the funds which are needed to meet the following national goals:

First, I believe that this nation should commit itself to achieving the goal, before this decade is out, of landing a man on the moon and returning him safely to the earth. . . . But in a very real sense, it will not be one man going to the moon—if we make this judgment affirmatively, it will be an entire nation. For all of us must work to put him there . . .

HIGH FLIGHT

(By John Gillespie Magee, Jr.)

(Magee was a 19-year-old American volunteer with the Royal Canadian Air Force, who was killed in training December 11, 1941.)

Oh! I have slipped the surly bonds of Earth
And danced the skies on laughter-silvered wings;
Sunward I've climbed, and joined the tumbling mirth
Of sun-split clouds—and done a hundred things
You have not dreamed of—wheeled and soared and swung
High in the sunlight silence. Hov'ring there,
I've chased the shouting wind along, and flung
My eager craft through footless halls of air
Up, up the long, delirious, burning blue
I've topped the wind-swept heights with easy grace,
Where never lark, or even eagle, flew;
And, while with silent, lifting mind I've trod
The high untrespassed sanctity of space,
Put out my hand, and touched the face of God.

Mr. GRASSLEY. Mr. President. I rise today with a heavy heart to honor seven fallen astronauts, the adventurers aboard *Columbia*. On Saturday, February 1, after 16 days in space, their hero's homecoming abruptly turned into a national tragedy. As the space shuttle fell apart upon re-entry into Earth's atmosphere in the skies above Texas, the Nation once again fell into mourning.

Each of the seven astronauts leaves behind family and friends who now bear the burden of immense sorrow and grief. May they find peace in the days and years ahead. The loss of a spouse, father, mother, sibling, or child brings immeasurable anguish, especially under such tragic, public circumstances.

May they find comfort in the knowledge that their loved ones were pursuing their lifelong dreams. The dreams of individuals whose aspirations will benefit all of humanity. They leave behind for their children and grandchildren a legacy that will continue to inspire generations to come. The U.S. space program will continue. Their mission will not be forgotten.

In classrooms across America, Israel, India, and the world over, young impressionable minds can learn from these seven ambitious individuals the values inherent to the human spirit: courage, adventure, discipline, discovery, commitment, exploration, and risk-taking.

Each of the astronauts ought to be remembered in history for their willingness to risk it all in pursuit of scientific discovery. The *Columbia* crew carried out 90 experiments to help solve problems here on Earth, including science experiments developed by students from 9 States and 8 countries. Thanks to their selfless good work—ranging from tests developed to help fight cancer, improve crop yields, build earthquake-resistant buildings, and understand the effects of dust storms on weather—human civilization stands to gain from their labors above.

Like the explorers and frontiersman who traversed the unknown before them, these seven men and women responded to a similar calling. Their predecessors navigated uncharted territory by way of oceans and open prairie: Ferdinand Magellan. James Cook, Lewis and Clark. It is a timeless human quest to discover the undiscovered and to take risks.

These magnificent seven set out on heavenly horizons to explore, investigate, research, and navigate what for most of us Earth-bound folks will remain a mystery. We are indebted to their courage, commitment and contributions.

Mr. President, I wanted like to single out one member of the crew. One of seven U.S. astronauts with Iowa ties, Laurel Clark was born in Ames. She leaves behind some family members in Iowa, including her 96-year-old grandmother Mary Haviland and Doug and Betty Haviland, her aunt and uncle. For the second time in 16 months, Reverend and Mrs. Haviland are coming to grips with devastating grief. They also lost their son in the World Trade Center attacks on 9/11. Friends and family members recall Clark as a high-achiever committed to science and the space program. Last year, she visited an elementary school in Carroll, IA to educate a second-grade class about the space shuttle's mission. A wife and mother of an 8-year-old son, the 41-year-old Navy doctor was on her first space flight. In her e-mails from *Columbia*, Clark wrote about how ''glorious'' it was to see Earth from her position in space. May her loved ones find peace as she watches over them now from the heavens above. The necessary investigations are underway to discover what went so terribly wrong on that bright Saturday morning in February, just minutes before the crew's homecoming. May we fully ascertain what went wrong to bring closure to the loved ones left behind and avert another tragedy. Congress will need to continue strong oversight and consider NASA's budgeting needs to ensure an effective, efficient, and safe space program.

It is sadly ironic to consider that for many Americans, these highly-trained and dedicated astronauts would have remained to them anonymous if not for the tragedy that took their lives. Continuing and improving the space program would be the best way to honor the legacy of the fallen *Columbia* crew. Consider the discoveries waiting to be made in medicine, biology, physics, meteorology, and agro-sciences. Don't discount the advances already made in satellite communications and strategic military defense systems thanks to space exploration.

Four decades ago, the first American astronauts launched us into space. There is no turning back on destiny now.

Notwithstanding the loss of human life, I believe the *Columbia* crew, including Iowa-born Laurel Clark, would urge us to resume America's space odyssey and get back to the future.

Ms. CANTWELL. Mr. President, I rise today to honor the seven heroes lost in the tragic explosion of the space shuttle *Columbia* on February 1, 2003.

The seven members of the *Columbia* crew will be deeply missed by their families, NASA, our entire country, and others following this historic mission.

Though I could recite an astonishing list of accomplishments for each of the seven astronauts, their most important contribution was the example of bravery, courage, and excellence they set for men, women, and children across the land.

I am proud to say that one of these heroes, Air Force LTC Michael Anderson was a beloved son of the Spokane community and a cherished hero for men, women, and children in Washington. But Michael Anderson was a hero long before the accepted the challenge of the *Columbia* mission.

Lieutenant Colonel Anderson knew he wanted to be an astronaut at the early age of 3. This dream followed him to Washington, when he and his family

moved to the Spokane area at age 11 after his father was assigned to the nearby Fairchild Air Force Base.

Throughout his early education in Spokane area public schools, Anderson remained focused on his goal of being an astronaut, becoming an exceptional science student, and overcoming all of the challenges facing a young African-American man in this country.

He graduated from Cheney High School in Cheney, WA, in 1977 and continued his science education with a bachelor of science degree in physics/astronomy from the University of Washington in 1981, when he was also commissioned as a second lieutenant of the Air Force. Anderson later completed a master of science degree in physics from Creighton University in 1990.

After becoming an astronaut in 1994, Michael Anderson took to heart his responsibility as a role model for children around the country and back home. After his 1998 flight on the space shuttle *Endeavor* to the *Mir* Space Station, Anderson visited his alma mater, Cheney High School.

With a crowd of enthralled students listening on, Anderson told the students that they could do what he had done if they set goals and worked hard.

Anderson also left the students a reminder of his achievement, returning a school pennant that he had taken to space with him on the mission. On display in the school's main entrance, this pennant, along with a mission patch and small flag that also went into space, continues to serve as an inspiration to the school's students.

LTC Anderson is an amazing story of courage, achievement against many odds, and sacrifice for this country. He provided a demonstration of excellence and offered a triumphant example of accomplishment for Americans of all color, race, and background. He will be missed, but he will never be forgotten.

The Washington family has also lost another friend in Navy CDR Willie McCool, who made Anacortes, WA, his home during two terms of service at Naval Air Station Whidbey Island.

Commander McCool was not only well regarded during his time at Whidbey, but he continued his tie to the community after he left. Community members remember him for his kindness and professionalism and his love of children; he often returned to Fidalgo Elementary School to discuss his work as an astronaut.

We lost a good friend in Commander McCool and also lost a piece of home; he brought a bit of Anacortes with him on *Columbia* in the form of a Douglas fir cone from the surrounding forest.

Though the loss of this crew is a sober reminder of the risks involved with human space flight, I join the President and many of my fellow Members of Congress in calling for the continued support of NASA's space shuttle program.

Critically, this support, together with a continued investigation of this tragedy, must be focused on ensuring the safety of future space shuttle flights.

The space shuttle program remains a leading force in scientific research and in stimualting public interest in space exploration.

This leadership is exemplified by the numerous experiments conducted by the *Columbia* crew before the tragic reentry, and the interest of scientists, schoolchildren, and people worldwide.

The space shuttle is also critical for the assembly and operation of the International Space Station.

Importantly, the benefits of the experiments conducted on the space shuttle and the International Space Station extend beyond the scientific community to directly enhance the lives of individuals across the globe, whether in finding cures to diseases or helping us understand the origin of the universe.

While the tremendous technical and scientific accomplishments of NASA demonstrate vividly that humans can achieve previously inconceivable feats, the exploration of space also humbles us by exhibiting the miracle of this tiny ''blue marble'' in the cosmos and the wonder and preciousness of human life.

Mr. BROWNBACK. Mr. President, on January 16 the crew of STS–107 launched from Cape Canaveral, FL through the skies to space. They were sent on a mission to further space exploration and had the work of more than 70 international scientists onboard. The *Columbia* crew of seven had a research mission in the space, physical, and life sciences. After a nearly flawless mission, the world witnessed their tragic death as the *Columbia* Space shuttle shattered above the Earth upon its return on February 1.

As is well known now, this crew, doing the work of international scientists, were quite international themselves. The diverse group of human researchers spanned the globe, hailing home to the United States, India, and Israel. Each country celebrated in their own way their national heroes upon the launch of *Columbia*. But now, these countries join together in sharing our sorrows with each other in the aftermath of such a heartbreaking tragedy.

These people each brought something special to the mission of NASA. CDR Rick Husband first dreamed of being an astronaut at the age of 4 and worked throughout his life to become an astronaut, fulfilling his dream in 1994 when he was selected by NASA. Pilot Willie McCool was the most steady and dependable of men; his friends considered themselves blessed to know him. Payload CDR Michael Anderson always wanted to fly and along the way of achieving his goals, he became a role model for African-American children across the United States. David Brown, mission specialist, probably most accurately said what we believe now, that, ''This program will go on,'' no matter what happens. Kalpana Chawla traveled an arduous path to becoming an astronaut and represents so well the diversity aboard the *Columbia*. Born in India, she moved to the United States to fulfill her dream of reaching the stars. She has now done that and more. Laurel Clark was a physician and a flight surgeon who loved her work and her family. From aboard the shuttle Laurel said, ''Life continues in a lot of places and life is a magical thing.'' She could not have captured the feelings of so many any more accurately. Ilan Ramon, who brought so much attention and pride to this mission, was the first Israeli astronaut. The son of a Holocaust survivor, he brought with him aboard the shuttle a picture that a Jewish boy had drawn before he died in the Holocaust.

The diversity of this crew so accurately represents the diversity in the missions of NASA. Even through the cold war era and into today aboard the International Space Station, NASA has been a leader in international relations. Taking giant steps for mankind, NASA often times set the example for the rest of the world to follow. It is in that spirit that we sent the *Columbia* crew to do their work, and it is in that spirit that we will continue their work.

NASA has, from its inception, been charged with making the impossible possible. From the early days of the Mercury Program, through the advancements in Gemini and the triumphant successes of Apollo, NASA has given us a sense of national pride. Yet we mustn't let our pride fool us into thinking that NASA's work is commonplace. Each time a shuttle launches and a mission is accomplished, it is a miraculous, humbling event.

The mission of these seven astronauts did not end when the *Columbia* went down. No. Their mission will go on. Space exploration is in our blood, a part of our national heritage. Manned space flight will continue, and these heroes would want it to. We will move on with space exploration and we will do so with pride, ensuring that these seven lives were not lost in vain.

America is strong. She is steadfast. And she is brave. God has called these mothers, fathers, sons, and daughters, but we will not forget them. We will never forget the inspiration they gave to so many hopeful citizens on Earth. We must persevere and we must move on, for the honor of these seven fallen heroes.

As chairman of the Science, Technology, and Space Subcommittee here in the Senate, I plan to take an active role in ensuring that the dreams of these seven astronauts are not forgotten. As NASA determines what went so terribly wrong, we will be diligent in doing everything we can in the Congress to give NASA the support it needs to make sure we press forward with scientific advances, and that nothing like this happens again.

Our next step will be to determine what the future of space exploration holds for Americans—what our goal is

and how we get there. The tragedy that NASA is enduring will not dissuade or discourage America from venturing into space. Our commitment to space exploration is firm.

For the families of the seven, I send my prayers. As Psalm 19 states, ''The heavens declare the glory of God . . .''. The heavens are now declaring the glory of these seven heroes. There are seven more stars in the heavens tonight, and with each setting of the sun, the spirits of our seven heroes will shine brighter. Every time we look up into the starry night, we can remember the lives of the seven cherished heroes aboard the Space Shuttle *Columbia* and be proud, proud of their dedication, their diversity, and their dream.

I express my heartfelt sorrow and condolences to the families and friends of these seven astronauts. I will never forget the sacrifices they made in the name of exploration. May God bless them and their families.

Mr. KOHL. Mr. President, I rise today to honor the memory of Dr. Laurel Blair Salton Clark, one of the seven courageous astronauts tragically killed when the Space Shuttle *Columbia* disintegrated over Texas on Saturday, February 1.

Dr. Clark was born in 1961 in Ames, IA. She graduated in 1979 from Racine's William Horlick High School in Wisconsin. She received a bachelor's degree in zoology in 1983 and a doctorate in medicine in 1987 from the University of Wisconsin-Madison. Dr. Clark joined the Navy, in part to finance her college education.

A flight surgeon trained as a Navy undersea medical officer, Dr. Clark performed medical evacuations from submarines during assignment in Holy Loch, Scotland. She was assigned as a flight surgeon for a Marine Corps AV–8B Night Attack Harrier Squadron in Yuma, AZ, and for the Naval Flight Officer Advanced Training Squadron in Pensacola, FL. In April of 1996, Dr. Clark was selected by NASA, and she qualified for flight assignment as a mission specialist after completing 2 years of training and evaluation.

There were over 80 experiments conducted aboard *Columbia*, most dedicated to research investigating human physiology, fire suppression, drug delivery techniques, and space communication technology. The research conducted during the 16-day mission was sponsored by NASA and the European, Canadian, and German Space Agencies. Schools and universities around the world were involved in many of the experiments the crew performed in Spacehab, a facility which offers scientists access to microgravity aboard space shuttles.

Many have noted and applauded the diversity of the *Columbia's* crew, and Dr. Clark certainly hoped that the scientific experiments the crew conducted would benefit all mankind. In an e-mail sent to her family and friends on Friday, January 31, she spoke of feeling blessed to be representing the United States and ''carrying out the research of scientists around the world.''

Our thoughts and prayers are with Dr. Clark's 8-year-old son Ian and her husband Jonathan Clark. The loss of the space shuttle's crew is devastating, and my hope is that we can identify the cause of the *Columbia's* breakup and prevent such tragedies in the future.

Dr. Laurel Clark told her loved ones of the *Columbia* mission, ''magically, the very first day we flew over Lake Michigan and I saw Wind Point clearly.'' Speaking on behalf of Wisconsin, we are honored that she considered Racine her hometown. Today, we celebrate the brave contributions Dr. Laurel Blair Salton Clark made during her life and career, and we honor her memory throughout the Nation.

I yield the floor.

Ms. MIKULSKI. Mr President, I rise to speak today on the *Columbia* tragedy. On Saturday, February 1, our Nation suffered a tragic loss. The seven astronauts of the Space Shuttle *Columbia* gave their lives in service of their country and all mankind. These brave men and women displayed a dedication to duty and scientific exploration that is an inspiration to all of us. India and Israel share in our shock and grief. Israel lost a national hero, their nation's first astronaut, Colonel Ilan Ramon. My thoughts and prayers are with all the families. They should know that the United States Senate shares their sorrow and will remember and honor the lives of their loved ones.

The best way to honor these seven brave men and women is to move forward with the space program. But first, there needs to be a thorough, rigorous and candid investigation of what went wrong. The issues confronting us are immediate and severe. Three American astronauts remain in space. The two investigative committees must gather the evidence, conduct their analysis and report to the Congress and to the American people with candor so the shuttle program can move forward in the safest way possible.

In my years as chair of the Appropriations Subcommittee, and now as its ranking member, shuttle safety has been my top priority. But, shuttle safety and astronaut safety have also been the priority of the committee—on a bipartisan basis. When I first joined the committee, Senator Jake Garn of Utah—himself a former astronaut—was my mentor. We worked together using the findings of the Challenger and Augustine Commissions as blueprints for NASA's future. The Augustine report gave us guiding principles for a balanced space program. The *Challenger* report told us what we needed to do on safety. Now, with my friend and colleague, Senator KIT BOND, I share the same bipartisan spirit. We have common goals and common values. He believes, as I do, that safety must come first. Over the last few years, no matter which of us was chair and which was ranking, safety was the number one priority.

There has never been any question that we would fully fund the shuttle program and shuttle safety initiatives. Year after year, Senator BOND and I worked together to make sure everything that NASA asked for was put in the Federal checkbook. But, we went even farther than that. For the last two years, while I was chair, I wrote into the report language that NASA must make the safety of the shuttle program and the safety of our astronauts its highest priority. Last year, I said in the committee's report that NASA's budget must reflect its long-term challenges. I asked for a detailed assessment of the agency's needs and an accounting of what funding was needed.

The immediate need facing NASA is the *Columbia* investigation. This report addresses an immediate problem for which there are immediate and severe consequences. Then the long range issues must be addressed. What does NASA do about its aging infrastructure and aging workforce? How are we going to have a balanced 21st century space program that includes human flight, space science and aeronautics?

To conclude, I salute the men and women of Texas and Louisiana. The local law enforcement, national guard, regular men and women who live in these small towns—everyone is pitching in to find fragments of the *Columbia*, to guard them, to make sure every piece gets to the NASA investigators. People are opening their homes to volunteers, cooking and delivering meals. Thank you for everything you are doing. You represent the best of the American spirit. Like we have seen after other tragedies—the rescue workers and volunteers at ground zero—in the face of tragedy, America stands united.

Mr. LOTT. Mr. President, I take this time to express my grief, as well as the grief of all Mississippians, over the loss of the crew of the Space Shuttle *Columbia*. Mississippians feel a strong bond to both the space program and the crew of the *Columbia*. One reason for this bond is NASA's John C. Stennis Space Center. The Stennis Space Center, which is located in Hancock County, MS, tests every space shuttle's main engine before it is installed for a launch. Also, the Stennis Space Center's remote sensing experts are currently assisting NASA in locating debris from the *Columbia*.

Another reason Mississippians feel closely connected to the *Columbia* tragedy is that Robert and Barbara Anderson, the parents of LTC Michael Anderson, were both born in Mississippi. While Mr. and Mrs. Anderson now live in Spokane, WA, they still have family members who reside in Madison County, MS. While these ties to the space program and the crew of the *Columbia* provide Mississippians with a source of great honor and pride, now that tragedy has struck, these ties make the loss of the seven *Columbia* astronauts that much more personal.

The loss of the *Columbia* crew was truly a national tragedy. While the United States has been blessed with many outstanding natural resources, no one will ever convince me that our most valuable resource is anything other than the outstanding individuals this country produces. Our NASA astronauts are outstanding individuals who represent the best of the best.

While I am sure that many here are familiar with the type of outstanding personal achievement that is required to become an astronaut, I would like to take a moment to give a brief synopsis of the accomplishments of the seven crew members of the *Columbia* shuttle.

COL Rick Husband, commander. Rick Husband, 45, was a test pilot in the U.S. Air Force. He received a bachelor of science degree in mechanical engineering from Texas Tech University in 1980 and a master of science degree in mechanical engineering from California State University-Fresno in 1990. Husband had already completed a space mission as the pilot of STS–96 in 1999, on which the first docking with the International Space Station was performed. Rick Husband leaves a wife and two children behind.

CDR William C. McCool, pilot. William C. McCool, 41, served as a commander in the U.S. Navy and was also a former test pilot. In 1983, McCool received a bachelor of science degree in applied science from the U.S. Naval Academy, where he graduated second in his class. He later received a master of science degree in computer science from the University of Maryland in 1985 and a master of science degree in aeronautical engineering from the U.S. Naval Postgraduate School in 1992. This was William McCool's first space flight. He leaves behind a wife and three children.

LTC Michael P. Anderson, payload commander. Michael Anderson, 43, was a lieutenant colonel in the U.S. Air Force, where he served as an instructor pilot and tactical officer. Anderson received a bachelor of science degree in physics/astronomy from University of Washington in 1981 and a master of science degree in physics from Creighton University in 1990. Selected by NASA in December of 1994, Anderson flew on STS–89 in 1998 and has logged over 211 hours in space. Anderson leaves behind a wife and two daughters.

CAPT David M. Brown, mission specialist 1. David Brown, 46, was a captain in the U.S. Navy and served as a naval aviator and flight surgeon. Brown received a bachelor of science degree in biology from the College of William and Mary in 1978 and a doctorate in medicine from Eastern Virginia Medical School in 1982. This was Brown's first space flight.

Dr. Kalpana Chawla, mission specialist 2. Kalpana Chawla was an aerospace engineer and an FAA certified flight instructor. She received a bachelor of science degree in aeronautical engineering from India's Punjab Engineering College in 1982, a master of science degree in aerospace engineering from the University of Texas-Arlington in 1984, and a doctorate in aerospace engineering from the University of Colorado-Boulder in 1988. Chawla was the prime robotic arm operator on STS–87 in 1997 and had logged more than 376 hours in space prior to the *Columbia* flight. Chawla was the first Indian-born woman in space and leaves a husband behind.

CDR Laurel Blair Salton Clark, mission specialist 4. Laurel Clark, 41, was a commander in the U.S. Navy and a naval flight surgeon. She received a bachelor of science degree in zoology from the University of Wisconsin-Madison in 1983 and a doctorate in medicine from the same school in 1987. The *Columbia* flight was Clark's first space flight. She leaves behind a husband and an 8-year-old son.

COL Ilan Ramon, payload specialist 1. Ilan Ramon, 48, was a colonel in the Israeli Air Force. Ramon received a bachelor of science degree in electronics and computer engineering from the University of Tel Aviv in 1987. He served as a fighter pilot during the 1970s, 80s, and 90s and was a veteran of the Yom Kippur War in 1973, as well as the 1982 war in Lebanon. The *Columbia* flight was Ramon's first, and with it he became the first Israeli in space. He leaves behind a wife and four children.

As you can see, this group of individuals would stand out in any company, and it is right that the country should mourn their loss. And as the country mourns, it is especially important that we remember the friends and family of the lost astronauts. If just their accomplishments and dedication to their countries can cause whole nations to mourn, I can only imagine the grief of those who knew them personally and lost not only a national hero, but a friend, or spouse, or parent. I can only hope the knowledge that the thoughts and prayers of entire Nations are with them will provide some small comfort.

While our Nation grieves deeply for these men and women who have made the ultimate sacrifice in the name of their countries, we take solace in the fact that we will benefit immeasurably for years to come from their dedication and hard work. The crew of the *Columbia* surely represented the best of this world. They entered space not just as members of one nationality, race, or religion, but as fellow human beings. The crew members risked and ultimately sacrificed their lives, not for personal gain, but for the advancement of science and the betterment of humankind. It is for these reasons that I want to say thank you to COL Rick Husband, CDR William C. McCool, LTC Michael P. Anderson, CAPT David M. Brown, Dr. Kalpana Chawla, CDR Laurel Blair Salton Clark, COL Ilan Ramon, and all their friends and family who have shared in their sacrifice.

Mr. SARBANES. Mr. President, we are deeply saddened by Saturday's loss of seven astronauts as they returned from a 16-day voyage aboard the space shuttle *Columbia*. The tragic loss of the crew of mission STS–107 touches not only all Americans, but also many members of our larger, global community. As we honor the courageous men and women of the *Columbia* and mourn their loss, our thoughts and prayers are with their families and loved ones.

The seven men and women aboard the *Columbia* were truly a select group of explorers. They represented the vast range and distinction of our nation's skills and achievements; all had extensive training in various fields of scientific inquiry. At the same time, they represented America's finest aspirations. Diverse in their origins, they shared a dream of space travel, and they lived and worked together in a common spirit of cooperation, curiosity, and courage.

Michael Anderson, *Columbia*'s payload commander, spoke for all the crew when he said the following, in an interview appearing in the Baltimore Sun this past Sunday:

> I take the risk because I think what we're doing is really important. For me, it's the fact that what I'm doing can have great consequences and great benefits for everyone, for mankind.

Research was the primary mission of STS–107. The *Columbia* carried 32 payloads with material for 59 separate investigations. Among these payloads were student experiments from Australia, China, Israel, Japan, Liechtenstein, and the United States. State-of-the-art communications equipment allowed earthbound researchers and the global public to witness experiments as they were being performed. To make the most of their 16 short days in space, the seven astronauts worked in two shifts, around the clock. We have suffered the grievous loss of our astronauts. But the astronauts completed much of their mission.

We can honor the crew of mission STS–107, Colonel Rick D. Husband, Commander William McCool, Lieutenant Colonel Michael P. Anderson, Captain David M. Brown, Dr. Kalpana Chawla, Commander Laurel Blair Salton Clark, and Colonel Ilan Ramon, by rededicating ourselves anew to the mission they so vigorously embraced. We must have a prompt and thorough account of the events that brought down the *Columbia*, but we must not let our great sense of loss deter us from continuing their work. For more than forty years, the space program has played a vital role in our broader national research efforts. Our space explorations have led to scores of new discoveries, which have given us not only better insights into the universe but also a better understanding of the earth, and of life here on earth. We will remain forever grateful to the crew of the *Columbia* for the legacy they have left us, and the example they set.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I rise today to join my colleagues and the

country in remembering the seven brave crewmembers of the Space Shuttle *Columbia* who tragically lost their lives last Saturday morning, February 1, 2003.

Rick Husband, William McCool, Michael Anderson, Kalpana Chawla, David M. Brown, Laurel Blair Salton Clark, and Ilan Ramon gave their lives trying to expand our knowledge of science, advance our technology, and broaden the limits of our universe.

These seven courageous astronauts sacrificed their lives for our future. While this is a time of great sadness, it is also a time to take great pride in their achievements, their dedication, and their service to the Nation and to the world.

They were seven different people with various skills, many talents, and different backgrounds, and they all came to work together as a team. That is what most people believe America should be like: working together as a team to accomplish something greater than themselves. They could have had very comfortable jobs somewhere else, but they chose to risk their lives for the country. They have not only found a place in our hearts, but they have found a place in our imagination also because, for me, they represent what this country is all about. They came together. They came from modest circumstances. They used the power of education to prepare themselves not just for personal success but to contribute to the Nation and to contribute to the world. They exemplify the best of this Nation.

They understood that great accomplishment and great achievement bring great risk. They knew this, yet they valiantly accepted, in the name of science and exploration, all the risks. It is important we pay tribute to them and acknowledge the risks our astronauts take with every mission.

We tend to take these risks for granted and forget the extreme conditions and pressures these brave men and women face and will face in the future. In honor of the crew of *Columbia*, we must not take these risks for granted any longer.

In their honor, we must pledge to continue the peaceful exploration of space. We have forged international partnerships. We have been able to share the pride of an international space station. We must continue to fund NASA, continue our space programs, and continue in the tradition of American and human accomplishment.

Later this year, we will celebrate the 100th anniversary of the Wright brothers' monumental 59-second flight on December 17, 1903. That flight forever changed the world. Fifty-four years later, we were able to put a man in space.

The process of innovation and exploration must go on, and America must play its traditional significant, historic role.

We have in our process from the sands of Kitty Hawk to the stretches of the Moon experienced powerful joy and monumental success, and yet we have faced tremendous setbacks and extreme sorrow. But we have persevered, and we have continued our missions into the heavens.

From our colleague John Glenn and Allan Shepherd to Neil Armstrong to an international space station, and from the crew of *Challenger* and the crew of *Columbia*, we must continue to challenge ourselves as they challenged themselves. We must continue to better ourselves as a nation and continue to grow.

President Kennedy challenged America to send a man to the Moon. We have met that challenge and have gone far beyond.

As we continue with future missions, we must never forget these seven brave souls. They gave the ultimate sacrifice for a noble cause. My deepest condolences go out to their families and the Nation that mourns them and the country of Israel that mourns its lost astronaut. This is a time for mourning, but we must shortly move on and continue to run the great risks they took, in their memory, so we can build upon their sacrifice, so we continue to reach for the heavens and beyond.

I yield the floor and 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. ENSIGN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RECESS

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Senate stand in recess for the policy lunches and that it reconvene at 2:15 p.m.

There being no objection, the Senate, at 12:27 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mrs. DOLE).

COMMEMORATING THE ''COLUMBIA'' ASTRONAUTS—Continued

The PRESIDING OFFICER. There are now 5 minutes evenly divided.

Mrs. HUTCHISON. I yield 1½ minutes to Senator BENNETT from Utah.

Mr. BENNETT. Madam President, all that needs to be said has been said by the President and others about the shuttle disaster. I simply note the people of Utah are particularly distressed, not only with the human tragedy that affects all Americans but because the space program is very close to the hearts of all Utahans.

My predecessor in the Senate, Jake Garn, was an astronaut on the shuttle. The Jake Garn Space Center at Utah State University is named after the Senator. The schoolchildren of Utah assembled project ''Star Shine,'' which was a school science project that was carried into space by the shuttle. So all Utahans join in expressing our condolences to the families, and our determination that space exploration by this country will nonetheless still go forward.

Mrs. HUTCHISON. Madam President, Senator NELSON and I attended, along with many other Senators, the beautiful service yesterday honoring these brave astronauts that we now know so much more about. Today the Senate is commemorating these *Columbia* astronauts and reconfirming the importance to our country that space research has been and will continue to be.

In the resolution we talk about U.S. Air Force COL Rick Husband, the mission commander, who was from Texas; U.S. Navy commander, William Willie McCool, the pilot; U.S. Air Force LTC Michael Anderson, payload commander, mission specialist; U.S. Navy CAPT David Brown, mission specialist; U.S. Navy commander Laurel Blair Salton Clark, mission specialist; Dr. Kalpana Chawla, mission specialist; and Israeli Air Force COL Ilan Ramon, payload specialist. They were killed in the line of duty. The Senate is honoring them today.

Debris has been recovered in 38 counties of my State, spreading over a surface area of 28,000 square miles, an area the size of West Virginia. The Space Shuttle *Columbia* broke up 40 miles above the ground.

It is my honor to cosponsor this resolution with Senator NELSON, the only Member of the Senate who has actually been on a manned space flight, and Senator Glenn, of course, before him. He has been a great resource on the committee.

Before turning it over to Senator NELSON of Florida, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Madam President, how much time remains in the debate?

The PRESIDING OFFICER. The Senator has 2½ minutes.

Mr. NELSON of Florida. Madam President, it is with sadness that I rise to join my colleague from Texas to support this resolution. So many of our colleagues have joined us. We thank you very much for joining us yesterday as we went to the space center in Houston.

This is a resolution that not only talks about the past, and about bravery, but it talks about the future. It talks not only about honoring the legacy and the lives and the sacrifice of these brave souls but also about fulfilling America's destiny as a nation of explorers and adventurers.

This resolution is about the vision that ignites the heart of almost every American, to think that we are pushing back the frontier. As we developed

this country, we used to push westward. That was our frontier. Now we push upward and explore the heavens.

I urge our colleagues to join Senator HUTCHISON and me in supporting this resolution.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the resolution. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Kentucky (Mr. MCCONNELL) is necessarily absent.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM), the Senator from Iowa (Mr. HARKIN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that if present and voting the Senator from Florida (Mr. GRAHAM), the Senator from Iowa (Mr. HARKIN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Georgia (Mr. MILLER) would each vote Aye.

The PRESIDING OFFICER. Are there any other Senators in the chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 30 Leg.]

YEAS—95

Akaka	DeWine	Lincoln
Alexander	Dodd	Lott
Allard	Dole	Lugar
Allen	Domenici	McCain
Baucus	Dorgan	Mikulski
Bayh	Durbin	Murkowski
Bennett	Edwards	Murray
Biden	Ensign	Nelson (FL)
Bingaman	Enzi	Nelson (NE)
Bond	Feingold	Nickles
Boxer	Feinstein	Pryor
Breaux	Fitzgerald	Reed
Brownback	Frist	Reid
Bunning	Graham (SC)	Roberts
Burns	Grassley	Rockefeller
Byrd	Gregg	Santorum
Campbell	Hagel	Sarbanes
Cantwell	Hatch	Schumer
Carper	Hollings	Sessions
Chafee	Hutchison	Shelby
Chambliss	Inhofe	Smith
Clinton	Inouye	Snowe
Cochran	Jeffords	Specter
Coleman	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kerry	Sununu
Cornyn	Kohl	Talent
Corzine	Kyl	Thomas
Craig	Landrieu	Voinovich
Crapo	Leahy	Warner
Daschle	Levin	Wyden
Dayton	Lieberman	

NOT VOTING—5

Graham FL	Lautenberg	Miller
Harkin	McConnell	

The resolution (S. Res. 45) was agreed to.

The preamble was agreed to.

The PRESIDING OFFICER. The majority leader.

MOMENT OF SILENCE

Mr. FRIST. Madam President, in response to the resolution, I ask unanimous consent that we have a moment of silence, here and in the Galleries as well, out of respect for the astronauts, their families, and the much larger NASA community who are mourning as we speak. A moment of silence, please.

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

(The Senate observed a moment of silence.)

Mr. FRIST. Thank you.

The PRESIDING OFFICER. The majority leader.

ORDER OF BUSINESS

Mr. FRIST. Madam President, we will now be proceeding to the Estrada nomination. To my colleagues, I simply report that a little bit later in the day we will be announcing whether or not there will be further votes today. Later today, in our wrap-up, we will talk about the plans for tomorrow and on Monday, but I would suspect we will be in session tomorrow morning until approximately noon and that we will be in session on Monday.

It is important that we have the debate and discussion that will begin shortly on this particular nomination which is very important to this body and to the country. We anticipate a very good discussion as we go forward. It will be active and we want to give plenty of opportunity for both sides to be heard as we proceed to debate.

EXECUTIVE SESSION

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

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

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

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I am pleased that we have finally gotten to consider the nomination of Miguel Estrada to preside on the United States Court of Appeals for the District of Columbia Circuit, which has been pending before the Senate since May 9, 2001. I strongly support this nomination, and I hope we can vote on it soon. Also, I should say that I truly hope that news reports are inaccurate about efforts by my colleagues on the other side of the aisle to engage in a filibuster of this nominee in an effort to deny him a vote by the full Senate. To defeat this nominee in this manner would be unprecedented and a real shame for this body.

As many of us who are familiar with Mr. Estrada know, he represents a true American success story. His story can make us all proud to be members of this country, make us proud of our country. Born in Tegucigalpa, Honduras, his parents divorced when he was only 4 years old. Mr. Estrada remained in Honduras with his father while his sister emigrated to the United States with his mother. Years later, as a teenager, Mr. Estrada joined his mother in the United States. Although he had taken English classes during school in Honduras, he actually spoke very little English when he immigrated. He nevertheless taught himself the language well enough to earn a B- in his first college English course. In a matter of years, he not only perfected his English skills, but he exceeded the achievements of many persons for whom English is their native tongue. He graduated magna cum laude and Phi Beta Kappa in 1983 from Columbia College, then magna cum laude in 1986 from Harvard Law School, where he was editor of the Harvard Law Review. Those are really difficult achievements.

Mr. Estrada's professional career has been marked by one success after another. He clerked for Second Circuit Judge Amalya Kearse a Carter appointee—then Supreme Court Justice Anthony Kennedy. He worked as an associate at the law firm of Wachtell Lipton in New York City, one of the great law firms of this country. He then worked as a Federal prosecutor in Manhattan, rising to become deputy chief of the appellate division. In recognition of his appellate skills, in spite of the fact that he has a speech handicap, he was hired by the Solicitor General's Office during the first Bush administration. He stayed with the Solicitor General's Office for most of the Clinton administration. When he left that Office, he joined the Washington, DC, office of Gibson, Dunn & Crutcher, where he has continued to excel as a partner. And everybody knows that the law firm of Gibson, Dunn & Crutcher is one of the great law firms of this country.

Most lawyers are held in high esteem if they have argued even one case before the Supreme Court. Mr. Estrada has argued 15 cases before the States Supreme Court. This is an impressive accomplishment by any standard, but it is particularly remarkable when you take two additional factors into consideration. First, as I have noted, English is not Mr. Estrada's native language. He has nevertheless mastered it to such a degree that he is considered to be one of the foremost appellate lawyers in our country. Second, his oral argument skills are even more extraordinary because, as I have mentioned, he has worked to overcome a speech impediment.

Despite this disability, Mr. Estrada has risen to the top of the ranks of oral advocates nationwide. People all over this country have admiration for him.

The legal bar's wide regard for Mr. Estrada is reflected in his evaluation

by the American Bar Association. The American Bar Association evaluates judicial nominees based on their professional qualifications, their integrity, their professional competence, and their judicial temperament. They do not have an official role in the confirmation process, but Senate Democrats did identify the group's evaluations last year as the ''gold standard.''

They ask judges who have heard a nominee argue cases, lawyers on the other side of cases, and hundreds of lawyers with whom the nominee has worked. They also ask neighbors and friends and other critics, people who have axes to grind. They really go into a lot of things, but mainly with people in the profession.

Based on its exhaustive assessment of these factors, the ABA has bestowed upon Mr. Estrada its highest rating of unanimously well qualified. That is high praise indeed.

I have to say, as one who has been critical of the American Bar Association and their evaluation process in the past, in recent years I think they have been doing an excellent job. We are gaining by the work they are doing.

In the past I have seen them as a partisan organization that was not fair to Republican nominees, at least to some Republican nominees. But I don't find that bias any longer. I want to praise the American Bar Association for it.

I take the time to offer up this brief recitation of Mr. Estrada's personal and professional history because I think it illustrates that he is in fact far from some rightwing idealogue that some of the usual opposition groups have portrayed him to be. He clerked for Judge Kearse, a Carter appointee; then Justice Kennedy, a moderate by any standard. He joined the Solicitor General's office and stayed on through much of the Clinton administration. His supporters include a host of well-respected Clinton administration lawyers, including Ron Klain, former Vice President Gore's chief of staff and a former staffer on the Senate Judiciary Committee, a man we all respect; Robert Litt, head of the criminal division in the Reno Justice Department or the Clinton Justice Department; Randolph Moss, former assistant Attorney General; and Seth Waxman, former Solicitor General in the Clinton administration. All of these people are people we respect, we admire, all of them are Democrats, and all of them have been Democrat leaders, and all of them have had an awful lot of influence with the Senate Judiciary Committee and the Senate itself through the years.

Mr. Klain's letter to the committee in support of Mr. Estrada is particularly insightful. He wrote:

> Mr. Estrada will bring an independent streak to his judging, that may serve to surprise those who nominated him—and I think will give every litigant, from any point of view, a fair chance to persuade Mr. Estrada of the rightness of his or her case.

Another letter from more than a dozen of Mr. Estrada's former colleagues at the Solicitor General's office states that:

> . . . he is a person whose conduct is characterized by the utmost integrity and scrupulous fairness, as befits a nominee to the federal bench.

I ask unanimous consent to print a copy of these letters in the RECORD.

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

O'MELVENY & MYERS LLP,
Washington, DC, January 16, 2002.

Hon. PATRICK LEAHY,
Chairman, U.S. Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: When we talked recently, I told you that I was supporting the nomination of Miguel Estrada to be a Judge of the U.S. Court of Appeals for the District of Columbia Circuit. Given that I did not have, at that time, a chance to explain the basis for my position in depth, I thought I might put my views in writing for your consideration.

At the outset, let me be clear that I write this letter with mixed emotions. Not mixed emotions about Miguel: if President Bush is to fill this seat on the D.C. Circuit, I believe Miguel is an outstanding candidate who merits confirmation. Rather, I think it is unfortunate that this vacancy exists at all due to the Senate's failure to confirm two outstanding, and well-qualified candidates for this court nominated by President Clinton. In this case, that unfairness is particularly ironic, as I met both Elena Kagan—President Clinton's nominee for this position—and Miguel Estrada—President Bush's nominee—when we were all law students. The federal judiciary would be better off if the Senate had confirmed Professor Kagan last year—and then, with a subsequent vacancy arising during the Bush administration, Mr. Estrada were nominated and confirmed. But unfortunately, that is not the way that things worked out.

That said, I would hope that Miguel Estrada would gain your support for confirmation this year. I believe that Miguel is a person of outstanding character, tremendous intellect, and with a deep commitment to the faithful application of precedent. I have known Miguel for 15 years, and have seen him in a variety of contexts and circumstances. Though Miguel is politically conservative, I support his confirmation for three reasons that go beyond those factors that are obvious on their face; i.e., three reasons that go beyond his outstanding credentials, his intellect, and his incredible record of achievement as a lawyer.

First, Miguel is a serious lawyer who takes the law very seriously. Yes, Miguel has passionate views about legal policy and can be a strong advocate in a debate. But I have no doubt that, on the bench, Miguel will faithfully apply the precedents of his court, and the Supreme Court, without regard to his personal views or his political perspectives. His belief in the rule of law, in a limited judiciary, and in the separation of powers is too strong for him to act otherwise. He will not be one of those ''conservatives'' who gives speeches about judicial restraint, but then becomes an unabashed judicial activist on the bench. He will do his job as the law, the Constitution, and his duty requires. I do not think we can ask more of a judge on an intermediate appellate court.

Second, Miguel will rule justly toward all, without showing favor to any group or individual. When I worked on the Judiciary Committee staff, one of your colleagues once said to me, ''Adversity in youth can affect potential judges one of two ways: it can make them compassionate towards those in need—feeling empathy for their plight—or it can make them cold-hearted—feeling as if 'I made it without help, so you can, too.'" Miguel is one of those individuals who falls firmly in the first category: the challenges that he has overcome in his life have made him genuinely compassionate, genuinely concerned for others, and genuinely devoted to helping those in need. In the political arena, Miguel favors very different policies than you and I do to achieve these ends. But his commitment to them is without question—and the fact that he would bring this commitment with him to the bench, in the dispensation of justice to all, is also without question. Those without means or without advantage will get a fair hearing from Miguel Estrada.

Third, Miguel will bring an independent streak to this judging, that may serve to surprise those who have nominated him—and I think will give every litigant, from any point of view, a fair chance to persuade Miguel of the rightness of his or her case. Make no mistake about it, Miguel is conservative, and in cases where those sorts of labels matter, is more likely to rule ''that way'' than the judges nominated to the D.C. Circuit by President Clinton. Miguel Estrada will not be ''the David Souter'' of the D.C. Circuit. But I do think that Miguel will be more independent, more open-minded, more likely to ''break ranks'' than other potential nominees of this conservative President. Miguel is a rigorous skeptic—and I have seen him be as skeptical about conservative shibboleths as liberal ones. He will ask tough questions of both sides, and give both sides a chance to win him over. This powerful intellectual quality is not unhinged from a compassion for people—rather, it is harnessed by Miguel in service of that compassion. It is a quality that will make Miguel a very fair judge.

In closing, I appreciate your consideration of this letter and the views expressed here. I wish you the best in trying to untangle the difficult mess that the confirmation process has become. And I hope you will see fit to support Miguel Estrada's confirmation when the Committee acts on that nomination.

With best wishes,

Sincerely,

RONALD A. KLAIN,
O'Melveny & Myers LLP.

SEPTEMBER 19, 2002.

Re nomination of Miguel A. Estrada.

Hon. PATRICK J. LEAHY,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, U.S. Senate, Washington, DC.

Hon. ORRIN G. HATCH,
Ranking Member, Senate Committee on the Judiciary, Dirksen Senate Office Building, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND SENATOR HATCH: We are writing to express our support for the nomination of Miguel A. Estrada to be a Judge of the United States Court of Appeals for the District of Columbia Circuit. We served with Mr. Estrada in the Office of the Solicitor General, and we know him to be a person of exceptional intellect, integrity, and professionalism who would make a superb Circuit Judge.

Miguel is a brilliant lawyer, with an extraordinary capacity for articulate and incisive legal analysis and a commanding knowledge of and appreciation for the law. Moreover, he is a person whose conduct is characterized by the utmost integrity and scrupulous fairness, as befits a nominee to the federal bench. In addition, Miguel has a deep and abiding love for his adopted country and

the principles for which it stands, and in particular for the rule of law. We hold varying ideological views and affiliations that range across the political spectrum, but we are unanimous in our conviction that Miguel would be a fair and honest judge who would decide cases in accordance with the applicable legal principles and precedents, not on the basis of personal preferences or political viewpoints.

We also know Miguel to be a delightful and charming colleague, someone who can engage in open, honest, and respectful discussion of legal issues with others, regardless of their ideological perspectives. Based on our experience as his colleagues in the Solicitor General's office, we are confident that he possesses the temperament, character, and qualities of fairness and respect necessary to be an exemplary judge. In combination, Miguel's exceptional legal ability and talent, his character and integrity, and his deep and varied experiences as a public servant and in private practice make him an excellent candidate for service on the federal bench.

We hope this information will be of assistance to the Committee in its consideration of Mr. Estrada's nomination. He is superbly qualified to be a Circuit Judge for the District of Columbia Circuit, and we urge your favorable consideration of his nomination.

Very truly yours,

Thomas G. Hungar, Gibson, Dunn & Crutcher LLP; Richard P. Bress, Latham & Watkins; Edward C. DuMont, Wilmer, Cutler & Pickering; Paul A. Engelmayer, Esq., Wilmer, Cutler & Pickering; David C. Frederick, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.; William K. Kelley, Notre Dame Law School; Paul J. Larkin, Jr., 1314 Cleveland Street; Maureen E. Mahoney, Latham & Watkins; Ronald J. Mann, Roy F. & Jean Humphrey Proffitt Research Professor of Law, University of Michigan Law School; John F. Manning, Columbia Law School; Jonathan E. Nuechterlein, Wilmer, Cutler & Pickering; Richard H. Seamon, Associate Professor, University of South Carolina; Amy L. Wax, Professor of Law, University of Pennsylvania Law School; Christopher J. Wright, Harris, Wiltshire & Grannis LLP.

Mr. HATCH. Mr. Estrada's supporters are not limited to prominent and well-connected Democrats and Republicans. We heard during his confirmation proceedings or hearings about Mr. Estrada's pro bono efforts before the Supreme Court to overturn the conviction of death row inmate Tommy David Strickler. His cocounsel in that case, Barbara Hartung, wrote the committee that Mr. Estrada:

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

Again, that is high praise from Barbara Hartung.

Another letter in support of Mr. Estrada came from Leonard Joy, attorney in charge of the Legal Aid Society, Federal Defender Division in New York City, which is the community defender organization appointed to represent indigent defendants in Federal court at the trial and appellate levels. Mr. Joy, who frequently represented defendants whom Mr. Estrada prosecuted while he was an assistant U.S. Attorney, wrote that:

He clearly was one of the smartest attorneys in the office which prides itself in attracting the best and the brightest. Yet throughout he was eminently practical in the judgments he made and he had a down-to-earth approach to his cases. I found him to be a fair and straightforward prosecutor who did not treat defendants unduly harshly.

It is fair to say that all lawyers in my office liked him. Many of them are liberal in their politics and it is a credit to Mr. Estrada that he was able to get along with people who may have had different views than he.

Mr. HATCH. The letters the committee has received from lawyers who know Mr. Estrada both personally and professionally depict him as a brilliant yet fair attorney who is willing to listen to both sides of an issue before making a decision. Inherent in this description is the necessary conclusion that Mr. Estrada is not an idealogue but instead shows great respect for persons with divergent viewpoints. Indeed, as I noted at the hearing, Mr. Estrada placed phone calls to my office to support the confirmation of two Clinton judicial nominees: Adalberto Jose Jordan, who was confirmed to the Southern District of Florida, and Elena Kagan, nominated for the DC circuit.

Beyond the letters of support we have received for Mr. Estrada, the cases he has taken on as an attorney illustrate his commitment to following the law instead of imposing any political agenda. I know that the issue of reproductive choice is one that is very important to many of my Democratic colleagues, although it is one on which we disagree. I am not sure how many of them saw the portion of the hearing when Mr. Estrada was asked about his work on the NOW—National Organization for Women—case for the Clinton administration. Even if you assume that Mr. Estrada is pro-life as a matter of politics, which even I do not know, that representation illustrates his ability to put aside his personal convictions and follow the law as a good jurist has to do.

In addition, on the NOW web site there is an article by Vera Haller of Women's E-news. Although this article criticizes several of President Bush's judicial nominees—unfairly, in my view—but that is a different story—it applauds the selection of Mr. Estrada, noting that ''[h]is presence on the list . . . was seen by some as a sign that President Bush hoped to avoid contentious confirmation battles in the Senate.''

I want to take a moment at the outset here to address a couple of issues that we are sure to hear more about as the discussion of Mr. Estrada's nomination progresses.

First, Mr. Estrada has been unfairly criticized by some for declining to answer questions at his hearing about whether particular Supreme Court cases were correctly decided. Lloyd Cutler, who was White House Counsel to both President Carter and President Clinton, put it best when he testified before a Judiciary Committee subcommittee in 2001. He said, ''Candidates should decline to reply when efforts are made to find out how they would decide a particular case.'' He further explained, ''What is most important is the appointment of judges who are learned in the law, who are conscientious in their work ethic, and who possess what lawyers describe as 'judicial temperament.'' Mr. Estrada's academic achievement, his professional accomplishments, and the letters of support we have received from his colleague all indicate that Mr. Estrada fits this description and deserves our vote of confirmation.

Second, several opponents of Mr. Estrada have attempted to block his confirmation by demanding that the Department of Justice release internal memoranda he authored while he was an assistant to the Solicitor General in the Solicitor General's office. First, it is important to note that Mr. Estrada told the committee that he does not object to the release of these documents. He is, rightfully, proud of his legal work. But there is a larger institutional problem. What the opponents of Mr. Estrada, or those who are continuing to demand these documents, apparently ignore is the fact that all seven living former Solicitors General—four Democrats and three Republicans—oppose this request. Their letter to the committee explains that the open exchange of ideas upon which they relied as Solicitors General ''simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure.'' These seven former Solicitors General—four Democrats, three Republicans—concluded that ''any attempt to intrude into the Office's highly privileged deliberations would come at a cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself.''

The Wall Street Journal and the Washington Post have also criticized attempts to obtain these memoranda—and they should. The seven former Solicitors General of the United States are right, and their wise counsel should be followed.

I ask unanimous consent that the letter of the Solicitors General, as well as the Wall Street Journal and Washington Post editorials, be printed in the RECORD.

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

WILMER, CUTLER & PICKERING,
Washington, DC, June 24, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to express our concern about your recent request that the Department of Justice turn over ''appeal recommendations, certiorari recommendations, and amicus recommendations'' that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of the Solicitor General—under Presidents of both parties—we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review of adverse appellate decisions, and whether to participate as amicus curiae in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these and other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

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

Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Sincerely,

On behalf of: Seth P. Waxman, Walter Dellinger, Drew S. Days, III, Kenneth W. Starr, Charles Fried, Robert H. Bork, Archibald Cox.

[From the Washington Post, May 28, 2002]

NOT FAIR GAME

Senate Judiciary Committee Chairman Patrick Leahy (D–Vt.) recently sought a series of internal Justice Department memos in connection with the judicial nomination of Miguel Estrada. Mr. Estrada, whom President Bush has named to the D.C. Circuit Court of Appeals, is a conservative who served as a staff attorney in the Office of the Solicitor General, mostly during the Clinton administration. Although his former colleagues there generally speak highly of him, one, a man named Paul Bender, has suggested publicly that Mr. Estrada's conservatism would corrupt his judicial work. Apparently to see if Mr. Estrada's paper trail within the office would support this suggestion, Sen. Leahy has requested all of Mr. Estrada's written recommendations to the office concerning whether cases should be appealed and what positions the government should take as a friend of the court. Such a request for an attorney's work product would be unthinkable if the work had been done for a private client. The legal advice by a line attorney for the federal government is not fair game either.

The desire to evaluate Mr. Estrada's performance is understandable, and the problem of how to explore a nominee's views is not trivial. Mr. Estrada has no significant record of public statements or controversial writings, yet despite scant evidence, liberal groups are convinced that he threatens values they hold dear. Like most nominees, however, Mr. Estrada likely will decline to discuss specific issues that might come before him as a judge. So there is no good way of exploring whether he would respect and apply precedent faithfully or engage in judicial policymaking.

That said, there are plenty of bad ways, and few involve greater institutional risk for the Justice Department than letting appeals memos become fodder for wars about nominations. Particularly in elite government offices such as that of the solicitor general, lawyers need to be able to speak freely without worrying that the positions they are advocating today will be used against them if they ever get nominated for some other position. Says Walter Dellinger, one of President Clinton's solicitors general and one of Mr. Estrada's bosses in the office: ''It would be very destructive of all of the purposes served by the attorney-client privilege to have attorneys in the solicitor general's office looking over their shoulders when they write memos.'' It is also needlessly destructive. A broad range of Clinton-era Justice Department political appointees are perfectly capable of describing Mr. Estrada's role at the solicitor general's office.

On several occasions in recent years, Congress recklessly has gone after work by line attorneys at the Justice Department. Importing these excesses into the confirmation process is a terrible idea. After a year of investigating, liberal activists have not been able to find much on Mr. Estrada, and the unfortunate result seems to be a fishing expedition. But there's no logical end to it. Mr. Estrada once clerked for Justice Anthony Kennedy, and it is perfectly possible that he made comments in some of his memos there that the Judiciary Committee might find interesting as well. Why not ask for those? There are some ponds in which activists—and Senators—should not fish.

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

THE ESTRADA GAMBIT

Senate Judiciary Chairman Patrick Leahy keeps saying he's assessing judicial nominees on the merits, with political influence. So why does he keep getting caught with someone else's fingerprints on his press releases?

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

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

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

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

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

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

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

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

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

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

We report all of this because it reveals just how poison judicial politics have become, and how the Senate is perverting its advise and consent power. Yesterday the Judiciary

Committee finally confirmed a Bush nominee, but only after Republican Arlen Specter went to extraordinary lengths to help fellow Pennsylvanian Brooks Smith.

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

[From the Wall Street Journal, June 11, 2002]

NO JUDICIAL FISHING

Senate Judiciary Chairman Patrick Leahy has just received the answer to his outrageous request for the private decision memos written by judicial nominee Miguel Estrada: No fishing now, or ever.

Last month Mr. Leahy followed orders from liberal interest groups (as reported in Legal Times) to ask the Department of Justice for all of the appeal recommendations, certiorari recommendations and amicus recommendations that Mr. Estrada worked on while at the Clinton-era Solicitor General's office.

Internal deliberations are highly confidential documents, protected by executive privilege. No White House would disclose them, and sure enough, the Bush Administration has now quickly refused to do so. Assistant Attorney General Daniel Bryant wrote Mr. Leahy last week that future Assistant Solicitors General would be ''chilled'' from providing ''the candid and independent analysis that is essential to high-level decision-making.''

The Justice Department ''cannot function properly if our attorneys write these kinds of documents with one eye focused on the effect that their words, if made public, might have on their qualifications for future office,'' he added.

This is no surprise to anyone, certainly not to Mr. Leahy and his liberal minders. Their goal here is delay, trying to put off the day when Mr. Estrada takes a seat on the D.C. Circuit Court of Appeals, from which President Bush could promote him to become the first Hispanic-American on the U.S. Supreme Court. Mr. Estrada was nominated 13 months ago and hasn't even had a hearing yet.

In the meantime, the D.C. Circuit, like the federal judiciary overall, faces a severe vacancy crisis; four of its 12 seats are vacant. Mr. Leahy's ideological petulance grows more costly by the day.

Mr. HATCH. Madam President, let me say this to colleagues who insist upon seeking internal memoranda Mr. Estrada wrote during his tenure at the SG's office. During the last Congress, the Senate confirmed Jonathan Adelstein, whom I fully support, to an important position on the FCC. Mr. Adelstein is a former aide to the distinguished minority leader, but the Republicans did not demand all of Mr. Adelstein's memoranda to Senator DASCHLE on telecommunications issues before confirming him. This is despite the fact that such memoranda probably could have been useful in determining how Mr. Adelstein would have approached his decisions as a commissioner. The reason we did not seek them was because of the obvious: To do so would have intruded into the deliberative relationship between Mr. Adelstein and Senator DASCHLE. This would have been an inappropriate intrusion, as all of the Solicitors General, including President Clinton's Solicitors, have warned of the Judiciary Committee's request, regardless of how valuable the memoranda would have been in deciding whether to support Mr. Adelstein.

Along the same lines, I must note the American public would probably find insightful the internal memoranda written to any of my colleagues in the Senate by their staff. How would we feel about that? Do we think we would get the most candid advice if our top counsel knew their private advice is not really private? Let's get real here.

These misguided efforts should not prevent our confirmation of a highly qualified nominee who has pledged to be fair and impartial, and to uphold the law regardless of his personal convictions. I have no doubt Mr. Estrada will be one of the most brilliant Federal appellate judges of our time. This is a picture of Miguel Estrada, who was found by the American Bar Association—unanimously—well qualified, the highest rating given to any judicial nominee. I have no doubt Mr. Estrada will be one of the most brilliant Federal appellate judges of our time, and I urge every Member of this body to join me in voting to confirm him.

Madam President, let me say just a few more things about the significance of this nomination. There have been many people who have been waiting for the confirmation vote on this nominee, 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.

It was no small matter that at our hearing for Mr. Estrada, we had in the audience the Honorable Mario Canahuati, the Ambassador of Honduras to the United States. The Honduran community in this country, though centered in Louisiana, is scattered throughout the U.S., from North Carolina to New York to California.

We welcomed also to our hearing the leaders of the many Hispanic communities and organizations in the U.S. who came to express support for this nomination.

In this context, I want to make a general comment on judicial confirmations. 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 have been 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 well paid, special interest liberal lobbyists in Washington, and a few other diehards.

It seems to me the only way to make sense of the advise and consent role 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, qualifications, or inability to follow the law are evident.

As Alexander Hamilton recorded for us, the Senate's task of advise 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. Let me say this again. Such political efforts would threaten one of the cornerstones of this country's unique success—an independent judiciary.

Let's not take my advice here, let's listen to Presidents Carter and Clinton's White House counsel, Lloyd Cutler, a person, though we disagree on many issues, for whom I have the highest regard and always have. He is a terrific human being and a wonderful lawyer, one of the best who has ever served his country.

Moreover, these are not just my views, this is our Anglo-American judicial tradition. It is reflected in everything that marks a good judge, not the 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 no Senator would invite a nominee to breach this code of ethics, and it worries me that we are coming close, and that we now appear to complain that a nominee does not breach the code when we ask him to. I can honestly say I fear that we are getting to or crossing over dangerous lines here I have not witnessed in my 27 years in the U.S. Senate.

As I have indicated by reciting his stellar record, Miguel Estrada's nomination is before us today because it deserves to be here under any standard that any disinterested person could devise. He is qualified for the position for which President Bush has nominated him. I know it, and after our debate, I think the American people will know it as well.

But notwithstanding all of Mr. Estrada's hard work and unanimous rating of highly qualified by the ABA, he has been subjected, so far, to a pinata confirmation process with which we have all become very familiar. The extreme left-wing Washington groups go after judicial nominees like kids after a pinata. And it is not specific to Mr. Estrada. They beat it and they beat it until 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 to us, so they now

say that we simply do not know enough about Mr. Estrada to confirm him. And that is after more than 640 days of delay.

Well, it is not that we do not know enough. We had a full-day hearing, conducted by Senator SCHUMER. It was a full hearing. I commend him for conducting and allowing all Senators the opportunity to ask any and all questions they wished to ask. I believe that was last September. Mr. Estrada's nomination has been pending before us for almost 2 years. We know as much about Mr. Estrada as we have known about any nominee. Their complaint is that we know all there is and the usual characters haven't found anything to distort.

But surely we should not expect to hear it suggested today that Mr. Estrada doesn't have enough judicial experience. Only 3 of the 18 judges appointed to the DC circuit by Democrats since President Carter had any prior judicial experience before their nominations.

These include Ruth Bader Ginsburg and Abner Mikva to select two. 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 wish 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 nomination 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 Latinos 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. Miguel Estrada's success can make each of us love this country all the more.

In fact, I have never seen any Hispanic nominee whose nomination has so resonated with the Latino community, except for the partisans—the partisan Democrats.

As I said earlier, Miguel Estrada was born in 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 fullblooded Hispanic. This is the most embarrassing tactic used against this nominee. I wonder if we would tolerate saying of a woman nominee that because of this or that, she is not really a woman, or of a male nominee that because he is this or that, he is not fully a man. We would not tolerate that here, and I do not think we should tolerate it in the case of Miguel Estrada.

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 Republicans and Democrats—I have tried to achieve greater inclusion of Hispanics in the Federal Government. I have worked hard to do that. I love the Hispanic people. They know it.

I am concerned by the obstacles they face. I fear that some Democrats are creating a new intellectual glass ceiling for Hispanics. If they do not think a certain liberal way that they do, then they are not good enough for upward mobility and advancement.

Let me say that again. If they do not think a certain liberal way that they do, then they are not good enough for upward mobility and advancement. That is wrong, and this body should not perpetuate that.

Many liberals in this town fear that there could be role models for Hispanics that might be moderate to conservative—despite the fact that polls show that the great majority of Hispanics are conservative. But surely, the advancement of an entire people should not be dependent on one party being in power.

This past year 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, but I doubt it.

The best expression of this outrage was shown just last week by Congressman Herman Badillo in an article in the Wall Street Journal.

I ask unanimous consent that this article be printed in the RECORD.

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

[From the Wall Street Journal, Jan. 30, 2003]

QUÉ PASA, CHUCK?

(By Herman Badillo)

NEW YORK.—Nothing makes Democrats more frenzied than when a Hispanic or African-American goes off the reservation. Witness now the opposition that the Puerto Rican Legal Defense Fund and the usual Washington special interests are giving Miguel Estrada, the young Honduran immigrant-turned-New Yorker that President Bush has nominated to the D.C. Circuit Court of Appeals.

Congressional Democrats have gone so far as to say that Mr. Estrada is a Hispanic ''in name only.''

But if their behavior is outrageous it is also par for the course. Half of the Democrats' energy lately seems focused on corraling the nation's two largest minority groups into an intellectual ghetto. The vitriol we saw most famously directed at Clarence Thomas, and more recently at Condoleezza Rice, demands that blacks and Hispanics toe a political line to have their success acknowledged by their own community.

When confirmed by the Senate, Miguel Estrada, a brilliant lawyer with extraordinary credentials, will be the first Hispanic on the second most prestigious court in the land. He will be a role model not just for Hispanics, but for all immigrants and their children. His is the great American success story.

But his confirmation by the Senate will come no thanks to Chuck Schumer, his home-state senator. Mr. Schumer has thrown every old booby-trap in Mr., Estrada's way, and invented a few new ones just for him. When the Senate held a hearing for Mr. Estrada last year, Mr. Estrada's mother told Mr. Schumer that she had voted for him and hoped that he would return the favor. He hasn't yet.

It is hard to blame Democrats of course. They know how their bread is buttered and by whom—the monied special interest groups that have made a profitable business of opposing the nominations of President Bush. The Hispanic groups that shun Mr. Estrada, including the Congressional Hispanic Caucus, which announced its opposition to his nomination last September, are a different matter. They should be ashamed of themselves.

Sen. Orrin Hatch (R., Utah), who heads both the Senate Judiciary and the Senate Republican Hispanic Task Force, put it well when he said that these liberal Hispanic groups ''have sold out the aspirations of their people just to sit around schmoozing with the Washington power elite.''

Mr. Schumer's one-man campaign against Mr. Estrada has grown tiresome too. Despite the rebuke of every living U.S. solicitor general of both parties dating back four decades, Mr. Schumer continues to make irresponsible demands, never made before for a non-Hispanic nominee, and insists on making backhanded and unfounded insinuations about Mr. Estrada's career and temperament. This treatment of Mr. Estrada is demeaning and unfair, not only to the nominee but also to the confirmation process and the integrity of the Senate.

Mr. Schumer's petulance ignores Mr. Estrada's qualifications, intellect, judgment, bipartisan support, and that he received a unanimous ''well qualified'' rating—the highest possible rating—from the American Bar Association. The liberal Hispanic groups that challenge Mr. Estrada's personal identity as a Hispanic ignore his support by nonpartisan Hispanic organizations, such as the Hispanic National Bar Association, the League of United Latin American Citizens, and the U.S. Hispanic Chamber of Commerce.

Mr. Schumer and his colleagues are fond of speaking about the need for ''diversity'' on the courts. Apparently that talk does not extend to President Bush's nominees, since the confirmation of Mr. Estrada would provide just such diversity on this important court. It is past time that Mr. Schumer put an end to his embarrassing grandstanding on Mr. Estrada's nomination.

One would think that a New York senator would know that, whether Puerto Rican, Dominican or Honduran, Hispanics are most

united in one thing—the pride we take in our advancement as Americans regardless of where we started. One suspects that Mr. Schumer may learn this lesson yet, and that Miguel Estrada's name is one that Charles Schumer will hear repeated when he runs for re-election all too soon.

Mr. HATCH. Mr. Badillo served four terms as a Democrat in the House of Representatives, as Deputy Mayor of New York City under Mayor Koch, as Bronx President and as Board Chairman of the City University of New York. He is the best known Hispanic public leader in New York State with five decades of public service to show for his efforts.

Mr. Badillo had this to say about how Mr. Estrada has been treated:

[It is] demeaning and unfair, not only to the nominee but also to the confirmation process and the integrity of the Senate.

Mr. Badillo notes that Mr. Estrada has had demands placed on him ''never made before for a non-Hispanic nominee.''

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

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

Congressman Herman Badillo said it well—in fact, he said it beautifully:

[W]hether Puerto Rican, Dominican or Honduran, Hispanics are most united in one thing the pride we take in our advancement as Americans regardless of where we started.

In fact, that is true for all of us.

It seems to me that 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. That is what I have come to call and deplore as the ''intellectual glass ceiling.''

I have news for those engaging in this: Hispanic Americans—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. People who are demanding that all Hispanics should fit into one mold ought to be ashamed of themselves. They have sold out the aspirations of their people just to sit around schmoozing with Washington's liberal power elite.

Let's be clear, these liberal groups are only two or three in number, and they are basically surrogates for the Democrat Party. 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.

Like President Bush—I have the same feelings—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 wish to address one last thing. I noticed that the very liberal Puerto Rican Legal Defense Fund issued a report just last spring, arguing that there were too few Hispanics on the bench and challenging the Bush administration to nominate more.

I noticed, however, that they never mentioned Miguel Estrada's nomination. In fact, though they address all the other federal circuit courts, the DC Circuit Court for which Mr. Estrada is nominated is oddly missing from their analysis arguing for more Hispanic nominations.

In this respect, I want to commend President Bush. He has already sent us 9 since he began, and we expect by the end of this week to have altogether 12 well-qualified Hispanic nominees. At this rate, if he has 8 years to serve, President Bush will have nominated close to 40 Hispanic-American judges. This will be more than any other President before him, Democrat or Republican. Already, as this chart indicates, President Bush has a greater percentage of Hispanic nominations than any President before him.

Nevertheless, I too am concerned about the few Hispanic judges we have, especially given that Hispanics are now the largest minority group in America. And I am concerned by the obstacles they face. Congressman Badillo, himself a former Democrat, describes it this way: ''Nothing'' he says, makes some people ''more frenzied than when Hispanics and African Americans go off the reservation.'' I hope that he is not talking about any Senators here.

Finally, I ask unanimous consent to have printed in the RECORD an editorial by The Washington Post that expresses their support for Mr. Estrada.

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

[From the Washington Post, Sept. 29, 2002]

EXPLOITING ESTRADA

It is hard to image a worse parody of a judicial confirmation process than the unfolding drama of Miguel Estrada's nomination to the U.S. Court of Appeals for the D.C. Circuit. Opponents of Mr. Estrada, a well-regarded appellate lawyer who served a stint in the solicitor general's office, are convinced that the young, conservative Hispanic represents a grave threat to the republic. Yet Mr. Estrada has not done his foes the courtesy of leaving a lengthy paper trail of contentious statements. And this creates something of a problem for those bent on keeping him off the bench: There is no sound basis on which to oppose him. Mr. Estrada's other problem is that the White House does not merely want credit for appointing a first-rate lawyer to an important court but wants to use Mr. Estrada, who had a hearing last week before the Senate Judiciary Committee, to curry favor with Hispanic voters. As a result, Mr. Estradas' nomination has been turned into a political slugfest and discussed in the crudest of ethnic terms.

On one side of this degrading spectacle, Mr. Estrada's opponents question whether he is Hispanic enough, whether a middle-class Honduran immigrant who came to the Untied States to go to college can represent the concerns of ''real'' Latinos. The Puerto Rican Legal Defense and Education Fund, for example, complains that his ''life experiences [have not] resembled . . . those of Latinos who have experienced discrimination or struggled with poverty, indifference, or unfairness.'' Such distasteful ethnic loyalty tests have no place in the discussion. Yet on the other side, Republicans have reduced Mr. Estrada to a kind of Horatio Alger story. White House counsel Alberto R. Gonzales, in an article on the opposite page on Thursday, described him as ''an inspiration to Hispanics and to all Americans.'' But Mr. Estrada has not been nominated to the post of inspiration but that of judge. Both sides should remember that there is no Hispanic manner of deciding cases.

Lost in all of this is a highly qualified lawyer named Miguel Estrada. Democrats have suggested opposing him because of general concerns about the partisan ''balance'' on the D.C. Circuit or because they don't know enough about his views to trust him. They also continue to fish for dirt on him. Sen. Charles E. Schumer (D–NY.) grilled him at his hearing about questions that have been raised anonymously concerning his aid to Justice Anthony M. Kennedy in picking clerks. And Democrats are still pushing to

see confidential memos Mr. Estrada wrote in the solicitor general's office and trumpeting criticism of him by a single supervisor in that office—criticism that has been discredited by that same colleague's written evaluations.

Seeking Mr. Estrada's work product as a government lawyer is beyond any reasonable inquiry into what sort of judge he would be. Nor is it fair to reject someone as a judge because that person's decision to practice law, rather than write articles or engage in politics, makes his views more opaque. And its is terribly wrong to demand that Mr. Estrada answer charges to which nobody is willing to attach his or her name.

Democrats have a legitimate grievance concerning the D.C. Circuit: Two excellent nominees of the previous administration were never acted upon by Senate Republicans. The White House is wrong to ignore this issue and does so at its peril. But the answer is not attacks on high-quality Bush administration nominees such as Mr. Estrada. At the end of the day, Mr. Estrada must be considered on his merits. His confirmation is an easy call.

Mr. HATCH. As one editorial puts it, his nomination is ''an easy call.''

The Post was right to point out that we who support Miguel Estrada should not do so simply because he is a Hispanic. As the Post points out there is no particularly ''Hispanic manner of deciding cases.'' They reject the diversity argument.

I agree, and as I indicated Mr. Estrada has an exemplary record as a magna cum laude of both Columbia University and Harvard Law School graduate, and his extraordinary record of public service, including 15 cases argued before the Supreme Court. This record has not been met by many of the nominees of either party over the 27 years I have been here.

In addressing why he was before us at his hearing I did not say anything about confirming Miguel Estrada because he is Hispanic. I did not have to make that argument because, as The Post points out, his record makes his confirmation ''an easy call.''

But this fact should not diminish the pride, that I have addressed, that Miguel Estrada's supporters have in the compelling story of a young immigrant who arrives from Honduras at age 17 and rises to be nominated to the second most prestigious court in the land. This is a pride I hope we can all share, Democrats and Republicans, when this Senate confirms him. It is a non-partisan pride.

I disagree with The Post, however, to the extent they minimize the significance of confirming a well-qualified Hispanic.

Confirming minority candidates, provided they are also well-qualified as Mr. Estrada is, is a positive good, in and of itself. It is important to raise role models in high office for young Hispanics in this country, indeed for all immigrants, provided they are otherwise well qualified or as in Miguel Estrada's case—unanimously well-qualified. Now, I will take a second with another chart because it is important to go through his qualifications. These are only a few qualifications, but they are very important.

Miguel Estrada not qualified? Give me a break. My friends on the other side have said the American Bar Association is the gold standard. I think the way they are doing it now is probably true. ABA rating: Unanimously well qualified.

He argued 15 cases before the U.S. Supreme Court, winning most of them; Columbia and Harvard Law, graduated magna cum laud; editor of the Harvard Law Review—there are a lot of lawyers in this body; I doubt if many have been editors of law reviews—law clerk for U.S. Supreme Court Justice Kennedy; assistant solicitor general for President Bush 1 and President Clinton.

Those are very important qualifications. There are not many who come before this body who have been confirmed, even to the prestigious Circuit Court of Appeals for the District of Columbia, that can match Miguel Estrada.

I believe he handled himself well before the committee, although some on the other side do not. Be that as it may, Miguel does work very hard with the speech impediment he has had all his life. In spite of that handicap or disability, he has argued 15 cases before the U.S. Supreme Court. It has been hardly a disability to him. He is a terrific human being. He is a very upright person. He is an example to all of what we can achieve in this great land. He certainly deserves confirmation by this body. I hope we can do that within a reasonable period of time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. I ask unanimous consent the call of the quorum be dispensed.

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

Mr. LEAHY. Madam President, notwithstanding the misleading charts of my good friend from Utah—we will get to the numbers—there is an easy number for everyone to remember. There are 10 Hispanics on the circuit court of appeals today. Eight were nominated by President Clinton. There would actually be 13 on the circuit courts of appeals today except the Republican leadership in the last couple of Congresses blocked three of President Clinton's nominees for the court of appeals. President Clinton does have, by far, the record of having successfully appointed the highest number of Hispanics for circuit courts of appeals of either President of either party. As I said, it would be even larger if the Republican Party had not refused votes in committee on three nominations.

Madam President, in the wake of the tragic events of this week, all Americans are grieving with the families of the crew of the Space Shuttle *Columbia* and with the entire NASA community. The President acknowledged that loss with a prayerful statement Saturday afternoon and with his presence, and his eloquent words yesterday in Houston were joined by a number of Senators of both parties. Our Nation mourns the loss of another crew, the crew of the Black Hawk helicopter that went down east of Baghram Afghanistan last Thursday.

Both were connected to important national missions, one the scientific quest into space, and the other part of the continuing struggle to secure Afghanistan from those who have made it a haven for international terrorism. These actions remind us all of the courage and sacrifice of those who serve the Nation in our armed services and on the frontiers of space. This week the Nation mourns, and much of the world grieves with us.

This morning, Secretary of State Powell spoke to the Security Council of the United Nations on the situation in Iraq as the administration moves forward with preparations for war, war that appears now inevitable. We know how precious to their families are each of the members of the Reserves and Armed Forces who may be about to take assignments in harm's way. In light of all these events, this week is really a poor time for the leadership of the Senate and the administration to force the Senate into an extended debate on the administration's controversial, divisive plan to pack the Federal court with activists. I had hoped the administration and the Republican leadership would reconsider that plan and the timing of this debate. I know the Democratic leader raised the matter with the Republican leadership. I thank Senator DASCHLE for having done so.

I thought the Senate was right to begin the week with unanimous Senate action on S. Res. 41, commemorating the devotion and regretting the fate of the *Columbia* space shuttle mission. Both the Republican leader and Democratic leader joined to put together that resolution. I commend both of them for doing it.

In fact, memorials are taking place around the country this week, in our hometowns and small towns, as well as the one in Houston yesterday, and here at the National Cathedral in Washington tomorrow, at Cape Canaveral in Florida, and elsewhere. Of course, there are memorials in other countries affected, especially Israel and India.

So this is not the time I would have chosen for this debate. The Senate should be finding matters of consensus on which we can all work together in unity in these difficult days of grieving. It would be good, just for once, to have things that could unite us rather than things that divide us.

Under Democratic Senate leadership in the difficult days following the terrorist attacks of 9/11, that is what we did. We joined together, Democrats and Republicans alike. We worked hard to

put aside divisive issues. We focused exclusively on what America needed most in the aftermath of those attacks. I recall how hard some of us devoted ourselves to what became the USA Patriot Act; the hours, the days, the weeks we spent trying to forge consensus.

We also saw how the administration worked to demean that bipartisanship, and how during the election season it denigrated the work of Democrats trying to help the security of this country and began, once again, to divide, not unite.

It would be good to see national leaders in national campaigns seek to unite us and not to divide us. But it has been sometime since we have seen that.

So in the new 108th Congress, as we begin this initial nominations debate in the Senate Chamber, we see an emboldened executive branch wielding its rising influence over both Houses of Congress, and ever more determined to pack the Federal courts with activist allies, to turn this independent judiciary into a political judiciary.

That would be one of the greatest tragedies this Nation could face. Throughout the world, when people come to America they look at our Federal judiciary and say: This is a truly independent judiciary. Shouldn't we be working to do that?

In upholding our constitutional oath, shouldn't we, as Senators, be doing that? Shouldn't whoever is President be doing that?

I recall when the Soviet Union collapsed, Members of the new Russian Duma came here to the United States to see how we do it in a democracy. I recall sitting in my conference room with a number of people. I remember the Members of the Duma coming to my office. There were those who were going to have to oversee the new judiciary. One of the things that struck me is one of them said: We have heard that there are instances where American citizens go into a court and they bring suit against the American Government. Is that true?

I said: Yes, it happens all the time.

They said: We have also heard there were times when Americans bring suit against their Government and the individual citizen wins, the Government loses.

I said: That happens all the time.

And they said: You don't replace the judges if they rule with one of the citizens and rule against the U.S. Government?

I said: If the U.S. Government is in the wrong, of course they do, that's their duty. That is what we mean by judicial independence. That is how the same American citizen could come in on another issue and lose. The fact is, American citizens can come into our Federal courts and know they are going to be independent. They are going to know it doesn't make any difference whether they are Republicans or Democrats, whether they are rich or poor, no matter what their color, no matter what their religion, no matter whether they are liberal, conservative, moderate, or whatever part of the country they are from, when they go to the Federal courts they can see they are independent.

Now, in this attempt to change the ideology of all the Federal courts into one narrow ideological strata, we see a attempt not to unite Americans but to divide them. But worse than that, because these are lifetime appointments, we see an attempt to irrevocably damage the integrity and the independence of the Federal judiciary.

With unprecedented speed—certainly unprecedented in the last 15 or 20 years—the Democratic-controlled Senate moved through and, in 17 months, confirmed 100 of President Bush's nominees. The vast majority of them were conservative Republicans, and I voted for almost all of them because I thought, having listened to them, at least we knew enough about them to know that they could be impartial on the bench. There were some we did not take up because it was so obvious from their statements that they were there to take a political, ideological view. Then we find some, of course, who will not tell us at all what they are there for.

The fundamental checks and balances of our Federal system are at risk of being sacrificed to a one-party rule with the coequal branches of our Government collapsing into one.

The Senate should not abandon its critical role. I wish more people—I wish 100 Members of the Senate—would sit down and read history books and determine how we got here and what our advice and consent rule is. Look at the fact that even President George Washington had judges who were turned down by the Senate at that time.

This is a great institution. I have given 29 years of my life here. It is the main place of checks and balances in our Federal Government, especially when it comes to advising and consenting to appointees. We are not talking about an appointment to an assistant secretaryship, or administratorship somewhere in a job that may last for a couple of years, important though it may be; we are talking about lifetime appointments, appointments of judges who will be there long after all of us have left.

Defending and upholding the Constitution is what we Senators are sworn to do. I can remember every time I walked down the aisle of this Senate and up to the Presiding Officer and raised my hand to take my oath of office to begin another 6-year term. I can remember each one of those times as though it was in crystal, as though time stopped, because what I remember is not the fact that I have become a Senator again, or that my family may be in the Gallery, or that my friends are happy. What I remember is I am taking a very awesome oath. This oath says that I will uphold the Constitution, and I will uphold my duties as a U.S. Senator—not as a Democrat or as a Republican, and not even as a Vermonter but as a U.S. Senator. We are a nation of 275 million Americans. Only 100 of us get the opportunity to represent this country at any given time. And it is an awesome responsibility.

I see the administration trying to pack the Federal court with activists. I take that very seriously. I have voted against nominees of Republican Presidents and of Democratic Presidents if I believed it would not be upholding my duties as a Senator to vote for them. But, unfortunately, this debate will be contentious, and it may be split largely along party lines.

Already, Republicans have charged those who have spoken or voted against this nomination as motivated by racism. I do not know any racist in this body in either party, and I resent the fact that some Republicans have said those who have voted against this nominee in the committee were motivated by racism. There are none in this body.

The Associated Press reports that Republicans, last Thursday, charged those who opposed this nomination of doing so ''because of ethnicity'' and with wanting ''to smear anyone who would be a positive role model for Hispanics.'' Those who made such statements should begin this debate by withdrawing those statements and disavowing that divisive rhetoric.

It is wrong for anybody to be declaring that Members of this body in either party are racists. I think it is wrong what has happened here.

Those who have done so should apologize to Democratic Senators on the Judiciary Committee who voted against this nomination, and also to the Hispanic leaders—very respected Hispanic leaders—in this country who showed the courage to examine this nomination, and, having examined the nomination of Mr. Estrada, decided to oppose it.

Last year, some Republicans made an outrageous and slanderous charge that religious bigotry motivated votes by the Democrats on the Senate Judiciary Committee—even going so far as to say no Christians should get a vote, and basically made it very clear because there are four Catholics and four Jews on that committee. As one of those Catholics, I resent that, and I resent that more than anything I have heard in 29 years in the U.S. Senate. We have not seen that outrageous and slanderous charge withdrawn.

Again, I have never met a Senator in either party who showed religious bigotry. But I have heard Senators accuse Democratic members of the Senate Judiciary Committee of that. It is wrong. It is absolutely wrong—and just as wrong to say if you vote against somebody it is out of racism. That is wrong.

I have voted on thousands upon thousands of nominees for Presidents of both parties. For most of them I had

absolutely no idea what their race or religion was. And when I did, it never once entered into my thought. It may cause fundraising letters or cheap applause lines when speaking to different groups, but I must admit as a member of a religious minority that I find that it is something which I resent greatly.

I had hoped the administration and the Republican leadership would not do something so controversial and divisive with this nomination—not with all this Nation has gone through and continues to go through, with the tragedy of last weekend, and not knowing that we are coming to the final decision on going to war.

Just as the President has, once again, chosen to divide rather than unite by sending controversial judicial nominations in an effort to pack the courts, the Republican leadership in the Senate has chosen this time to force that controversy forward.

I made efforts over the last 2 years to try to work with the White House to confirm and appoint judges to the judicial vacancies, including a very large number of vacancies that are there because Republicans refused to allow a vote on nominations by President Clinton—moderate nominations by President Clinton. The vacancies remain year after year after year because the Senate does not allow a vote on the nominee.

As I said, during the last 17 months of the last Congress under Democratic leadership, the Senate confirmed 100 of President Bush's judicial nominees. Actually during that time, even though the Republicans were in charge for 6 months, they did not confirm a single one of President Bush's judicial nominees—but Democrats did, 100 of them. We worked at a rate almost twice that averaged during the preceding years when a Republican-led Senate was considering nominees of a Democratic President.

Consensus nominees were considered first and relatively quickly. Controversial nominees took more time but we considered many of them as well.

The last judicial nominee considered by the Senate last December was from the neighboring State of the distinguished Presiding Officer, Judge Dennis Shedd of South Carolina. Judge Shedd's nomination was chiefly supported by Senator Strom Thurmond. Despite his record—and certainly a record with which I disagree—in civil rights cases and his record on the bench, we proceeded. His record raised serious concerns among many—especially among African Americans living in the Fourth Circuit and across the Nation. But we brought the nominee forward. I do recall when we did that some Republicans said it would bring adversity to the bench. I am not sure what they meant by that. But we brought it forward, nonetheless, as I had agreed to. The Senate vote was 55 to 44 to confirm him.

Shortly thereafter, the Nation and the Senate were confronted by the controversy over the remarks of the former Republican leader, and people openly speculated whether the President would renominate that Senator's choice, Judge Charles Pickering. The nomination was defeated in our committee.

I do not know of any precedent for a President renominating a judicial nominee who was voted on and rejected by the Judiciary Committee. Yet this President has chosen to renominate—to go against precedent—both Judge Pickering and Justice Priscilla Owen, who both had been voted on by the Judiciary Committee and whose nominations were rejected last year.

I am over the fact that we haven't seen them on the agenda, in case Senators have second thoughts. But we will see. But now we have a different nomination before the Senate.

As I have said for some time, the Senate and the American people deserve to have an adequate record and strong confidence about the type of judge Mr. Estrada would be in order to support a favorable vote on this nomination. But we don't have that in the sparse record before the Senate on his nomination to the second highest court of the land, and as a Senator I certainly don't have confidence to support this nomination when basically all I can say about him is he is a pleasant person to be with. We have seen different sort of constantly changing biographies of him in the press—all impressive, whichever one is the latest one being used. But what I want to know is what is he going to be like in a court? You have to be concerned. Will he be an activist on the DC court?

Throughout our earlier proceedings, I repeatedly urged Mr. Estrada and the administration to be more forthcoming—certainly to be forthcoming at least to the extent that the five previous administrations I served with have been. But neither the nominee nor the administration has shown any interest—any interest whatsoever—in being more forthcoming.

So what do we have? We have before us for consideration a nominee with no judicial experience, and little relevant practical experience related to the jurisdiction of this court. He counts Justice Scalia, Kenneth Starr, and Ted Olson among his friends and mentors, but any information about how his decisionmaking would go or what he thinks is not there.

The Senator from New York, Mr. SCHUMER, asked him: Well, we are not going to ask you about a case that may actually be before the court. Senator SCHUMER said: We are not going to ask you how you would vote on the WorldCom case because that may well be there. But if you look at Supreme Court cases, for example, can you name any you disagree with? And that was just to get some idea of what he thinks. He asked him: Can you name any cases you disagree with? And he could not.

Even if you did not want to look at some very recent cases, I would think somebody would think of a case, such as the Dred Scott decision, or Plessy v. Ferguson. These are a couple cases that would come to mind that you might disagree with. I certainly would disagree with the court upholding, what everybody now realizes is unconstitutional, the locking up of Japanese Americans during World War II, the locking up of loyal American citizens absent any due process just because of where their ancestors came from, which was upheld by a very political Supreme Court. I could have disagreed with that.

There has to have been some cases—over all these years. Upholding slavery? Upholding separate but equal? Upholding the internment of Americans for no other reason than the color of their skin and where their parents or grandparents came from? That was a softball toss. We are not even going to be allowed to know what he thinks about that. Maybe he thinks those were good cases. But if that is the case, then say they are good cases, which actually is what he did. He said there were none he disagreed with.

So you have to think that maybe one of the reasons for the controversy over Mr. Estrada is because he appears to have been groomed to be an activist appellate judge and groomed by well-connected, ideologically driven legal activists.

For example, those who he declares are his friends—you can have friends whenever you want. I have friends who range across the political spectrum. But I think I also would be willing to state what my political philosophy is, or certainly what my judicial philosophy is if I am going to ask for a lifetime appointment to the bench, just as I have to state what my political philosophy is when I ask the people of Vermont to elect or reelect me.

Last week, the Congressional Hispanic Caucus and the Congressional Black Caucus restated their concerns, and the Puerto Rican Legal Defense and Education Fund, the Mexican American Legal Defense and Education Fund, and the Southwest Voter Registration and Education Project reiterated their concerns.

Some of the most respected Latino labor leaders, including Maria Elena Durazo of HEAR, Arturo S. Rodriguez of the UFW, Miguel Contreras of L.A. County Fed., Cristina Vazquez of UNITE, and Eliseo Medina of SEIU have indicated their strong opposition to this nomination.

Let me quote from the letter from Antonia Hernandez and Antonio Gonzalez:

> As a community, we recognize the importance of the judiciary, as it is the branch to which we have turned to seek protection when, because of our limited political power, we are not able to secure and protect our rights through the legislative process or with the executive branch. This has become perhaps even more true in light of some of the actions Congress and the executive branch have taken after 9/11, particularly as these actions affect immigrants.

After an extensive review of the public record that was available to us, the testimony that Mr. Estrada provided before the Senate Judiciary Committee, and the written responses he provided to the committee, we have concluded at this time that Mr. Estrada would not fairly review issues that would come before him if he were to be confirmed to the D.C. Circuit Court of Appeals. As such, we oppose his nomination and urge you to do the same.

Two of the Nation's most respected Hispanic leaders.

They go on to analyze an array of issues that affect not only the Latino community but all Americans on which they find this nomination wanting. Of course, MALDEF outlined its concerns in advance of the hearing last fall in a memorandum to the White House. As their recent letter says:

[T]he Judiciary Committee gave Mr. Estrada ample opportunity to address [their concerns]. Ultimately, Mr. Estrada had the affirmative obligation to show that he would be fair and impartial to all who would appear before him. After reviewing the public record, the transcript and the hearing, and all written responses submitted by Mr. Estrada, we conclude that he failed to meet this obligation. He chose one of two paths consistently at his hearing and in his written responses: either his responses confirmed our concerns, or he chose not to reveal his current views or positions.

My view of the record is similar to theirs. It is also shared by the respected Puerto Rican Legal Defense and Education Fund.

Senator SCHUMER chaired a fair hearing for Mr. Estrada last September. Every Senator—Republican and Democrat—had ample time to ask whatever questions they wanted. I was hoping that the hearing would allay concerns because I have been impressed with Mr. Estrada as a person in meeting with him. But what I wanted to know was not Mr. Estrada the person, somebody who lived next door to you, but what would a Judge Estrada—the person sitting up at the bench when you appear there—how would that person be?

When he avoided answering question after question after question, then I ended up with more questions than answers.

The recent statement from Latino labor leaders makes the following point:

Mr. Estrada is a ''stealth candidate'' whose views and qualifications have been hidden from the American people and from the U.S. Senate. Since his nomination, Mr. Estrada has consistently refused to answer important questions about his views and his judicial philosophy.

These Latino leaders went on to say that it would be ''simply irresponsible for the Senate to put him on the bench.''

After a thorough review, the Puerto Rican Legal Defense and Education Fund concluded that Mr. Estrada was not sufficiently qualified for a lifetime seat on the Nation's second highest court and said that his ''extreme views should be disqualifying; that he has not had a demonstrated interest in or any involvement with the Hispanic community or Hispanic activities of any kind; and that he lacks the maturity and judicial temperament necessary to be a circuit judge.''

PRLDEF said Mr. Estrada has ''made strong statements that have been interpreted as hostile to criminal defendants' rights, affirmative action and women's rights.'' They expressed concern about his temperament. People they interviewed about Mr. Estrada described him as ''arrogant and elitist'' and that he '''harangues his colleagues' and 'doesn't listen to other people,''' that he is not even tempered and he is ''contentious, confrontational, aggressive and even offensive in his verbal exchanges'' with them.

As I said before, some of his supporters have said, if a Senator opposes him, that Senator is racist or anti-Hispanic.

These claims are offensive and absurd. Well-respected leaders of the Hispanic community itself have raised very serious objections and concerns about his nomination. In fact, to say that those who vote against him are racist or anti-Hispanic is as false as the statements made last fall that those who voted against Judge Pickering were anti-Christian.

No one has worked harder to increase Hispanic representation on our courts than PRLDEF, MALDEF, and the congressional Hispanic caucus. In fact, they didn't begin their review of Mr. Estrada's record with the expectation of opposing his nomination. Instead, they started with their strong record of supporting more diversity on the Federal bench, something they have done for years, President after President, urging more diversity on the Federal bench. This was before the 10 Hispanics on the court of appeals. I know President Clinton listened to them because he appointed eight of those 10. They actually would have had three more had the Republican-controlled committee allowed them to come to a vote.

Now there is all this talk about how can we possibly be stopping President Bush when he is trying so hard to have Latinos on the bench. There are 42 vacancies that have existed in the 13 circuit courts of appeal during President Bush's tenure. Mr. Estrada is the only Hispanic he has nominated. Unlike the eight that were confirmed of President Clinton's and the other three that he had in there, 11 that he nominated, President Bush has nominated one, and he had 42 chances to nominate. Out of those 42 chances, the only one he nominates is not somebody who could form a consensus within the Hispanic or non-Hispanic community, but he has one that is rejected by much of the Hispanic community, is guaranteed to be divisive. And one more time—one more time but consistent as always—the administration seeks to divide, not to unite, something that has been their hallmark.

They didn't find any Hispanics to nominate for the four vacancies on the Tenth Circuit. That includes New Mexico and Colorado, both States with large Hispanic populations. They didn't find any Hispanics to nominate for the three vacancies in the Fifth Circuit, which includes Texas, certainly a State with a large Hispanic population, or the six vacancies on the Ninth Circuit. They couldn't find any Hispanics to nominate there, but that includes California and Arizona, certainly States with large Hispanic populations. There are three vacancies on the Second Circuit, no Hispanics, even though that includes New York and Puerto Rico. Certainly, they should have found some there. Or the Third Circuit, New Jersey and Pennsylvania, they couldn't find any Hispanics there to appoint.

And we know that there are some outstanding Hispanic lawyers in each of those circuits. Some are sitting on the State courts doing a superb job where there is a record and where there would be a consensus and where you would have somebody who would unite rather than divide.

In fact, there are more than 1,000 local, State, or Federal judges of Hispanic heritage, and out of those 1,000, for these 42 vacancies, the President finds one, and that one is there with no experience, no background as a judge, and is there solely because he has been put forward to carry on a particular judicial ideology.

I don't want to leave the impression that the President sent nobody up here of Latino descent. He did. And a Democratic-controlled Congress confirmed them all. Judge Christina Armijo of New Mexico, Judge Phillip Marinez, and Randy Crane of Texas, Judge Jose Martinez of Florida, Magistrate Judge Alia Ludlum, and Jose Linares of New Jersey—they were all nominated. We confirmed every one of them. In fact, we just held a hearing on Judge James Otero of California. I told him at the end of the hearing that I assumed we would be confirming him very quickly. Actually, we would have, had the nominee had his hearing last year, had his paperwork been completed.

But also, as I have said before, there are 10 Latino appellate judges currently seated in the Federal courts. Eighty percent of them were appointed by President Clinton. Even there, a number of them were denied Senate consideration for years while the Republicans controlled the Senate.

For example, the confirmation of Judge Richard Paez to the Ninth Circuit took more than 1,500 days, even though he was strongly supported by both his home State Senators. And after Republicans delayed Judge Paez for 5 years, 39 voted against him.

Judge Sonia Sotomayor is in the Second Circuit, my circuit; everybody agreed that she was a superb candidate, but then for month after month after month—we wanted to bring her up for a vote—an anonymous hold on the Republican side of the aisle blocked consideration—anonymous hold after anonymous hold.

The irony there is that she had a strong court record. She had first been

appointed to the Federal bench by the first President Bush. He appointed her. She had this record. She had a unanimously well qualified, the highest rating possible. They stalled her and stalled her with an anonymous hold. Finally, the embarrassment got too much. And when it came to a vote, 29 Republicans voted against her.

Now a number of the circuit court nominees President Clinton sent up here never even received a hearing or vote. Jorge Rangel and Enrique Moreno of Texas were both nominated to the Court of Appeals for the Fifth Circuit. President Clinton was able to find qualified Hispanics for the Fifth Circuit, but the Republican leadership would not allow them to come to a vote. And Christine Arguello of Colorado was nominated to the Tenth Circuit. An awful lot of President Clinton's judicial nominees were never even given hearings or votes. Many of them were qualified Hispanics, African American, or women.

That is why during the past Congress, in the year and a half the Democrats were in control, we tried to restore fairness to the confirmation process. We tried to address the vacancies we had inherited. Even though those vacancies were caused because Republicans would not allow votes on Democratic nominees, we brought forward Republican nominees for the same places. Diversity has been the greatest strength of our Nation. That diversity of backgrounds should be reflected in our Federal courts, not just on the streets of our cities and towns. We also should accept the fact that race or ethnicity or gender are no substitute for the wisdom, experience, fairness, and impartiality that qualify someone to be a Federal judge—especially a Federal judge—entrusted with a lifetime appointment.

No potential candidate for a lifetime appointment to the Federal courts should get a presumption of competence or entitlement. You are not automatically competent or entitled simply because you are appointed. It makes no difference which party the President is from. If it were otherwise, we should do away with the advise and consent clause of the Constitution and change it to advise or rubber stamp, or something like that.

Nominees should be treated fairly, but the proof of suitability for a lifetime appointment rests on the nominee and on the administration. The Senate is not required to prove they are qualified for a lifetime appointment. We have to satisfy ourselves as individual Senators, as 100 Senators, that they are qualified and suitable for this lifetime appointment. It is up to the nominee himself or herself and the administration to make the case that allows us to reach the conclusion that they are qualified.

We have to look at their records, listen to their answers to the questions—if they will answer the questions—and if they refuse to answer the questions, I don't know why any Senator would think that he or she has an obligation to vote for this person if they will not even answer the question of why they are qualified, beyond a political connection, to a lifetime appointment on what is supposed to be an independent, nonpolitical Federal bench.

Certainly, we know the benefits of diversity and how it contributes to achieving and improving justice in America. That is fine. We should look at that and the President should. All of these questions should be looked at, and the answers to the questions should be looked at. But if all we have are questions and no answers, where do we go?

As Antonia Hernandez wrote in the Wall Street Journal:

> The fact that a nominee is Latino should not be a shield from full inquiry, particularly when a nominee's record is sparce, as in Mr. Estrada's case.

She continued:

> It is vital to know more about a nominee's philosophies for interpreting and applying the Constitution and the laws.

It was in connection with the nomination of Judge Dennis Shedd, a white male and former staffer to Senator Thurmond, that Republicans argued he would bring diversity to the Fourth Circuit. Maybe that is their sense of diversity. I suspect it is not the sense of many others. Be that as it may, each Senator has to make up his or her mind about the qualifications. I defy any Senator to make up his or her mind satisfactorily when they don't have a record before them or answers to questions.

The Fourth Circuit was a Federal circuit court that had the longest history without an African-American judge, speaking of diversity. It wasn't until President Clinton's recess appointment of Judge Roger Gregory that the Fourth Circuit was finally desegregated.

The reason we were not able to get him through before was the Republican majority used blue slips and secret objections to block the integration of that court for years during the Clinton administration as the Clinton administration nominated one qualified African American after another. He was accorded a hearing, but they did say Judge Shedd would bring diversity to that court. In that regard, I am glad that common sense came out, and I applaud the two Senators from Virginia—Republican Senators—for convincing the President to renominate Judge Gregory, this outstanding African-American jurist. I commend both Senator ALLEN and Senator WARNER for standing up for him. When he came to the Senate floor and we had a rollcall vote on him, every Senator, except one, voted for him. It shows the quality of the nominee, but also it is a strong signal to that court that here is a judge who has been looked at by both Republicans and Democrats in 1990, and 100 Senators came to the conclusion that he was qualified.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Congressional Hispanic Caucus and a CHC civil rights task force scorecard.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, September 25, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Judiciary Committee, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Congressional Hispanic Caucus (CHC), we wish to inform you that the CHC has decided to oppose Miguel Estrada's nomination to the United State Court of Appeals for the District of Columbia Circuit. After reviewing Mr. Estrada's record and meeting with him in person, we have concluded that he fails to meet the CHC's evaluation criteria for endorsing judicial nominees.

As you know, the judicial nomination process is important to the CHC because we believe that our nation's courts should reflect the diversity of thought and action that enrich America. Earlier this year, we launched the Hispanic Judiciary Initiative to further formalize our involvement in this issue by establishing a set of evaluation criteria and an internal process for endorsing nominees. We hope that this initiative will allow us to continue our work to ensure fair treatment of Latino judicial nominees and tackle the lack of diversity in the federal judiciary.

In evaluating Mr. Estrada, we considered not only his honesty, integrity, character, temperament, and intellect, but also his commitment to equal justice and advancement opportunities for Latinos working in the field of law. Because of the nature of the CHC's mission and the important role that the courts play in achieving that mission, in order to support a judicial nominee the CHC requires that he or she has a demonstrated commitment to protecting the rights of Latinos through his or her professional work, pro bono work, and volunteer activities; to preserving and expanding the progress that has been made on civil rights and individual liberties; and to expanding advancement opportunities for Latinos in the law profession. On this measure, Mr. Estrada fails to convince us that he would contribute under-represented perspectives to the U.S. Court of Appeals for the District of Columbia Circuit.

As stated by Mr. Estrada during his meeting with us, he has never provided any pro bono legal expertise to the Latino community or organizations. Nor has he ever joined, supported, volunteered for or participated in events of any organization dedicated to serving and advancing the Latino community. As an attorney working in government and the private sector, he has never made efforts to open doors of opportunity to Latino law students or junior lawyers through internships, mentoring or other means. While he has not been in the position to create internships or recruit new staff, he never appealed to his superiors about the importance of making such efforts on behalf of Latinos. Furthermore, Mr. Estrada declined to commit that he would be engaged in Hispanic community activities once appointed to the bench or that he would pro-actively seek to promote increased access to positions where Latinos have been traditionally under-represented, such as clerkships.

Mr. Estrada shared with us that he believes being Hispanic would be irrelevant in his day-to-duties on the court, which leads us to conclude that he does not see himself

as being capable of bringing new perspectives to the bench. This is deeply troubling since the CHC's primary objective in increasing ethnic diversity of the courts is to increase the presence of under-presented perspectives.

Mr. Estrada's limited record makes it difficult to determine whether he would be a forceful voice on the bench for advancing civil rights and other protections for minorities. He has never served as a judge and has not written any substantive articles or publications. However, we did note that in responding to inquiries about case law, Mr. Estrada did not demonstrate a sense of inherent ''unfairness'' or ''justice'' in cases that have had a great impact on the Hispanic community.

The appointment of a Latino to reflect diversity is rendered meaningless unless the nominee can demonstrate an understanding of the historical role courts have played in the lives of minorities in extending equal protections and rights; has some involvement in the Latino community that provides insight into the values and mores of the Latino culture in order to understand the unique legal challenges facing Latinos; and recognizes both the role model responsibilities he or she assumes as well as having an appreciation for protecting and promoting the legal rights of minorities who historically have been the victims of discrimination.

Based on the totality of the nominee's available record and our meeting with him, Miguel Estrada fails to meet the CHC's criteria for endorsing a judicial nominee. In our opinion, his lack of judicial experience coupled with a failure to recognize or display an interest in the needs of the Hispanic community do not support an appointment to the federal judiciary. We respectfully urge you to take this into account as you consider his nomination to the U.S. Court of Appeals.

Sincerely,

SILVESTRE REYES,
Chair, Congressional Hispanic Caucus

CHARLES A. GONZALEZ,
Chair, CHC Civil Rights Task Force.

CONGRESSIONAL HISPANIC CAUCUS HISPANIC JUDICIARY INITIATIVE—SCORECARD FOR CIRCUIT COURT NOMINEE MIGUEL ESTRADA

Evaluation criteria	Mr. Estrada's record	Conclusion
Commitment to equal justice for Latinos.	No record	
Commitment to protecting Latino interests in the courts.	None	Failed.
Support for Congress' right to pass civil rights law.	No record	
Support for individuals access to the courts.	Unclear	
Support for Latino organizations or causes through pro bono legal expertise.	No	Failed.
Support for Latino organizations or causes through volunteerism.	No	Failed.
Support for Latino law students or young legal professionals through mentoring and increasing internship opportunities.	No	Failed.
Commitment to increase Latinos' access to clerkships once on the bench.	No	Failed.

Mr. LEAHY. Mr. President, before my voice goes, I see the distinguished Senator from Utah in the Chamber. Obviously, he will be recognized next. Then I hope we will go to Senator SCHUMER. I will have more to say, but the spirit is more willing than the vocal cords.

I yield the floor.

Mr. SCHUMER. Mr. President, will the Senator yield for a unanimous consent request?

Mr. HATCH. I yield to Senator SCHUMER for a unanimous consent request.

Mr. SCHUMER. Mr. President, I ask unanimous consent that immediately after Senator from Utah finishes, I be recognized for a period of time.

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

The Senator from Utah.

Mr. HATCH. Mr. President, I thought I would make some points here because the distinguished Senator from Vermont is mistaken in a number of accusations he makes.

I wish to list the following Hispanic groups or Hispanic-owned businesses that express their support for Miguel Estrada. One of the oldest Hispanic organizations in the country is the League of Latin American Citizens. It is well known, well respected, and bipartisan. They are firmly behind Miguel Estrada. Next is the U.S. Hispanic Chamber of Commerce; Hispanic National Bar Association; Hispanic Business Roundtable; National Association of Small Disadvantaged Business; Mexican American Grocers Association; ATL, Inc.; PlastiComm Industries, Inc.; Phoenix Construction Services; Hispanic Chamber of Commerce of Greater Kansas City; eHEBC Hispanic Engineers Business Corporation; Hispano Chamber of Commerce de Las Cruces; Casa Del Sinaloense; Republican National Hispanic Assembly; Hispanic Engineers Business Corporation; Hispanic Contractors of America, Inc.; and the Charo-Community Development Corporation.

That is to mention a few. There are dozens of organizations that support Miguel Estrada. As anybody would understand, there is a lot of pride in Hispanic organizations for this type of a nominee, who has achieved so much in his life, and has done it basically on his own and has achieved the heights that very few lawyers and people have achieved, who has not had a glove laid on him in our committee hearing—other than complaints that they don't know his philosophy. My goodness, they have had almost 2 years to learn his philosophy and they could have asked any question, and they did ask a lot of questions.

Let me say there is a double standard here on judicial qualifications. On January 30, 2003, the Senate Judiciary Committee voted 10 to 9 to approve the nomination of Miguel Estrada to the U.S. Court of Appeals for the DC Circuit. On January 24, 2003, Senator LEAHY questioned Mr. Estrada's qualifications, saying he ''has no judicial experience. He has no publications since law school.''

He is not a distinguished legal scholar or professor of law.

I might add that in 1997, the distinguished Senator from Vermont praised Merrick Garland—as did I, by the way; I supported him strongly; he was another DC Circuit nominee with no judicial experience, no professional experience, no publications—as ''highly qualified for this appointment'' and someone who would make ''an outstanding Federal judge.'' That is in the CONGRESSIONAL RECORD of March 19, 1997, at S2518.

That is what was said about Merrick Garland. I agree with Senator LEAHY on that point. He was an excellent candidate, an excellent judge. I supported him strongly and broke down barriers to make sure he could become a judge on the Circuit Court of Appeals.

Mr. Estrada's and Mr. Garland's credentials, or should I say Judge Garland's credentials, were exactly the same at the time. Let me go down through a list of credentials.

The age of the nominee: Miguel Estrada was 41. That was 2 years ago almost; Merrick Garland was 44.

Phi Beta Kappa: Yes for Miguel Estrada; yes for Merrick Garland.

Harvard Law School, magna cum laude: Yes for Miguel Estrada; yes for Merrick Garland.

Editor of the Harvard Law Review: Yes for Miguel Estrada; yes for Merrick Garland.

Law clerk, U.S. Court of Appeals, the Second Circuit: Yes for Miguel Estrada; yes for Merrick Garland.

Law clerk of the U.S. Supreme Court: Yes for both of them.

Private practice: 7 years for Miguel Estrada; 7 years for Merrick Garland.

Assistant U.S. attorney: 2 years for Miguel Estrada; 3 years for Merrick Garland.

U.S. Department of Justice: From 1992 to 1997 for Miguel Estrada; from 1993 to 1997 for Merrick Garland who now sits on the DC Circuit Court of Appeals.

Bipartisan support: Yes for Miguel Estrada; yes for Merrick Garland.

Race: Miguel Estrada is Hispanic. Merrick Garland is white.

Days from nomination to Judiciary Committee approval: 631 days for Miguel Estrada; only 100 for Merrick Garland. They are not quite equal there.

Seven current Judiciary Committee Democrats served in the Senate in 1997. Seven of them are current Democrats on the committee. Every one of those Democrats voted for Merrick Garland, and every one of them voted against Miguel Estrada—all seven of them.

Let me say that the statement of Senator KENNEDY, our distinguished former chairman of the committee way back when, about Merrick Garland in the CONGRESSIONAL RECORD of March 19, 1997 at S2518 I think applies to Miguel Estrada. This is our distinguished colleague from Massachusetts:

> No one can question Mr. Garland's qualifications and fitness to serve on the DC Circuit. He is a respected lawyer, a former Supreme Court law clerk, a partner at a prestigious law firm, and has served with distinction in the Department of Justice under both Republican and Democratic administrations. Support for him is bipartisan.

I think that statement in every detail applies to Miguel Estrada. I do not think there is any question about it.

What is going on here? What is wrong with this tremendous lawyer who has

made it on his own under very trying circumstances; who has an ABA rating of unanimously well qualified; who has argued 15 cases before the U.S. Supreme Court—I am not sure Merrick Garland did that, although I think Merrick Garland is a terrific individual—Columbia and Harvard Law, magna cum laude; editor of the Harvard Law Review, something that is about as prestigious as it gets in law school; a law clerk for U.S. Supreme Court Justice Kennedy; Assistant Solicitor General not only for George Bush I, but for President Clinton as well, praised by the person who supervised him, who later, not knowing we had all of those praises, besmirched him. But it is pretty hard to go against what he put in writing way back when, and I will get into that before we are through.

I have been listening very carefully to some of the comments of my distinguished friend from Vermont, and I do not believe that bringing up the names of Clinton nominees who happen to be of Hispanic descent has anything to do with how this Senate should treat Mr. Estrada. However, since my Democratic colleagues have criticized my treatment of these nominees when I was chairman, I feel compelled to set the record straight.

The fact is, under Republican leadership, most of President Clinton's Hispanic nominees—14, to be exact—were, indeed, confirmed. Although my Democratic colleagues would have you believe something more nefarious was at work, the fact is the nominations of Jorge Rangel and Enrique Moreno for the Fifth Circuit stalled because there was an utter failure of consultation by the Clinton White House. There is no question about that. And neither sitting Senator in Texas was willing to return their blue slips because there was no consultation, which is a requisite.

My colleagues on the other side are certainly raising consultation questions all the time about this White House, and we have directed the White House to consult. Unfortunately, some of them, I think, take the attitude that unless the White House chooses who they want, it is not consultation. That is not a good definition of consultation.

Tenth Circuit nominee Christine Arguello has been brought up. She was not nominated until July of 2000. It was way too late in the session to effectively move her nomination under those circumstances. We did not receive her questionnaire until August of 2000 and, if my records are correct, I do not believe we ever did receive her FBI file. So to raise that is sophistry at best.

It is unfortunate for the nominee when he or she is not confirmed because of these obstacles, but none of these face Mr. Estrada. As we all know, he has been pending for 2 years now and has been rated unanimously well qualified, the highest rating by the American Bar Association.

As for Ninth Circuit Court nominee Richard Paez, I was a vocal supporter of Judge Paez in the face of harsh criticism from some in my own party. I was one of two Republicans to vote for him in this committee, and I led the effort on the Republican side to get him confirmed on the floor. I believe my Democratic colleagues know this, so I take exception when they cite his name as an example of my alleged stonewalling on Clinton nominees. There was none.

Let me talk about the hearing testimony of Mr. Estrada. Mr. Estrada repeatedly answered the questions that were put to him. Let me give some examples.

Mr. Estrada testified he was committed to following the precedents of higher courts faithfully and giving them full force and effect, even if he disagrees with them and even if he believes such precedents are erroneous. That is pretty important testimony, and it is testimony that should be in his favor.

When asked how he would decide cases presenting an issue for which there was no controlling authority, Mr. Estrada testified:

> When facing a problem for which there is not a decisive answer from a higher court, my cardinal rule would be to seize aid from anyplace I could get it.

He testified this would include related case law and other areas of legislative history and views of academics.

When asked if he sees the local process as a political game, Mr. Estrada testified: The first duty of a judge is to self-consciously put that aside and look at each case by withholding judgment, with an open mind, and listening to the points. I think the job of a judge is to put all that aside and to the best of his human capacity to give a judgment based solely on the arguments on the law.

Miguel Estrada said: I will follow binding case law on every case, and I don't even know if I can say whether I concur in the case or not without actually having gone through all the work of doing it from scratch. He further says: I may have a personal moral philosophical view on the subject matter, but I undertake to you that I would put all that aside and decide cases in accordance with binding case law, and even in accordance with the case law that is not binding but seems instructive on the area, without any influence whatsoever from a personal view I may have about that subject matter.

Mr. President, I could go on and on. What is clear from this testimony is Mr. Estrada will be a judge who sets aside his personal convictions, whatever they may be, and follow the law. This is precisely the type of a person we want on the Federal bench.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the senior Senator from New York for permitting me to go for 5 minutes.

Mr. SCHUMER. Mr. President, I ask unanimous consent before I speak the Senator from Pennsylvania be given 5 minutes. I also ask unanimous consent Senator KENNEDY be allowed to speak at 5:40.

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

Mr. SPECTER. Mr. President, I have sought recognition to support the nomination of Miguel Estrada. We have heard a lot about his academic record. The Senator from New York knows what a taste of being magna cum laude at Harvard is like. He is a Harvard graduate himself. I know what it is like to be magna cum laude of Harvard, too, and the Phi Beta Kappa standing from Columbia and magna cum laude there, and editor of the Harvard Law Review.

These academic credentials are unsurpassable. Fifteen cases argued before the Supreme Court, extraordinary. Clerk for the U.S. Supreme Court Justice—again, an ''A+'' rating. There could be no doubt about the qualifications of this man.

Now, there is an objection raised that not enough is known about his philosophy. What is really being attempted here is to impose a test that you have to be in philosophical agreement in order to get the vote of a Senator for confirmation. I suggest that is an inappropriate test. It is not the traditional test. It is going much too far.

When Justice Scalia was confirmed, he would not even give his opinion on whether he would uphold *Marbury* v. *Madison*. There have been many Supreme Court nominees and circuit court nominees with whom I have disagreed philosophically on major points, but I have not withheld my vote in confirmation for Chief Justice Rehnquist, Justice Scalia, Justice Kennedy and Justice Thomas because I did not like their views on the issue of choice.

If a nominee is outside of the mainstream, that is one thing. I did not hesitated to oppose the nomination of Judge Robert Bork, where he was outside of the mainstream, even though he was nominated by my party, where he articulated the view of original intent, which simply could not be comprehended, and did not accept judicial review. He said absent original intent, there is no judicial legitimacy, and absent judicial legitimacy there cannot be judicial review. That is beyond the mainstream.

No one can contend Miguel Estrada is beyond the mainstream. If there are specific objections, let's hear them. But we have not heard them.

Then you have the business about the refusal to turn over his memoranda when he was in Solicitor General general's office, and you have the letter from seven ex-Solicitors General, which I ask unanimous consent to have printed in the RECORD—both Democrat and Republicans.

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

WILMER, CUTLER & PICKERING,
Washington, DC, June 24, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to express our concern about your recent request that the Department of Justice turn over ''appeal recommendations, certiorari recommendations, and amicus recommendations'' that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of the Solicitor General—under Presidents of both parties—we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review of adverse appellate decisions, and whether to participate as amicus curiae in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these and other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis, if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

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

Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrified in the process.

Sincerely,

SETH P. WAXMAN,
On behalf of
WALTER DELLINGER,
DREW S. DAYS, III,
KENNETH W. STARR,
CHARLES FRIED,
ROBERT H. BORK,
ARCHIBALD COX.

Mr. SPECTER. It is absolutely chilling to the operation of the Solicitor General's office or the operation of any governmental office with lawyers working to say their work product, their views, will be subject to review and scrutiny if they are later nominated to some judicial position.

I think it boils down to—I will not call the request for the opinions of the Solicitor General's office a red herring; that could be a little too harsh—it certainly is a subterfuge. It is not what they are really looking for. They are looking for an excuse.

The news reports today are that the Democrats plan a filibuster. That is the headline: ''Democrats Plan Filibuster on Estrada Nomination.'' If that is so, the Senate is going to come to a grinding halt. If Miguel Estrada cannot be confirmed, then I doubt that anybody can be confirmed. We may be locked in debate on this matter—I heard an estimate of 3 months at lunch; that may be an understatement.

I don't think the American people are going to tolerate this. There has been much too much judicial politics. Republicans are as guilty of it as are the Democrats. When President Clinton was in office and Republicans controlled the Senate, nominations were blocked inappropriately. I was prepared to cross party lines where I thought it was justified. Now that we have a Republican in the White House and the Democrats have controlled the Judiciary Committee for most of the last 2 years, the shoe is on the other foot and there have been inappropriate blocking of nominees.

The only filibuster which we can find is the one on Abe Fortis for Chief Justice of the United States Supreme Court, which is hardly a judgeship for the court of appeals.

I say to my colleagues on the other side of the aisle, the Democrats on the Judiciary Committee, and the Democrats generally, we have to come to some accommodation. We have to come to a judicial protocol so we consider the issues on the basis of merit and qualification without politicizing and without looking for people who agree with us philosophically.

I may come back to speak later, but I wanted to speak at an early point in this proceeding because of my participation in the confirmation hearings of some seven Supreme Court nominees and hundreds of lower Federal court nominees. I hope we will take Estrada out of politics and confirm him.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, this is going to be a long debate, whatever happens. I very much appreciate the sincere concerns of my colleagues from Utah and Pennsylvania.

I say to my friend from Pennsylvania before he leaves, he asked, if Miguel Estrada cannot get confirmed, who can? I, for one, have voted for 96 of the 102 judges President Bush has nominated. We passed over 100 of them.

There seems to be an idea on the other side if we oppose a single judge we are totally blocking the President's program. I argue just the opposite. I argue to my friend, as he well knows because he knows the Constitution better than just about anyone else in this Chamber, with maybe the exception of our good friend from West Virginia, the Founding Fathers wanted debate. They wanted the Senate to have a role. Read the Federalist Papers. That is how it was for many years.

To sum up, the White House has started to nominate ideological nominees—not like President Clinton, not like the first President Bush—but when we try to examine the ideology of these nominees, that is wrong. We do virtually no moderates before us. Everyone is from conservative, to way out of the mainstream, and we have voted for most of the conservative judges. Let's be honest about it. This debate was not started by Democrats in the Senate. This debate was started by a White House that is intent on changing the character of the Federal bench, to go way beyond what is the mainstream of America. Everyone will agree, Justice Scalia and Justice Thomas are the two most conservative judges on the court. President Bush said it in his campaign. He said: I will nominate Justices like Scalia and Thomas.

That is not saying moderation. He promised the American people moderation when he ran. But when it comes to the article III section of Government, we don't see a drop of moderation.

We will continue to make this argument because we believe we are defending the Constitution. We are doing just what James Madison and John Jay and Alexander Hamilton and all of the great writers of this Constitution wanted us to do, which is have some influence on the article III section of Government.

I am going to speak at some length, which is not what I usually do here. I usually say I think you can say everything in 5 or 10 minutes. But this issue is so important to me that I intend to be on the floor here today for a period of time, and regularly after that.

I rise in opposition to the nomination before us today. Mr. Estrada has been nominated to a lifetime appointment, a lifetime seat on the DC Circuit, the Nation's second most important court. If confirmed, this 42-year-old man will spend the next half century making important decisions that will affect our children, our grandchildren, our great-grandchildren, and generations beyond. If we vote to confirm Mr. Estrada, there is no going back. There is no opportunity to look at what he does in his first years as judge and reconsider. The vote here is final. If he is confirmed, we are all going to have to live with the consequences for decades to come.

So this is not a trivial matter. This is not a trifling matter. This is one of the most important matters that comes before us. The ability to ratify or reject a President's nomination to a lifetime appointment in article III, the third branch of Government, is a solemn obligation. It is one that should not be taken lightly. To rush through the nomination, to not have questions fully answered and explored, does violation to the very Constitution that we all revere. Yet that is what the other side is asking us to do.

The Senate has a solemn, almost sacred duty when evaluating applicants for such powerful posts. I will quote my good friend from Utah, Senator HATCH:

> The Senate has a duty not to be a rubberstamp.

Those are his words. That is every bit as true today as it was when he uttered them.

The Founding Fathers, in my opinion—not just mine, almost everybody's—were really quite brilliant in devising a system of checks and balances. When it came to judicial nominations, they had a robust debate. For a good period of time at the Constitutional Convention they were considering vesting all the power in the Senate. There was a period where they considered vesting all the power in the President. They realized, as they did with most matters, that our country was best off with a system of shared power.

The Framers gave the President the power to select nominees but gave the Senate coordinate responsibilities to advise the President on whom to nominate, and to decide whether the nominees deserve confirmation. By and large, the system has worked well for over 200 years. For those of us who revere the Constitution and who believe in the rule of law, it is a beautiful work of art.

I believe to this day what was said when America was founded, that we are God's noble experiment. We still are. That is why the debate today and in the following weeks has so much vitality. For this beautiful work of art to maintain its beauty and brilliance, the Senate must hold up its end of the bargain. We have a duty, a responsibility, an obligation to the judiciary, to the Constitution, and, yes, to the American people, to carefully evaluate these nominees and decide whether they merit confirmation.

This cannot be a rote process where the President sends us names and we just say ''OK,'' without undertaking an independent evaluation. As we hear so often from Senator BYRD, the keeper of tradition in this body, we have a duty to be vigilant defenders of constitutional principles and the Senate's role in checking executive power. For the Senate to retain its historical role in our system of government, we must live up to the standards set by those who came before us and ensure that we have balance in Government.

Too often, debates around here devolve into rancor and partisan backbiting. Too often in the past, debates involved personal attacks on people. Because we don't like a nominee, someone goes back and finds they smoked marijuana when they were in college, or they took out the wrong kind of movie when they were a young man or woman. That demeans the process.

To have a full debate and a fulsome discussion with the nominee about how he or she feels about important issues such as the first amendment and the second and the fourth and the commerce clause and the sovereignty clause and the right to privacy is not simply fun. It is not simply optional. It is deeply and solemnly necessary to uphold the will of the Founding Fathers, to uphold the very structure of the Government we revere. We should focus on facts in what we do and, equally important, on what we know and, equally important to this debate, what we don't know about this nominee.

When a nominee is seeking such a powerful post, this lifetime position on the Nation's second highest court, I believe the nominee has an obligation to answer questions. I believe the nominee has a duty to tell us what he thinks about the law, how he views vexing legal questions of the day, and to share with us his approach to the Constitution and his judicial philosophy. These are not only reasonable areas of inquiry, they are urgent and important areas of inquiry. We cannot be expected to undertake our constitutional duties without answers to these questions.

In the words of Mr. DOOLEY, ''this ain't beanbag.'' This isn't fun or a political game. This isn't trying one-upmanship. This goes to the very sacred obligation each of us has, when we take that oath of office upon our election or our reelection.

I know my friends on the other side of the aisle agree with me on this fundamental view. While I expect they will take to the floor and denounce the inquiries we have made, if we go back and look at the questions they asked—my friend from Utah and all the members of the Judiciary Committee, the questions they asked of President Clinton's nominees—they will see our questions pale in comparison. The questions we asked were exactly the kinds of questions the Founding Fathers expected us to ask to ensure balance in our system of government and justice. We asked nearly 100 questions of this nominee and he refused to answer all too many of them. He refused to answer most of the important ones. It is his right to duck or dodge or hide behind legal subterfuge. That he can do. But that doesn't mean we have to confirm him, plain and simple.

I have sat through a good number of judicial hearings in my years in the Senate. I followed many more in my career in the House. I have never seen such an incredible sense of avoidance and of ultimate stonewalling in any confirmation process as I saw when Miguel Estrada came before our committee. I chaired that hearing, as my good friend from Utah will remember, and one exchange we had was particularly memorable to me. Mr. Estrada kept saying, when we asked him about his views, that he didn't want to discuss it because future cases might come before him.

I'm a lawyer. Many of us are lawyers. We know, when you are asked what's your view of the first amendment, and you say: Well, a case might come before me on the first amendment and I can't discuss it, that is not the appropriate response. Certainly, if we were to ask Mr. Estrada how he might rule on, say, WorldCom and the suits against WorldCom, or on an existing case before the lower courts, he would have a right and an obligation not to answer that question. But to say he cannot discuss his views of the expansiveness or the narrowness of the commerce clause because eventually he will have to rule on the commerce clause makes a mockery of every judicial hearing we have had or will have.

But I kept trying. I decided if Mr. Estrada would answer nothing about his prospective views, why not look at what happened in the past.

So I asked him to discuss cases that by definition could never come before him if he were confirmed to a lifetime seat on the District of Columbia Circuit. I asked him about Supreme Court cases which are already decided. These cases are already the law of the land and can be reconsidered only by the Supreme Court. So there is no fear that a nominee would be doing something unethical by taking such a position. There is not only nothing wrong with discussing these cases, but there is a lot right about discussing these cases.

Answers to these questions will give us insight as to what kind of judge he will be:

Whether the nominee will fairly assess the claims of average people who want their basic rights vindicated in Federal courts;

Whether the nominee will approve the administration's environmental rollbacks against the interests of people who would protect the environment;

Whether the nominee has a general inclination to side with business interests or labor interests;

And whether this nominee basically supports States' rights or the rights of individuals within those States.

We have seen in the Supreme Court in the last decade these decisions being carefully discussed by the Justices with great differences of opinion.

These are the things the public wants to know. These are the things that determine, in my judgment, whether somebody should become a judge.

Everyone in this Chamber will come to a different conclusion once they know those answers. People will weigh answers differently. That is fair, and that is good.

But there is no question, my colleagues, that we should know something about how this nominee views the first amendment, the second amendment, the fourth amendment, the 11th amendment, and the 14th amendment before we just hand him such an important job.

We should know whether the nominee has an expansive view of the commerce clause or a narrow view; an expansive right to privacy or a narrow view.

These are the issues that are the sinew, that are the warp and woof of what our Republic is about. When the Founding Fathers in their beautiful and infinite wisdom decided that they would be careful with the one unelected branch of government—article III section of Government, the Judiciary—they knew what they were doing. They didn't want to vest too much power in any one person—the

President, any Member of this body—and simply appoint judges, because they knew with a lifetime appointment, which in its wisdom insulates people from the vicissitudes of political pressures—that was too serious and solemn a happening to just pass off to one person.

So the questions we hoped Mr. Estrada would answer honestly and forthrightly are the kinds of questions the American people depend on us to ask. These are the kinds of questions that should be answered before we vote on a nominee. Realizing Mr. Estrada would not answer anything about the future, despite the fact that countless others have—it hasn't interfered with their ability to be fine judges—I went back and asked him, Mr. Estrada, to answer questions about the past so we might get some feeling for his views. I asked him to name any one Supreme Court case from the history of all Supreme Court jurisprudence he was critical of. To the surprise of myself and some on the committee, he even declined to do that.

I asked him to tell me his views on a particular case I disagree with, Buckley v. Valeo. I don't think a millionaire has an absolute first amendment right to spend all the money he or she wants on putting on the same political commercial 411 times. I don't think it is what the Founding Fathers intended. There are two views on that. The Court disagrees with me. But I wanted to know Mr. Estrada's view. No matter how many times I tried, no matter how many opportunities he was given, Mr. Estrada insisted he could not state a view on a single court case—not Korematsu, not Dred Scott, not Plessy 1v. Ferguson, not Brown v. Board of Education, not Miranda v. Arizona, not Griswold v. Connecticut, not Roe v. Wade, not a single case.

Mr. HATCH. Mr. President, will the Senator yield for one question?

Mr. SCHUMER. I would be happy to yield.

Mr. HATCH. Is it not true that the question the Senator asked was whether he could name three cases in the last 40 years and not in all of jurisprudence? The specific question was in the last 3 years, and he said there were cases. But that is a little different than saying in all the jurisprudence.

Mr. SCHUMER. I say to my colleague, if I might reclaim my time, I first asked him about the first 40 years. And when he refused to answer that, frustrated as I was, I said, How about in all of jurisprudence?

Mr. HATCH. Could I just ask the question again? All I wanted to make sure of was the Senator said, Please tell us what three cases from the last 40 years of the Supreme Court jurisprudence you are most critical of, and just give me all of the sentences and as to why for each one. Then Mr. Estrada said, Senator, I think there are cases that I have been critical of that I can think of—and then he goes on to say more. Then you asked again on page 210, With all your legal background and legal work, you can't think of three or even one single case that the Supreme Court has decided that you disagree with. And then Mr. Estrada said he wasn't sure he was even in a position to disagree, et cetera. Then on page 211, you then asked this question.

Mr. SCHUMER. Could I reclaim my time?

Mr. HATCH. Let me finish this one last question. You don't know a single case in the last 40 years? I will tell you that for me, I think Buckley v. Valeo. But all I am trying to say is, Isn't it true that in the last 40 years, not in all jurisprudence.

Mr. SCHUMER. I will say to my colleague, reading from the transcript, I asked 40 years first. And then I said to him, So with all of your legal background and your immersion in the legal world, you can't think of three or even one single case that the Supreme Court has decided that you disagree with? I didn't say in the last 40 years at that point.

Mr. HATCH. On the next page, 40 years.

Mr. SCHUMER. I asked both, as I said to my colleague. And he didn't say. And I will argue to my colleague—I will not yield on that point—I asked him about 40 years. And then I asked him about it permanently on page 211. But I will say this.

Mr. HATCH. Will the Senator yield again?

Mr. SCHUMER. I will say this. I think it is amazing he couldn't name a case he disagreed with in 40 years alone. I don't think that is really the point here, whether it is 40 years or all the way back in jurisprudence. But I will continue with my remarks, and then I will yield for a question.

(Ms. COLLINS assumed the chair.)

Mr. HATCH. Will the Senator yield for one last question?

Mr. SCHUMER. I will yield for one last question.

Mr. HATCH. That is on the one page, the first page limited to 40 years, and on the second page it was more broad. But it wasn't clear that it meant all of jurisprudence. On the next page, again, 40 years.

That is just my point. All I am saying is in the heat of the moment someone may not be able to conjure up some cases. But be that as it may, he indicated he had some he was critical of. But I think the Supreme Court advocate, not knowing whether he will be confirmed, he probably wasn't about to antagonize anyone on the Court.

Mr. SCHUMER. That is for each of us to judge, whether a nominee who is worried about his confirmation should not speak about any case he might disagree with, whether it be 40 years or in all of jurisprudence.

But I just wanted to say, if you look at the record, it is clear. I gave him many different opportunities to answer that question. I asked the question in different ways. I came back to it. And Mr. Estrada didn't answer. To the average citizen who looked at it, he was stonewalling. He was just not giving answers that every law professor, or law student, or lawyer when asked would venture a guess at.

Let me tell you why many of us think he refused to answer the question. I would like my colleagues to hear this, because I don't think this has come out. Mr. Estrada stonewalled because that is the game plan he was given by the Justice Department and the White House. They told him not to answer questions. That was what they told him to do. Because again, they know Mr. Estrada's views. They do not want anybody else to know, because I believe if they were revealed, they are so far out of the mainstream he would not be approved. I don't know if that prediction will prove to be true. Maybe we will know, if we find the views on the issue.

But there is no secret to this. This has been the game plan of those who have sought to stack the judiciary to the far right side for years.

Let me review with my colleagues an article in the Legal Times which talked about a meeting that Judge Laurence Silberman—a leading conservative judge, a very erudite man, but he shared his strategy with prospective judicial nominees at a Federalist Society meeting just last year.

The Federalist Society is the breeding ground for most of the States rights agenda, supporting nominees the administration is sending us. It is no secret that Federalist Society members are among the most active in the White House and Justice Department in choosing judges. I will let the American people judge for themselves, but most believe the Federalist Society is not moderate and not conservative but way over to the hard right.

Judge Silberman appeared along with Senator KYL and Fred Fielding, President Reagan's counsel, to discuss with the group how to get these out-of-the-mainstream nominees on the bench, because they realized if they told the truth, they would have a difficult time because America is not far left or far right but moderate.

If President Clinton tried to stack the bench with far left nominees, we heard howls. He did not. But that is just what President Bush is trying to do. President Clinton, as I mentioned, nominated mostly partners in law firms and prosecutors, not many legal aid society people, not many ACLU advocates. President Bush is not doing the mirror image himself.

In any case, this is what was reported about that meeting. And I am quoting from an article in the Legal Times:

> President George W. Bush's judicial nominees received some very specific confirmation advice last week:

This is the article, not me—

> ''Keep your mouths shut.''
>
> The warning came from someone who has been a part of the process. Laurence Silberman, a senior judge on the U.S. Court of Appeals for the D.C. Circuit—

The very court we are talking about—

Told an audience of 150 at a Federalist Society luncheon that he served as an informal adviser to his then-D.C. Circuit colleague Antonin Scalia when Scalia was nominated to the Supreme Court in 1986.

This is a quote from the article:

''I was his counsel, and I counseled him to say nothing [at his confirmation hearings] concerning any matter that could be thought to bear on any cases coming before the Court,'' Silberman said.

Silberman said his advice led to Scalia's speedy confirmation by keeping the nominee out of trouble on Capitol Hill. He also explained that the advice was intended to be rather far-reaching.

Scalia called Silberman at one point, the latter recalled, and told him he was about to be questioned about his views about Marbury v. Madison, the nearly 200-year-old case that established the principle of judicial review.

''I told him that as a matter of principle, he shouldn't answer that question either,'' Silberman said. He explained that once a prospective judge discusses any case at all, the floodgates open and he would be forced to discuss other cases.

Does that help shed some light on why this nominee refused to discuss and answer an innocuous softball of a question: to name a case—whether it be in the last 40 years or all the way back—with which you disagree?

My colleagues, is the idea that a nominee to a powerful lifetime post on the Federal bench would be ''forced'' to discuss with the Senate his or her views on important historical cases really so terrifying?

If we cannot talk about Marbury v. Madison with nominees, if we cannot discuss the case that provides the foundation for jurisprudence in America, we are in pretty bad shape.

I was not in the Senate at the time of Justice Scalia's confirmation hearing, but I cannot imagine us confirming any nominee refusing to discuss a case that is 200 years old, a case that establishes the judiciary's power.

I do not think there was a philosophical reason by Judge Silberman. I think he thought that if the nominee's real views were known, many of the American people would rise up and say: This is not the kind of nominee we want. This is the kind of nominee who will not just interpret the laws as the Constitution calls for but make law.

It so happens judges on the far right and on the far left have a proclivity to want to make law because they feel things are so bad that they have to change them on their own.

I have to tell you that a nominee who refuses to discuss the single most important case in the history of the Supreme Court will have a hard time winning many Senators' votes. Confirming such a nominee would confirm that the Senate's role is nothing more than a mere formality. If the President picks you, and we cannot find something in your ancient past, some little personal transgression, then you go to the bench.

Balance becomes the baby that gets thrown out with the bath water. Our system of government gets thrown out of whack.

It is very interesting that Mr. Estrada seems to be executing the Federalist Society's game plan, remaining silent and stonewalling, while other nominees, who are generating less opposition, are simply answering questions.

There were five district court nominees at the hearing where Mr. Estrada testified. Because we spent so much time trying to get answers out of Mr. Estrada, we had little time to question each of them. So I asked each of them to answer, in writing, the very same question I asked of Mr. Estrada. I asked them to identify three Supreme Court cases with which they disagree. And do you know what? Each of them answered. Each was able to give me three cases with which they disagreed.

Some of them picked obvious cases, such as Korematsu, the Supreme Court case upholding the Government's power to put Japanese-American citizens into interment camps, a case which has been thoroughly discredited; cases such as Plessy v. Ferguson which held that separate was equal, a case that was later overruled by Brown v. Board of Education. But many of these nominees picked cases that have not been overruled.

Judge Linda Reade, a judge who I voted for in committee and on the floor—one of 96 judicial nominees by President Bush that I have supported so far, and who we unanimously confirmed to a district court judgeship in Iowa—gave some particularly interesting answers.

Judge Reade was critical of two Supreme Court cases that expanded police powers and diminished privacy rights under the fourth amendment.

One of the these cases, United States v. Rabinowitz, held that police had the power to search someone's office when he was arrested with an arrest warrant but without a search warrant.

The other case was Harris v. United States, where the court held, again, that a search of an arrestee's entire four-bedroom apartment was constitutional despite the fact that the police did not have a search warrant.

Her concerns about these cases reflected a heightened sensitivity to privacy rights protected by the fourth amendment. I do not want judges who read the fourth amendment so expansively that the police are handcuffed and unable to do their jobs. I want judges who will balance privacy rights with law enforcement interests.

Her answers suggested to me that Judge Reade would be attuned to the privacy side of the argument. I may not have fully agreed with her—I tend to be more conservative on these criminal justice issues—but I appreciated her candor and her forthrightness. I appreciated her straightforwardness. She was not hiding a thing. She was telling us what she thinks. And I voted for her.

Obviously, there is not a single Senator in this body who thinks Judge Reade's answers disqualify her for a Federal judgeship. Not a single one of us objected to her nomination or voted against her. And the same is true of the four other nominees we asked questions of the day of Mr. Estrada's hearing. They answered the questions forthrightly. They didn't hide the ball. They appeared to be within the mainstream. We confirmed them all quickly.

Just last week we held a confirmation hearing for Jeffrey Sutton, a very controversial nominee to the Sixth Circuit.

He is one of the leaders in the States rights movement. He has argued many of the seminal cases, and clearly he evokes much controversy. As my good friend from Utah will recall, the disabled community was so upset that they came out in large numbers, and we had to move the hearing room to a larger room, to which my friend from Utah graciously acceded.

I haven't decided how I will vote on Mr. Sutton's nomination, and there are still questions I have asked him to answer. But I will say this about him: He started on the right foot with me by at least telling us what he thinks of some cases. Twice Jeffrey Sutton told us on his own, without being asked, that he was critical of Supreme Court cases Buck v. Bell and Kiryas Joel.

When I asked him about other cases he was critical of, he said he had problems with Korematsu and Plessy v. Ferguson. I will grant these are not hard cases to be critical of, and I will repeat that there is still ground to cover with Mr. Sutton, but at least Mr. Sutton said that much and was committed to discussing other cases in writing.

Mr. Estrada told us nothing, not a single thing. This is reminiscent of what I thought was one of the least fine moments of the Judiciary Committee. It is reminiscent of Clarence Thomas telling America that he had never discussed Roe v. Wade and had no views on the case whatsoever. How many of us believed him then? How many of us believe him now? It is simply not credible. It is totally unbelievable that this nominee, Mr. Estrada, had no critical views on any Supreme Court case in history. Every lawyer in America, and most nonlawyers in America, can point to one Supreme Court case he or she is critical of. Of course, we all know Mr. Estrada has thoughts on the subject. Every single person, ask every one of the 100 Senators to bet all their money on whether Estrada has opinions on certain cases. We would all bet he does.

The bottom line is simple: If we confirm Miguel Estrada, we are ratifying a ''don't ask, don't tell'' policy for judicial nominees. Mr. Estrada sat there and said nothing, believing if he didn't say a word, we would rubberstamp him. By remaining silent, Mr. Estrada only buttressed the fear that he is a far-right stealth nominee, a sphinx-like candidate who will drive the Nation's

second most important court way out of the mainstream. I had hoped he would choose candor over secrecy. He refused to do so. All he said is: I will follow the law.

In my book, that doesn't explain much.

There is a myth that the law is something automatic, that the facts of a case, the applicable statutes can be dumped into a computer, and the right answer will just pop out, that a person's philosophy and ideology have nothing to do with determining how they vote when they get to be a judge. We all know that is poppycock. Anyone who studied the system knows that is not how the law works. If we did, we would have IBM build a computer, put some black robes on the computer, and obviate the need for these confirmation hearings or any judges. But we all know there is more to judging than that. We all know judges bring their experiences, their values, their judgment and, yes, their ideology to the bench with them.

If ideology didn't matter, both Republican and Democratic Presidents would nominate judges from across the political spectrum. Instead, Democrats tend to nominate Democrats; Republicans tend to nominate Republicans. That is fine. I know that as long as President Bush is President, I will be voting on mainly Republican nominees. I still voted for 96 out of 102, as did most of my colleagues. But that doesn't mean we have to rubberstamp each one. And certainly it doesn't mean that ideology is in play. If ideology was not in play, if we were just relying on the legal quality of the mind, then Estrada's mind is of good legal quality, excellent legal quality. But then the appointees of Democratic Presidents to the Supreme Court and other courts and the appointees of Republican Presidents to the Supreme Court and the other courts would be scattered all over the lot when it came to rendering decisions.

We know that is not true. There are always exceptions. Earl Warren became a very liberal Chief Justice although he was nominated by President Eisenhower. But by and large, the ideology matters. And that is why Democratic nominees tend to support different opinions and decisions than Republican nominees. That is our system, and that is great.

But to say ideology doesn't matter would mean President Bush would be nominating a whole lot of Democrats for judge and a whole lot of moderate Republicans. He has hardly nominated any of either category. The best you get is someone who is a conservative, not a hard right conservative.

Now let's go back to Mr. Estrada. There are some other ways to get at what Mr. Estrada actually believes and how he will act as a judge. By the way, this is all we have. If he refuses to answer questions at a hearing, and he doesn't, he is not a judge and he is not a law professor who opines on these issues.

Mr. DOMENICI. Might I inquire from the Senator, how much longer do you think you will be?

Mr. SCHUMER. I would say to my colleague, I will probably be another 15 minutes. I appreciate it. I rarely speak on the floor very long. I speak often, but usually for 5 or 10-minute amounts. But as my good friend from New Mexico knows, I feel very strongly about this issue.

Mr. DOMENICI. I had assumed your usual.

Mr. SCHUMER. I will try to finish as quickly as possible, in deference to my good friend from New Mexico.

So we don't have much on the record about Mr. Estrada. That is why his papers as Solicitor General mean so much. Because when Mr. Estrada worked in the Justice Department, he looked at cases and analyzed them and assessed the constitutionality of laws. That is, for all intents and purposes, what appellate judges do. Unlike a lawyer in a law firm who is looking out for a client with a vested interest, Mr. Estrada was working for the Government. His client was the Constitution. His memos would help show how he interprets the Constitution. Similar memoranda have been requested and produced when Congress was evaluating other nominees, both to the executive and judicial branches, creating ample precedent for such a request.

I know there has been a series of letters that have gone back and forth. I know we have differing views about the propriety of sharing these memoranda. But one thing is clear, there is precedent because others, including Bradford Reynolds and Justice Rehnquist, submitted those papers. It is clear there is no privilege. And it is clear these memos are needed to lift the veil covering whatever it is Mr. Estrada wants to remain covered.

So, in other words, because we have so little information on how Mr. Estrada thinks, these memos are more important to understand his thinking than they would be for the typical judicial nominees.

Mr. Estrada did work that was quintessentially judge-like, but we are being denied the opportunity to examine it, evaluate it, and assess for ourselves what kind of judge he would be. That doesn't seem right. A former supervisor has charged that Mr. Estrada advocated extreme positions, more aligned with his own interests than the Government's interest, when he was Solicitor General.

My friend from Utah said at a hearing that he had backed off those positions. He has not backed off those positions.

Many have said: Well, his evaluations were excellent.

We have talked to Mr. Bender, and he has said, first, when you look at those evaluations, they don't talk about his views and whether he would have fidelity to the Constitution or try to impose his own views. They talk about whether he was a hard worker. But what Mr. Bender said is: Everyone gets checked off excellent on those—we will have to check the record there—because it helps them get merit advancements.

So here you have the supervisor saying he was extreme, saying he would take his own views and not follow the law. Guess what the best way is to disprove that supervisor. Make the memos public. If the memos prove the supervisor wrong, Mr. Estrada has nothing to fear from their disclosure. If the memos prove the supervisor is right, this is someone no one in the Senate should want on the DC Circuit.

Mr. President, I have always used three criteria in evaluating judicial nominees. I call them excellence, moderation, and diversity.

Excellence is legal excellence, the quality of the mind. We don't want political hacks on these important courts. No one disputes that Mr. Estrada passes this point with flying colors. He comes highly recommended in this regard. When the ABA recommends him, that is all they are evaluating.

My second criteria is diversity. Clearly, he passes on this point. I have fought for as long as I have been in public service to promote diversity. A principal goal of mine in New York is to put more people of color on the Federal bench—and I have, as my record shows. We are going to talk a lot about the push for diversity, and we are going to see Mr. Estrada is the only Hispanic nominee of President Bush. Diversity seems to be limited at this point to Mr. Estrada when it comes to the court of appeals; whereas, those of us on this side, in the Hispanic caucus and others who oppose the nomination, have done far more for diversity than those who claim they are moving its cause forward today. In any case, I am for diversity. I will not talk more about that today. I will give that part of the speech next week.

The third factor forces me to take the floor today, and that is moderation. I don't like judges too far to the right, and I don't like them too far to the left. To be honest with you, when my judicial committee sends me recommendations, those are their instructions. I think judges too far left, as well as those too far right, want to make the law, not interpret it. I think they don't belong on the bench, with certain exceptions—rare, but certain.

So is Mr. Estrada moderate? Is he even a moderate conservative? Well, he gives every appearance of being extreme. People who know him say that, people who have talked to him about his views. That is one of the reasons, again, many of us feel he doesn't want to speak out, because if we knew his real views, he might well be rejected. Why has the Congressional Hispanic Caucus, the Puerto Rican Legal Defense and Education Fund, and the Mexican American Legal Defense Fund opposed Mr. Estrada? These groups have acted courageously in opposing

him because they share my commitment to promoting Latinos on the Federal judiciary. I have worked with them for years to diversify the bench. But the concerns about his views are overwhelming.

Let me tell you what Mr. Paul Bender had to say. He oversaw Mr. Estrada's work in the Solicitor General's office. He said he was too much of an ideologue to serve as a Federal judge. Mr. Bender said Mr. Estrada would bring his own personal agenda—an extreme agenda—to the courts if we confirm him.

My friend from Utah suggested Professor Bender has backed off. I assure my colleagues that is not the case. He stands by them 100 percent.

Again, my friends on the other side have suggested Bender is not credible because he gave Mr. Estrada high marks on his work evaluations. Every one of those evaluations went to legal excellence. I am not disputing that. Those evaluations did not deal with Mr. Estrada's potential extreme ideological nature. But don't take Professor Bender's word for it. Here is what Ann Coulter, the conservative pundit and Mr. Estrada's close friend, said about him this week:

> The second [Mr. Estrada] gets in there, he'll overrule everything you love.

This is a close friend of Mr. Estrada's, a conservative columnist. What was Ms. Coulter talking about? She was talking to Paul Begala. Was she saying Mr. Estrada will approve the Bush administration's rollback of environmental protections? Was she saying he would side with big business and special interests against the rights of labor and workers every time?

When Ms. Coulter says Miguel Estrada will overrule everything Mr. Begala cares about, it is not hard to worry that he will be another in a long line of rightwing judicial activists who prioritize States' rights over people's rights.

This is a lifetime appointment. Once it is done, it cannot be undone. If we approve Mr. Estrada, he is there for life and his decisions will affect all of us for generations to come. This Senate deserves a full and open debate. This Senate deserves answers to questions that may sound esoteric but will affect the lives of every single American. The people of this country, the American people, deserve these answers. They are so important to the future of this country.

When you have judges who try to make law, they make this Senate, the House, and the President—the elected branches of Government—less significant and less important. I say to my colleagues, many of us on this side of the aisle feel very strongly about this issue. We urge Mr. Estrada and the administration to reconsider. We urge them to give a fulsome view of how Mr. Estrada feels on the important issues of the day, and not simply to say he has a good legal mind, not simply to talk about the fact he has a nice history—which he does, and I give him credit for it—but to talk about the main thing that will influence what he does when he becomes a judge—his views.

We will continue this debate over the next few weeks and it could be one of the Senate's finest moments. I hope—no, I pray—we will rise to the occasion.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Madam President, anyone who doubted whether or not there were certain Democrats who intend to filibuster this nomination just heard a leading Senator who is going to espouse that. Two weeks of debate, he said; he hopes we will still be discussing this nomination then. It is the desire of at least one Senator, the Senator from New York, that this nominee not be approved, and that we will not have the opportunity to vote because they will not give us time.

Madam President, I come from a State, New Mexico, where 42 percent of the people are from what we generally call Hispanic descent—42 percent. Some people wonder why the Senator from New Mexico has different views than some of you around here. Well, we have 8 to 10 percent Native American Indians. If my arithmetic is right, when you add the two, there is about 51 percent either Hispanics or Native American Indians in my State.

I say right up front, I am not afraid of the views of a Hispanic whether he is a Democrat or a Republican. I don't niche Hispanics because they are Democrats and say they must be liberals who I would not approve for anything. Neither do I niche Republican Hispanics and say because they are Republicans—there is an implication they should not be, they should be Democrats—but if they are, they obviously should not be on the bench because they are obviously too conservative, or they would not be Hispanic Republicans.

I believe we are perilously close to determining it is OK to discriminate against Hispanics if they are conservative. I don't even know how conservative Mr. Estrada is, but the allegation is he is too conservative. He happens to also be Hispanic.

Just imagine, Madam President, if there was a Democrat nominee with the name Espinoza—I just picked one that came to mind—and Republicans found something wrong with him as a candidate—imagine what they might be saying: Republicans oppose a Hispanic for the circuit court of the United States. They don't want people of color on the circuit court of appeals.

I have not said that of the Democrats yet, but I am getting perilously close to wondering why, if he does not know enough about this nominee, he would call him unqualified for the bench in the circuit court. Is it because of his color? Is it because of from where he came? He epitomizes the American dream beyond what anyone in this Senate would probably epitomize. Coming here at 17 years of age and speaking no English; in a short period of time he learned the English language; graduated magna cum laude from law school, none other than Harvard—and we have people here wondering whether he is qualified.

In New Mexico, nobody would say of that man, Miguel Estrada: He is not qualified because he probably is too conservative, because he joined the Republican Party or, at least, he is one of them. I believe that would be wrong.

Again, I want to make sure everybody understands that I am doing my very best to tell it like I see it, but I am also doing a bit of surmising because my good friend from New York has not been here very long, and we welcome him. But there is no doubt in my mind that if they ever get a nominee on their side of the aisle who is a Hispanic Democrat for the circuit court of the United States and a Republican or a group of them are against that nominee, they might say the Republicans do not want to put a Hispanic on the bench.

Mr. SCHUMER. Will my colleague yield?

Mr. DOMENICI. I sat here for 30 minutes. I am very sorry.

Mr. SCHUMER. There were Hispanic nominees opposed by your side, and we never raised the issue because they were Hispanic—Paez, Rangel, Moreno.

Mr. DOMENICI. Madam President, I have the floor.

The PRESIDING OFFICER. The Senator from New Mexico has the floor.

Mr. DOMENICI. I did not interrupt his comments when there was tremendous opportunity to point out inconsistencies. I made only five notes and I could have stopped and asked him if something he said is really what he meant, but I chose not to. I am going to finish my few remarks. I will not be much longer.

I did not say that would happen, nor that they were discriminating against him, but the implication is clearly that it is kind of strange that this bright Hispanic young man is a Republican. I believe that is in the marketplace of ideas on the Democratic side.

I suggest there are some things happening in our country. In my own State, a young Hispanic came up to me the other day from a very large family—young people, middle-age people, grandmas, grandpas. They all have very beautiful Spanish names for all of those categories of people. He put his arm around me and he said: We have all been Democrats. There are probably 200 people in my family. We have all been Democrats. But you know, I am wondering if I should not join with you and become a Republican. It seems like you think like we do, and wouldn't it be something if I did and my whole family decided that I was right?

I said to him: I believe there are thousands like you who feel that way in New Mexico and in our country, and we welcome you.

If this young man, Miguel Estrada, when he became a citizen, became a Republican—and I do not know that, but there is an implication he is one of us or he is conservative—I welcome him. I am proud of him. I am glad he did it. I do not believe he ought to be eliminated from consideration on the circuit court of appeals or even a higher court because of that issue. I honestly believe it takes people of diversity in our country to join both parties and speak through their ideology and their feelings about what they think of our country.

I am not at all sure the argument being made today by the distinguished Senator from New York is anything other than ''we are afraid of this guy; we're not so sure he should be on the bench,'' but they really do not know why.

I hope that many Republicans join with Democrats and decide that if the distinguished Senator from New York wants to speak and wants to be joined for 2 weeks, that we will do him the favor and let him talk for 2 weeks. I am not sure our leader will do that because maybe we should shut off debate, but maybe it would be doing a favor for America and Hispanics across this country if we let him speak for 2 weeks. I do not think their cause will get any better. I think it might get even worse with the passage of time.

This young man went through all this effort thinking that he might complete the American dream. What must it have been like for this young man who learned English so quickly, went on to school and law school at Harvard? He must have thought the American dream for him might mean fulfillment as a judge.

He was appointed by the President of the United States more than 630 days ago, and instead of a dream, he has had a nightmare. I think it should end. The nightmare should be over. If they would like to make it 2 weeks longer and want to talk that long in the Senate, I hope the Senate insists that those who want to talk long on the Senate floor can talk long.

Certainly I am a very knowledgeable Senator about the institution. I love it, where some Senators do not even like to hear people say that. They think we waste too much time; we do this, that, and the other. I really love it. I did not at first, but I do now. I do not believe the other side will spend 2 weeks talking about this man unless they clearly do not want him to be on the bench, perhaps because of what I have said here; that maybe he does not belong as a Hispanic because, after all, he is conservative. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I am one who really cares for the distinguished Senator from New York. I understand him. I know him very well, and I care a great deal for him. He is just totally wrong.

For instance, Senator SCHUMER, the distinguished Senator from New York, submitted no written questions to Mr. Estrada. We waited 631 days to have a hearing. They conducted the hearing. The distinguished Senator from New York conducted the hearing. He could have asked any questions he wanted. He is saying he did not get good answers. I think some are interpreting that to mean he—or other Democrats as well—did not get the answers he wanted and he could not get anything on this man.

Following Mr. Estrada's hearing, the distinguished Senator from New York did not submit any questions. That is his right. I think sometimes we do submit too many written questions, and I respect him for not doing that. In fact, only two of my Democratic colleagues submitted any written questions at all to Mr. Estrada, which, of course, he answered immediately.

I find it amusing that the Senator from New York now claims he has questions for Mr. Estrada. If he did, why not write some questions? He certainly had a right to do that. With regard to the hearing testimony, Mr. Estrada repeatedly answered the questions put to him.

Let me give some examples. Mr. Estrada testified he is committed to following the precedents of higher courts faithfully and giving them full force and effect, even if he disagrees and even if he believes the precedents are erroneous. He will follow them. That is mainstream. That is not out of the mainstream. That is mainstream. I would not support anyone who would not answer the question that way.

When asked how he would decide cases presenting an issue with no controlling authority, Mr. Estrada testified: When facing a problem to which there is not a decisive answer from a higher court, my cardinal rule would be to seize it from any place I could get it. He testified this would include related case law and other areas, legislative history and views of academics.

How do you answer better than that? I guess you can using semantics that might be better than that, but I don't think you can do so.

When asked if he sees the legal process as a political game, Mr. Estrada testified: The first duty of a judge is to self-consciously put that aside and look at each case by withholding judgment with an open mind and listening to the parties. So I think that the job of a judge is to put all that aside and, to the best of his human capacity, give a judgment based solely on the arguments on the law.

Mr. Estrada also said: I will follow binding case law in every case. I don't even know that I can say whether I concur in the case or not without actually having gone through the work of doing it from scratch. I may have a personal, moral, philosophical view on the subject matter, but I undertake to you I would put all that aside and decide cases in accordance with binding case law and even in accordance with the case law that is not binding but seems instructive on the area without any influence whatever from any personal view I may have about the subject matter.

That is a pretty good answer. I could go on and on.

What is clear from his testimony is that Mr. Estrada will be a judge who will set aside his personal convictions, whatever they may be, and will follow the law. This is precisely the type of person we want to be a Federal judge.

I have heard the comments about the Federalist Society for years. The Federalist Society does not take positions in the law, but they put on the best seminars and conferences in the country today. And in every conference they have put on that I know of since I am a member of the board of advisers, along with a lot of other very distinguished people, far more important than I am, who have been mainstream thinkers through all the years, they put on these conferences with both sides being fully represented—plenty of Democrats representing the liberal side, to be brutally honest about it.

Now, let me just put one other thing to bed. I am so doggone tired of hearing about this Professor Bender. I ask unanimous consent I be permitted to talk about Professor Bender for a few minutes.

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

Mr. HATCH. 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 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.

According to published reports, Mr. Bender himself was the source of much conflict during his tenure at the Clinton Solicitor General's office.

According to published reports, while Mr. Bender was serving as the principal deputy from 1993 to 1996, about 1/3 of the assistants, including one 16-year career veteran, left the office.

Mr. Bender is an extremist by even the most liberal standards, as his 30-year history of hostility to Federal efforts to regulate pornography illustrates.

Mr. Bender has stated publicly that sexually explicit material should not be banned ''any more than material about war, crime, housing, poetry and music.''

In 1993, Mr. Bender pressed his agenda on pornography while serving as principal deputy Solicitor General, forcing President Clinton and the United States Congress—including 9 of my 10 Democratic colleagues on the Committee—to publicly reject his views.

In a case which became a political embarrassment for the Clinton Administration and the Reno Justice Department, Mr. Bender approved a brief filed with the U.S. Supreme Court in September 1993 which sought to overturn

the conviction of a repeat child pornographer and known pedophile.

The facts of the Knox case are straightforward. Stephen Knox was convicted of receiving and possessing child pornography under the Child Protection Act after the U.S. Customs Service found in Knox's apartment several videotapes of partially-clad girls—some as young as age ten—wearing bathing suits, leotards, or underwear in sexually seductive poses.

The brief that Mr. Bender approved sought to reverse the previous 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 to reject Mr. Bender's position in the case.

Upon learning of the Justice Department's position in the case, and after the Senate's unanimous vote denouncing it, President Clinton wrote to Attorney General Reno in November 1993 to argue 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.''

In 1994, the House voted 425–3 to condemn the Department's position, finding that Mr. Bender's argument would ''bring back commercial child pornography and lead to a substantial increase of sexual exploitation of children.''

Each of my Democratic colleague on the Committee who were Members of Congress at the time voted for either the Senate or House resolutions.

Bowing to congressional pressure and the rebuke by President Clinton, Attorney General Reno reversed Mr. Bender's position and filed her own brief, which restored the first Bush Administration's interpretation of the Child Protection Act.

My democratic colleagues who once condemned Mr. Bender now appear to rely on his views of Mr. Estrada's qualifications for the federal bench and continue to repeat his description of Mr. Estrada as ''an ideologue.'' I find this illogical, given that their determination in the past that Mr. Bender's views were out of the mainstream.

The Knox case is only one example of Mr. Bender's extremism.

In 1977, he testified before the Committee against tough anti-child pornography laws in a hearing entitled ''Protection of Children Against Sexual Children Against Sexual Exploitation.''

According to Mr. Bender's 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. . . .''

This is the hero they are quoting?

Mr. Bender testified that in order to prohibit child pornography and not run afoul of the First Amendment, ''you would have to have a finding, based on evidence, that in fact, the distribution of this type of film substantially increases the incidence of child abuse before you could possibly support the constitutionality'' of new laws prohibiting child pornography.

He noted that, in his experience, ''the estimates of the size of the pornography problem are usually much, much too large.''

Tell that to the millions of people who see child pornography all over the internet.

Mr. Bender concluded that he ''could not find any discernible harm to children from being exposed to explicit sexual materials as children . . . the harms that we found to children who were exposed to these things were harms that flowed, not from the materials, but from the social settings in which they saw them.''

Mr. Bender's testimony before this Committee exposes his ultra-liberal, pro-pornography views that are difficult to characterize as anything but out of the mainstream.

From 1968 to 1979, Mr. Bender served as the controversial Chief Counsel to the President's Commission on Obscenity and Pornography. Once again, his views were roundly rejected by the Senate.

Mr. Bender was the architect of the commission's report recommending 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.

Dissenting members of the commission described the Bender Report as a ''Magna Carta for the pornographer.''

In 1970, the Senate vote 60–5 for a resolution rejecting the Commission's report and recommendations, 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.

Mr. Bender's extreme views aren't limited to pornography. In 1998, he argued that convicted murderer James Hamm should be admitted to the Arizona bar. Hamm was convicted in 1974 and sentenced to 25 years to life after pleading guilty to killing a Tucson, AZ man during a drug deal. Mr. Bender, who taught Hamm constitutional law at Arizona State Law School, called him ''a poster boy for rehabilitation in prison'' and argued that he should be admitted to the bar because ''he's not going to steal from clients or file frivolous suits.''

Mr. Bender's views are certainly out of the mainstream of society in general. What's more, he appears to be out of the mainstream even among former members of the Clinton administration—hardly a conservative bunch—when it comes to Mr. Estrada.

Ron Klain, former chief of staff to Vice President Gore, praised Mr. Estrada, saying that he would be able to ''faithfully follow the law.'' Ron Klain was a former member of the Judiciary Committee. He is a wonderful Democrat and, no question, he's a wonderful attorney. We all know him and appreciate him and respect him.

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.'' Seth Waxman was a great Solicitor General. We all respect him. I know him personally. He's a very fine lawyer and a wonderful Democrat. I'm not calling him a wonderful Democrat because he's on our side with Estrada. I am calling him that because that's the way he is. He's a great attorney. I strongly supported him at that time.

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.

These are people who know him forward and backwards, who know what a great lawyer he is. These are mainstream Democrats calling him a mainstream person, we ought to listen to them.

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 unsubstantiated criticisms of Mr. Bender, a liberal extremist whose out-of-the-mainstream views have been twice condemned by the U.S. Senate.

There are many reasons to discredit Paul Bender's criticisms of Mr. Estrada. That is why I am taking this time to do it and I will try to finish so the distinguished Senator from Massachusetts can have the floor.

There are many reasons to discredit Paul Bender's criticisms of Mr. Estrada, not the least of which is the fact that he is the lone voice of criticism amid a sea of admiration and praise for Mr. Estrada.

One of Mr. Estrada's most ardent supporters from the Clinton administration is Seth Waxman, who specifically disputed Mr. Bender's criticisms of Mr. Estrada, yet they are being brought up on the floor again. There is a time to quit bringing these types of people to try to hurt Mr. Estrada. Let me read you what Mr. Waxman said in a letter to the Committee dated September 17, 2001.

I understand from published reports that . . . Paul Bender[] has criticized Mr. Estrada's professional conduct while in the Solicitor General's Office. I do not share those criticisms at all. During the time Mr. Estrada and I worked together, he was a model of professionalism and competence. In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his personal views—or indeed that they reflected any consideration other than the long-term interests of the United States. I greatly enjoyed working with Miguel, profited from our interaction, and was genuinely sorry when he decided to leave the office in favor of private practice.

Much has been said about Mr. Estrada's views regarding policy and social issues. I have never had a conversation with Mr. Estrada about either. To my mind—and I believe Mr. Estrada's as well—those views were entirely irrelevant to the work we had before us in the Solicitor General's office. I have great respect both for Mr. Estrada's intellect and for his integrity.

Now, this is not some right-wing fanatic who is praising Mr. Estrada's intellect and integrity. This is former Clinton Solicitor General Seth Waxman. Can there be any genuine doubt about his sincerity? The answer is no.

Mr. President, I ask unanimous consent that a copy of this letter be printed in the RECORD.

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

WILMER, CUTLER & PICKERING,
Washington, DC, September 17, 2001.

Chairman PATRICK J. LEAHY,
Senate Judiciary Committee, Washington, DC.
Senator ORRIN G. HATCH,
Senate Judiciary Committee, Washington, DC.
Re: Miguel Estrada

DEAR CHAIRMAN LEAHY AND SENATOR HATCH: During much of the year in which I served as Principal Deputy Solicitor General (1996–1997), Miguel Estrada and I were colleagues. I understand from published reports that my predecessor, Paul Bender, has criticized Mr. Estrada's professional conduct while in the Solicitor General's Office. I do not share those criticisms at all. During the time Mr. Estrada and I worked together, he was a model of professionalism and competence. In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his personal views—or indeed that they reflected any consideration other than the long-term interests of the United States. I greatly enjoyed working with Miguel, profited from our interactions, and was genuinely sorry when he decided to leave the office in favor of private practice.

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Yours sincerely,

SETH P. WAXMAN.

Mr. HATCH. I will put Seth Waxman up against Paul Bender any day, any time, anywhere. This is not some right-wing fanatic.

Mr. KENNEDY. Mr. President, I want to permit my friend and colleague to complete his thought, but we are trying to get some idea—

Mr. HATCH. I think I will only be a few more minutes.

Mr. KENNEDY. I believe there was an order before the Senate that I be recognized at 5:40, as I understood it?

Mr. HATCH. As I understand it, you were not here at the time and I had to make these points.

Mr. KENNEDY. I believe I was in the Chamber at 5:40. I heard the Senator speak at that time.

Mr. HATCH. I will try to finish as soon as I can. As I understand it, I have the floor.

The PRESIDING OFFICER. The Senator from Utah does have the floor.

Mr. HATCH. I will certainly try—

Mr. KENNEDY. Just as an parliamentary inquiry, what was the understanding?

The PRESIDING OFFICER. The order was to recognize the Senator from Massachusetts at 5:40. But the Senator was not present at that time.

Mr. KENNEDY. And what is the time now?

The PRESIDING OFFICER. The time is 5:56.

Mr. KENNEDY. Fine. I wasn't here at 5:40. I think I was at the entrance to the Chamber when the Senator asked consent to be able to proceed. If he wants to take advantage of that, so be it. But I think that it is unfortunate and unfair.

Mr. HATCH. If I might remark, I have been a friend of the Senator from Massachusetts for a long time.

Mr. KENNEDY. I just stated that—

Mr. HATCH. Who has the floor?

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

Mr. KENNEDY. You have the floor.

Mr. HATCH. I ask for the regular order.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I have been his friend for a long time, and I am going to finish this very quickly in deference to him. But he wasn't here. I did not see him at the door. And I had to make these comments because of some of the comments that were made that I thought were improper, against Mr. Estrada. And I am going to defend Mr. Estrada on the floor when these kinds of comments are made. I think it is the right thing to do. I am certainly not trying to take advantage of the distinguished Senator from Massachusetts, but I exercise my rights as a coequal Senator. Let me just finish this, and I will do it as quickly as I can.

Mr. President, at the request of the Committee, Mr. Estrada provided copies of his annual performance evaluations during this tenure at the Solicitor General's office. These documents cast serious doubt on Mr. Bender's allegations about Mr. Estrada.

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 none other than Paul 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 positions to others. . .

All dealings, oral, and written, with the courts, clients, and others are conducted in a diplomatic, cooperative, and candid manner.

I might add this doesn't sound like some radical rightwing fanatic some would portray Mr. Estrada as.

He goes on to say:

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 represent Mr. Bender's contemporaneous evaluation of Mr. Estrada's legal ability, judgment, temperament, and reputation for fairness and integrity.

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

Having said all that, I apologize to my colleague from Massachusetts for having to make these comments after the comments made by the distinguished Senator from New York. But I think I would have been remiss had I not made those comments to correct the Record to show this man Bender may be a law professor at an institution in the West, but he certainly has not been very fair to Mr. Estrada. And his own reputation would lead one to believe he is not worth listening to with regard to his opinion, which I believe and I think any fair person would believe was nothing but a politically motivated smear.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from New York is recognized.

Mr. KENNEDY. Mr. President, first of all, as I stated at the hearing, the personal attacks on Paul Bender are really beneath this body. Paul Bender has a long and esteemed history in public and private practice. He clerked for Felix Frankfurter on the Supreme Court. He argued dozens of cases before the Supreme Court. He taught constitutional law at the University of Pennsylvania and the University of Arizona. To criticize Paul Bender because you disagree with his statements is also chilling to anyone who wishes to express their personal opinions about a nominee. I really hope we can talk about the issues without resorting to personal attacks.

Others as well have echoed the Bender criticism.

Among the great debates at the Constitutional Convention two centuries ago was the issue of judicial appointments. Initially, there was broad agreement among the delegates that either the Senate alone or the legislature as a whole should appoint federal judges, and in June of 1787, the delegates tentatively adopted a proposal to give the appointment power to the Senate. But opposition soon arose. The delegates re-opened the issue and considered alternatives such as giving the power of appointment to both the Senate and the House, or to the President with the advice and consent of Congress, or to the President alone.

After months of debate, the issue was finally resolved in September. It was decided the President was to nominate, and the Senate would be asked to concur before the appointment could be made. The Framers believed that one person should have the responsibility for nominating judges, but they clearly wanted to avoid vesting too much power on this issue in the President. The Senate would have the power to prevent the President from shaping a judiciary in his own image. As Alexander Hamilton said in Federalist No. 77, ''If by influencing the President meant restraining him, this is precisely what must have been intended.''

By requiring the President and the Senate to share the responsibility of appointing federal judges, the Framers created one of the most important checks and balances in the Constitution and laid a solid foundation for the independence of the judiciary that has served the Nation so well.

In keeping with this shared responsibility, the Senate must fulfill its constitutional duty to review the nominations sent to us by President Bush—including the nomination of Miguel Estrada. We must assure ourselves that every nominee has the qualifications, temperament, and commitment to enforcing the constitutional and federal statutory protections that are central to our American democracy.

This is not a role we take lightly. At stake are lifetime appointments to courts that have the power to make far-reaching decisions affecting the lives of our people and the life of our Nation. The D.C. Circuit is one of the most important courts in the country—second only to the Supreme Court. It is particularly important to workers, immigrants, and those seeking to enforce their civil rights. It has a unique and prominent role among the Federal courts of appeals, particularly in the area of administrative law, and has exclusive jurisdiction over many workplace, environmental, civil rights, and consumer protection statutes.

If confirmed, Mr. Estrada would make decisions about the rights of workers. He would decide cases involving the right to form a union without intimidation by an employer and cases that affect health and safety rules and regulations—regulations affecting workers exposed to tuberculosis, and dangerous, even toxic, chemicals. These problems aren't going away—they are increasing. The administration continues to issue anti-worker Executive Orders and undermine the labor rights of airline workers. It refuses to put a plan in place to address the serious problem of ergonomic injuries in the workplace. We need judges who will interpret the law fairly—not judges tied to special interests that drive the administration's agenda.

In recent years, the D.C. Circuit has become a safe haven for employers eager to defy the orders of the National Labor Relations Board. In 1980, 83 percent of all NLRB decisions were enforced in full by the D.C. Circuit. Deference was given to the Board by the court. In 2000, however, only 57 percent of NLRB decisions were enforced in full. Time after time, the closely-divided D.C. Circuit has refused to defer to the NLRB's expertise.

Jose Castro knows that one judge's vote can make a difference. A few years ago, the Hoffman Plastics Company fired workers in retaliation for their attempts to organize a union. In response, the National Labor Relations Board ordered reinstatement and backpay for the workers affected. The board later denied reinstatement and granted only limited backpay to Mr. Castro, an undocumented worker. When Hoffman Plastics challenged the board's decision, the D.C. Circuit—in a 5 to 4 decision—rejected the employer's argument and enforced the board's order. The court determined that the board had appropriately crafted its order to take into account the policies underlying both the National Labor Relations Act and the Immigration Reform and Control Act.

Last year, however, the Supreme Court reversed the board and the D.C. Circuit and held—in a 5 to 4 decision—that many immigrant workers are not entitled to backpay remedies under the National Labor Relations Act. The Supreme Court's decision affects as many as 6 million immigrant workers across the United States, and employers have used it to claim that those workers have no labor protections.

If confirmed, Mr. Estrada would make decisions about our environmental laws—such as challenges to clean water regulations, Superfund clean-up of toxic sites, and Clean Air Act regulations. He will decide cases such as American Trucking Associations v. EPA, which denied EPA the authority to establish health standards for smog and soot. The issue in that case directly affects the thousands of children who suffer and die from asthma every year.

Mr. Estrada will be making these decisions as the Bush administration takes dramatic steps to curtail enforcement of our environmental laws. The administration has proposed rules to remove 20 million acres of wetlands from Federal protection, new regulations to weaken national forest protections enacted by the Reagan administration, approved natural gas drilling in Texas along the Nation's longest stretch of undeveloped beach, and proposed to scale back environmental reviews and judicial oversight over national forests and public lands.

Mr. Estrada will also make decisions about the enforcement of our nation's civil rights laws when he reviews race, gender, and disability discrimination cases like Kolstad v. American Dental Association. Carole Kolstad sued her employer for gender discrimination, and a one-vote majority of the D.C. Circuit upheld a very high standard for the collection of punitive damages. The Supreme Court later vacated the D.C. Circuit's decision, but once again it is clear that one vote can make a difference on the D.C. Circuit.

The question before the Senate is what role Mr. Estrada will play on this important court and in the lives of the American people. Will he be a fair and impartial advocate for the law and the Constitution, or will he be at the forefront of efforts to deny basic rights and protections for those who need them?

Mr. Estrada's record and his testimony before the Judiciary Committee provides little information and even less assurance that he is the right person for this important position. It is difficults—if not impossible—for us to exercise our constitutional duty of advice and consent, and to satisfy ourselves that Mr. Estrada is fit for a lifetime appointment without full information. Yet, Mr. Estrada remains a mystery. He refused to provide candid answers to questions during his hearing or in writing to the committee. And the Justice Department refuses to provide memoranda produced by Mr. Estrada when he served in the Solicitor General's office.

These Solicitor General memoranda would be helpful in understanding Mr. Estrada's fitness for a judgeship. They would aid us in determining how he would approach the complex task of judging, and whether he would be able to separate his own personal views from an objective analysis of the law. This administration and previous administrations have provided us with this kind of information in the past, and it is incumbent upon the administration to provide the Senate with the

information necessary to evaluate nominees to our Nation's Federal courts.

The little we do know of Mr. Estrada's record raises grave concerns. In fact, his direct supervisor in the Office of the Solicitor General has raised questions about whether Mr. Estrada has the temperament and requisite moderation to sit on the D.C. Circuit. The supervisor, Mr. Bender, has expressed his belief that Mr. Estrada would have difficulty separating himself from his personal ideological views.

It has been reported, for instance, that some of Mr. Estrada's colleagues have said that he is not openminded and that he ''does not listen to other people.'' After an in-depth meeting with Mr. Estrada, a member of the Congressional Hispanic Caucus stated that Mr. Estrada appeared to have a ''very short fuse'' and that he did not ''have the judicial temperament that is necessary to be a judge.'' According to the Puerto Rican Legal Defense Fund, with whom Mr. Estrada met, he was not ''even-tempered''—he became angry during their meetings with him, and he even threatened the group with legal action because they had raised concerns about his record.

These reports are very troubling. What we seek in our judges is a quality that makes them more than just talented lawyers or advocates. We want to know that a judge is openminded and fair. I am not persuaded that Mr. Estrada possesses the key qualities of moderation, openness and fairness required of our judges.

The cases that Mr. Estrada has made the primary focus of his pro bono activity also raise concerns about whether he will be fair in the wide range of cases that come before him. In two cases, Mr. Estrada tried to limit the first amendment rights of minorities to congregate and associate on public streets. He also sits on the board of the Center for Community Interest, which advocates the kind of police tactics that have often led to harassment and racial profiling in minority communities.

Mr. Estrada's single-minded focus on justifying such ordinances is cause for great concern. Even after the clear rebuke from the Supreme Court about the Chicago ordinance, he devoted many hours to defending the City of Annapolis against challenges to the constitutionality of its own antiloitering ordinance. When the NAACP challenged the ordinance, Mr. Estrada ''offered to take the city's case all the way to the U.S. Supreme Court, if necessary, free of charge.'' Mr. Estrada lost that case, too, however, when a Federal district court struck down the law as unconstitutional.

We know that decades of important civil rights precedents may well be at stake in coming years. These issues raise very serious concerns about Mr. Estrada's nomination. He is an intelligent and talented lawyer. But that is not enough. To serve as a Federal judge—particularly on the second most important court in the land requires a commitment to the core constitutional values of our democracy. It requires the special qualities that enable judges to meet their own important responsibilities—fairness, impartiality, and openmindedness.

There is nothing anti-Latino about our objections to Mr. Estrada. President Bush has nominated five Latinos to the Federal courts, four of whom were confirmed last year, when the Democrats controlled the Senate. It is the Democrats who have taken the lead in appointing Latinos to the Federal courts. During the Clinton administration, 23 Latino nominees were confirmed to the Federal courts—more than in any previous administration, Republican or Democrat. More Latinos would have been confirmed had it not been for the unfair tactics of Senate Republicans.

In fact, five Latino nominees sent to the Senate by President Clinton were not confirmed by the Republican-controlled Senate. Two of them, nominated to the Fifth Circuit Court of Appeals from Texas, were not even given hearings. One waited more than a year in the Senate before his nomination was returned to the President because of inaction by the Judiciary Committee. The other waited more than a year, and was then renominated by President Clinton in January of 2001, but President Bush withdrew it.

All five Latino nominees blocked by Senate Republicans had the full support of the Latino community—but the same cannot be said of Mr. Estrada. The major Latino organizations have raised strong concerns about Mr. Estrada. The Congressional Hispanic Caucus has opposed his nomination. The Latino organizations opposing or raising concerns about Mr. Estrada include: the Mexican American Legal Defense Fund, the Puerto Rican Legal Defense Fund, the National Association of Latino Elected and Appointed Officials, the National Council of La Raza, the California La Raza Lawyers, the Southwest Voter Registration Project, and the Illinois Puerto Rican Bar Association.

The Congressional Hispanic Caucus has told the Senate Judiciary Committee that Mr. Estrada does not meet their criteria for endorsement of a nominee. As the letter they sent to the committee states:

> The appointment of a Latino to reflect diversity is rendered meaningless unless the nominee can demonstrate an understanding of the historical role courts have played in the lives of minorities in extending equal protections and rights; has some involvement in the Latino community that provides insight into the values and mores of the Latino culture in order to understand the unique legal challenges facing Latinos; and recognizes both the role model responsibilities he or she assumes as well as having an appreciation for protecting and promoting the legal rights of minorities who historically have been the victims of discrimination.
>
> Based on the totality of the nominee's available record and our meeting with him, Mr. Estrada fails to meet the CHC's criteria for endorsing a nominee.

The Mexican American Legal Defense Fund opposes Mr. Estrada as well. According to their statement:

> The most difficult situation for any Latino organization is when a President nominates a Latino who does not reflect, resonate or associate with the Latino community, and who comes with a predisposition to view claims of racial discrimination and unfair treatment with suspicion and doubt instead of with an open mind. Unfortunately, the only Latino whom President Bush has nominated in two years to any Federal circuit court in the country is such a person. President Bush nominated Mr. Estrada to the D.C. Circuit Court of Appeals.
>
> After a thorough examination of his record, his confirmation hearing testimony, and his written answers to the U.S. Senate, we announce today our formal opposition to his nomination. We cannot in good conscience stand on the sideline and be neutral on his nomination or others like his. We oppose his nomination and that of others that will prevent the courts from serving as the check and balance so desperately needed by our community to the actions being taken by the executive and legislative branches.

Recently, the Puerto Rican Legal Defense Fund also issued a statement reaffirming its opposition to Mr. Estrada's nomination.

Many of us have deep concerns about Mr. Estrada's record and his unwillingness to supplement the record with answers to important questions or production of the memoranda from his days in the Solicitor General's office.

I urge the Senate to reject this nomination. A lifetime appointment to a court so important in deciding so many basic issues should not be given to a nominee about whom we know so little.

The basic values of our society—whether we will continue to be committed to equality, opportunity, freedom of expression, the right to privacy, and many other fundamental rights—are at stake in all of these nominations. On the role of the Senate in the appointment process, the genius of the Constitution is the clear system of checks and balances that it provides. The Constitution says ''advice and consent''—not ''rubber stamp.'' When this or any other administration nominates judges who would weaken the core values of our country and roll back the basic rights that make our country a genuine democracy, the Senate should reject them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, today I rise in support of Miguel Estrada, the nominee for the 12th Circuit Court of Appeals.

It is an honor to serve my State of Georgia in this great institution, and I am pleased that the work we are undertaking today pertains to such an important issue for our country—filling the vacancies in our courts with good and honorable judges.

One of the most important burdens that has been placed on the shoulders

of the Senate is the sanction of Federal judges. I relish this task because it grants us an opportunity to have a hand in the future of the laws that govern this great land. And there is no better way to help craft the America of the next generation, the America to be served by our children and our grandchildren.

Before I came to Congress, I practiced law for 26 years and I can say that it is rare to meet someone as qualified for the bench as Miguel Estrada. The American Bar Association unanimously rated Mr. Estrada as ''well qualified.'' I understand that some of my colleagues in the past have referred to this rating as the ''gold standard'' for judicial nominees. It seems then that a unanimous ''well qualified'' rating should speak volumes about Mr. Estrada's merit.

Some critics have said that Mr. Estrada should not be confirmed because he lacks judicial experience. I would simply highlight the examples of Justice White and Chief Justice Rehnquist. Both men had no prior judicial experience when they were appointed to the Supreme Court. Also on the same court that Mr. Estrada would join, five of the eight sitting judges had no prior judicial experienced, two of which were nominated by President Clinton.

Mr. Estrada, however, has had exceptional experience both in the government and in private practice. From 1992 to 1997, he served in 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 widely regarded as one of America's leading appellate advocates. He is currently a partner for a leading law firm with their appellate and constitutional law practice group. I believe that this represents sufficient experience for his nomination.

Another argument made by some is that Mr. Estrada has refused to produce confidential memoranda that he wrote when he was with the Solicitor General's office. I would argue that this request, if met, would have a debilitating effect on the ability of the Department of Justice to represent the United States before the Supreme Court and I have a letter signed by every living former Solicitor General—Democrat and Republican alike—saying the same. I would ask unanimous consent to print this letter in the RECORD.

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

WILMER, CUTLER & PICKERING,
WASHINGTON, DC,
June 24, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to express our concern about your recent request that the Department of Justice turn over ''appeal recommendations, certiorari recommendations, and amicus recommendations'' that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of the Solicitor General—under Presidents of both parties—we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review of adverse appellate decisions, and whether to participate as amicus curiae in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these and other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

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

Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Sincerely,

On behalf of: Seth P. Waxman, Walter Dellinger, Drew S. Days, III, Kenneth W. Starr, Charles Fried, Robert H. Bork, Archibald Cox.

Mr. CHAMBLISS. Also, as we have heard, Mr. Estrada has a great story; he is accomplished, competent, and experienced. This man came to America to seek the American Dream and he is now living that dream. He came to the United States from Honduras when he was seventeen years old and has spent his life gaining credibility as a Hispanic man of distinction. If confirmed, Mr. Estrada would break a glass ceiling by being the first Latino judge to serve on the DC Court of Appeals. However, if he is not confirmed, it would not just be terrible for the District of Columbia, but it would send the wrong message to Hispanic communities in my home state of Georgia and across the nation. But I would say to my colleagues that you should not vote for Miguel Estrada because he is Hispanic, you should vote to confirm him because he is a world-class laywer and he will make a world-class judge.

Mr. Estrada is a great lawyer and will make a superb judge. He has the qualifications, the capacity, the integrity, and the temperament to serve on the federal bench. I was happy to support his nomination last week in the Judiciary Committee and I urge my colleagues to join me in supporting the President's nominee for this important position.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, just a few remarks. The distinguished Senator from Massachusetts is very concerned about this court and how judges function on it, as am I. It is a very important court. In fact, next to the Supreme Court, it is the next most important court in the country—no question about it—because the decisions they make affect almost every American in many instances.

In terms of straightforward application of the law, the DC Circuit is one of the best functioning courts in the country. Recent years have seen DC circuit judges agreeing in the overwhelming majority of cases, including ones of great political significance, even when Republicans outnumbered Democrats six to four.

I might also add that the DC Circuit is in the midst of a vacancy crisis unseen in recent memory. Only eight of the court's 12 authorized judgeships currently are filled. In the past 2 years, two of the court's judges have taken senior status.

The DC Circuit has not been down to eight active judges since 1980. It is a crisis situation because it is extremely important. The vacancy crisis is substantially interfering with the DC Circuit's ability to decide cases in a timely fashion. As a result, litigants find themselves waiting longer and longer for the court to resolve their disputes. Because so many DC Circuit Court cases involve constitutional and administrative law, this means that the validity of challenged government policies is likely to remain in legal limbo.

In the 2001–2002 term, the court had to cancel several scheduled days of oral argument. As a result, cases that would have been heard in 2001–2002 will not be heard until September of 2002 at the earliest. For the 2002–2003 term, the court will be able to hear cases on just 96 days and will be able to schedule just 336 cases. Because of the limited number of sitting days, the court's oral argument calendar is already nearly full through March of 2003.

The vacancy crisis is also interfering with the operation of the court's emergency panel which hears emergency cases and various motions. Because only seven judges are now available for emergency panels, each one has to serve 6 weeks of overtime emergency duty on top of the 16 weeks he or she ordinarily serves throughout the year.

The court often has been forced to constitute emergency panels with fewer than the usual complement of three judges.

The chief judge of the DC Circuit, at a recent circuit conference said:

> If the court does not have additional judges soon, our ability to manage our workload in a timely fashion will be seriously compromised.

He further explained that:

. . . it is clear that the Senate's inaction is coming to jeopardize the administration of justice in this Circuit.

That is important stuff. It is really important that we put Miguel Estrada on the court.

We have had some comments about a few Latino groups that are known for liberal politics and have been opposed to Miguel Estrada. Let me list a few groups that support him. The following groups are just some that have announced support for him: League of United Latin American Citizens, LULAC, the Nation's oldest and largest Hispanic civil rights organization; U.S. Hispanic Chamber of Commerce; Hispanic National Bar Association; Hispanic Association of Corporate Responsibility; Association for the Advancement of Mexican Americans; MANA, a national Latina organization; Cuban American National Council; U.S.-Mexico Chamber of Commerce; Hispanic Business Roundtable; The Latino Coalition; National Association of Small Disadvantaged Businesses; Mexican American Grocers Association; Phoenix Construction Services; Hispanic Chamber of Commerce of Greater Kansas City; HEBC, Hispanic Engineers Business Corporation; Hispano Chamber of Commerce de Las Cruces; Casa Del Sinaloense; Republican National Hispanic Assembly; Hispanic Engineers Business Corporation; Hispanic Contractors of America; Charo, Community Development Corporation; Cuban American National Foundation.

The League of United Latin American Citizens is the oldest Hispanic civil rights organization. Established in 1927, it has more than 700 councils and more than 120,000 individual members.

The U.S. Hispanic Chamber of Commerce was established in 1979, with a network of more than 200 local chambers across the country, and it advocates on behalf of the 1.8 million Hispanic-owned businesses in the country.

The Hispanics National Bar Association was established in 1972 and has more than 25,000 members, consisting of lawyers and judges.

MANA, a national Latino organization, was established in 1974 to give a voice to the more than 20 million Hispanic women of all backgrounds and professions across the U.S.

The AAMA, Association for the Advancement of Mexican Americans, with over 30 years of service to the community, has been ranked the ninth largest Hispanic nonprofit in the country, providing education, employment and training, health care, and related services to more than 30,000 people annually.

The Cuban American National Council has served the Cuban American community of Florida for the past 23 years, through education, housing, health and human services, and employment and training.

I just thought the record needed to show that Miguel Estrada has tremendous support among Hispanic people. Now, things we've heard in the debate against Miguel have been some of the saddest things I have ever witnessed. It is akin to the lioness eating her cubs—Democratic Latino community leaders turning on one of their own because he doesn't fit their definition of ''Latino.''

Among their concerns is he is a recent immigrant, he hasn't lived in this country long enough to understand the plight of Hispanic Americans, he wasn't poor enough, his family was middle class and he attended private schools, he speaks English too well, he speaks Spanish too well—these are comments made by some of the liberal Latino groups. He is not from Mexico or Puerto Rico, he is from Honduras; he didn't do the right kind of pro bono work; he sought to protect victims of crime, not criminals. Jeepers.

His critics would have you believe that to be Hispanic you have to be poor, attend only inner city schools, work for the public defenders office, and never aspire to work for the Department of Justice, or to clerk for the U.S. Supreme Court. I don't think the vast majority of Hispanic people think that way. I think they are proud of Miguel Estrada, and they ought to be because he is a man who has really made something of his life, and he is still a very young man.

Miguel Estrada is the American dream incarnate. I think this should be celebrated by all Americans, but certainly by Hispanic Americans, and especially Hispanic mothers and fathers who dream of a bright future for their children. Tell those mothers and fathers that in order to be considered Hispanic, your children have to remain poor, forgo a quality education, and give up their dreams of succeeding in the legal profession. That is pure bunk and everybody knows it. But these are some of the arguments that have been made against Miguel Estrada.

Lest anybody think I am just saying these things because I am supporting Miguel Estrada, I have spent most of my Senate career working very closely with the Hispanic community in the United States, getting to know the issues and addressing the community's concerns through legislation. In fact, in 1986, I started the U.S. Senate Republican Conference Task Force on Hispanic Affairs to ensure that the Hispanic community had a strong voice in the Senate. Over my lifetime, I have grown to love the Hispanic culture, their people, and their history. I believe their values and culture have infused and invigorated the American dream. The Latinos I have come to know over the past 26-plus years tell me it is all about heart. It is the ''corazon.'' Frankly, I have come to feel like I personally have a Latino heart beating in my breast. That is how important this community is to me. That is how close I feel to my Hispanic brothers and sisters. I have the credentials to make that case. I happen to know Miguel Estrada. He, too, has ''corazon.''

The Hispanic community leaders I respect and admire have dedicated themselves to ensuring that people such as Miguel have the very opportunity Miguel has used to his advantage. They want Hispanics to succeed. They are not trying to force all Latinos into cookie cutter shapes. They want Hispanics to be as free to find their own way as American citizens. Organizations such as the League of United Latin American Citizens, the oldest Hispanic civil rights organization in the country, and the United States Hispanic Chamber of Commerce have existed for decades. Their mission has been to ensure that the downtrodden, the poor, the recent immigrant, and his heirs have an opportunity to succeed absent discrimination.

Hector Flores, president of LULAC, and George Herrera, the Hispanic Chamber's President, work hard to get more Hispanic kids into Columbia and Harvard, more Latino youth to clerk in at the U.S. Supreme Court, to work at the Department of Justice, and to become partners of a prestigious law firm. Miguel Estrada deserves credit, rather than this constant worry that he might be too conservative, or he might be too conservative than some of these liberal groups would like.

I have a lot more to say, but I will yield the floor at this point.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I didn't want the night to go by without commenting on some remarks made by two Senators on the other side, the majority, who have suggested that those who oppose Miguel Estrada are doing it on the basis of his ethnicity. In fact, one Senator said it was anti-Hispanic. The Congressional Hispanic Caucus, which is in existence here in Congress and consists of Hispanic members of Congress who have been elected by people from congressional districts all around the country, was formed many years ago. The Congressional Hispanic Caucus has taken a position against the nomination of Miguel Estrada. I hope nobody would suggest that the Congressional Hispanic Caucus is not Hispanic.

In fact, the Congressional Hispanic Caucus was so concerned about the fact there are not enough Hispanics in the judiciary that they formed in the last Congress the Congressional Hispanic Caucus Hispanic Judiciary Initiative to assure fair treatment of judicial nominees and to promote diversity.

While the Congressional Hispanic Caucus has endorsed other Bush judicial nominees who are Hispanic, such as Jose Linares, Mr. Estrada failed most of the factors in their evaluation. Therefore, they oppose his nomination.

The Congressional Hispanic Caucus sent a letter to the Judiciary Committee late last year. It was signed by Congressmen SILVESTRE REYES and CHARLES GONZALEZ on behalf of the entire Hispanic caucus. The letter was based on the review of his qualifications and their interview with him.

I am certainly not a member of the Judiciary Committee, and I am not here to debate the issue with the learned chairman of the committee, but I want everyone within the sound of my voice to understand that someone can opposes this nomination and not do it based on anti-Hispanic grounds. There is no better logic than to look at the Congressional Hispanic Caucus which opposes this nomination.

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

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

Mr. HATCH. Mr. President, I wish to make a few points. Some of my colleagues are suggesting that we are playing what amounts to the race card on this nominee. That is ludicrous. Personally, I resent it.

Let me make one point clear: No one is suggesting that anyone in the Senate has a bigoted bone in his or her body. No one is suggesting that for a minute. No one is suggesting Mr. Estrada is being opposed because he is a Hispanic. That is just a red herring. It is a shame on anyone who is arguing that carbuncle.

What I have suggested is exactly what Herman Badillo, a former Democratic Congressman, has written publicly. Some liberal, and, yes, Democrats, show increasing intolerance to Hispanics and African Americans who do not subscribe to their left of mainstream ideology. Their intolerance is not because they are Hispanic or African American but because they are Hispanic or African American and not liberals. That is where the intolerance is.

Some people will simply not accept a Hispanic, African American, or even women who do not toe the line of the radical left of special interest groups. We are finding that all over this instance.

Herman Badillo, a former Democratic Congressman, for whom I have always had respect, has written:

> Liberals and their special interest groups want to force these minorities into one monolithic intellectual ghetto demanding that they be of one mind.

I would think that every minority, whether liberal or conservative, would find such patronizing thought, control, and elitism demeaning and insulting. It amounts to an intellectual glass ceiling for minorities, and that is, to a degree, what is happening here.

In the hearing we held last September and in the follow-up questions, I have not heard one argument against Miguel Estrada—not one, not one valid argument. I have not heard one person make a case that the American Bar Association was wrong when they gave Miguel Estrada a unanimously well-qualified rating, the highest rating that the American Bar Association can give.

I have not heard one person indicate that this man is not of the highest intellect, the highest moral purpose, the highest qualifications, except for Paul Bender, who I think we more than explained away a few minutes ago, and it had to be done because for some reason they keep bringing up this man who has been very unfair and for partisan, cheap political reasons apparently, after having given the highest, most glowing recommendations for Mr. Estrada when he worked for him at the Justice Department.

They try to explain it away: Well, he was not talking about his ideology. Of course, he was. If there had been one indication of bad ideology or too much extreme ideology, I can guarantee you Paul Bender would never have given those glowing performance evaluations.

It is offensive. This man is a law professor in this country and, unfortunately, I hate to say it, but the law professors in this country, as a whole, are extremely to the left, and that is not too far different from many of the political science professors in this country.

I remember I went to one of the major universities a few years ago, and of the 41 members of the faculty, only one claimed to maybe be a moderate. All the rest admitted they were left wing, and yet these are the people teaching our children. That is not bad. They have a right to hear left-wing ideology and more liberal teachers, but I think they also have a right to hear people who are on the other side of the equation who may be right in many ways, not just right ideologically.

To be honest, I get a little tired of this business that we Democrats are the ones who have really done more appointments for Hispanics. Republican Presidents altogether in recent years have appointed 25 Hispanic judges. Sonia Sotomayor of New York was appointed by the first President Bush and was subsequently nominated to the Second Circuit by President Clinton and was confirmed.

The second President Bush has already nominated nine Hispanics, with three more coming up, according to press reports, for a total of 12. His chief counsel in the White House is Hispanic. There is no question he is reaching out and doing a good job. It is one of the things I love about him.

At the current rate of second President Bush, we can expect in 8 years President Bush I think will probably appoint at least 36 to 40 Hispanic judges on his own, more than all the past Republican Presidents put together and more than any single Democratic President.

To try to make the case only Democrats care for Hispanics is just ludicrous. I will say this, my colleagues on the other side are good people. I believe they are sincere in working for minorities as they have done, and I appreciate them personally, but to try to imply we are not I think is hitting below the belt in ways that should not happen on the Senate floor.

In all honesty—and I have heard arguments today that would cause anybody—I mean the bad arguments—the arguments against Miguel Estrada would cause people to vote for him. Miguel Estrada is a fine man. Miguel Estrada has made it to the top of his profession even with a disability. There are not many people who have argued 15 cases before the Supreme Court or who have the unanimously well-qualified American Bar Association rating or who have been the editor in chief of the Harvard Law Review, who have served various Federal judges.

I am a little surprised about some of my colleagues' confusion as to why Mr. Estrada, they claimed, did not address policy questions put to him. It is quite understandable. Would we policymakers want another public official, in this case a judicial nominee, to answer policy questions? A judicial nominee is not applying for a job as a policymaker. He or she is going to be a judge. Judges are not in the business of answering policy questions. It is just that simple.

When one asks the question, What is your view of the first amendment, my gosh, how does one answer that question? It is easy to say: I believe in it. I guess that is what Miguel Estrada could have said. Or if one asks, Are you going to overturn all of the environmental laws of our country, or words to that effect I heard on the floor today, first, it is offensive to ask that kind of question and, second, nobody in his or her right mind as a judicial nominee would want to give an opinion on a broad issue that might foreclose them from sitting on important cases that would come before the court later.

Yes, nominees are told on both sides, whether it is a Clinton judge or George W. Bush judge, that you should not be giving opinions that might involve what you might later have to judge when you get on the bench.

So it is a fine line and it is not an easy thing for witnesses, and frankly especially those who have not served on the Judiciary Committee and have not been through it for a long time. And even if they have, it is not easy.

The important realization in regard to Miguel Estrada is they had every opportunity to ask him any questions they wanted. They were in the majority. They held the committee hearings. I have heard Democrats on the committee say those hearings were conducted fairly and responsibly. Afterwards they had a right to submit any written questions they wanted to submit, and only two Senators submitted them and they were answered. So some of these arguments I have heard today are not arguments at all.

I think it was Walter Mondale who said: Where is the beef? What is it that makes Miguel Estrada unqualified to be on the Circuit Court of Appeals for

the District of Columbia? I do not think there has been even the slightest case made against him.

Then what is it? What is against him? What is against this fine Hispanic man who has made it on his own? I do not see any reason. Maybe we will get some in the next few days, but I do not see any reason. And I sure as heck would not rely on Paul Bender, not after what we all know he has done. He gave glowing performance evaluations when he really had the power—as an honest liberal, which we believed him to be at the time—he gave glowing performance evaluations and then later when this fine person, Miguel Estrada, is offered up as a judicial nominee by the President of the United States, he comes out and says he is an ideologue.

Who are you going to believe? I do not think I would believe Paul Bender on that issue, and I do not think anybody else should, either.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, there have been too many protests on the other side. The majority has said time and time again that they, the Republicans, treat the Hispanics well. I do not know why they have to keep saying that. The record speaks for itself. This side need not do so because our record does speak for itself. And that is the reason, as I said earlier, when people come—one Senator did come and talk about words to the effect I am not anti-Hispanic and then proceeded to lay out everything that was. That is why I thought I would come forward and talk about the fact that the Hispanic Caucus, which certainly could never be judged to be anti-Hispanic, has come out against this nomination, as have numerous other organizations: the Congressional Hispanic Caucus, the Congressional Black Caucus, and Hispanic organizations such as the Puerto Rican Legal Defense and Education Fund, Juan Figuera, President and General Counsel, the Mexican American Legal Defense and Education Fund, National Association of Latino Elected and Appointed Officials, National Council of La Raza, NCLR, National Puerto Rican Coalition, California La Raza Lawyers, Puerto Rican Bar Association of Illinois, Southwest Voter Registration Education Project, Labor Council for Latin American Advancement, Linda Chavez Thompson, AFL–CIO, 52 different Latino labor leaders, including people from all over the country from California to New York and places in between.

There are civil rights and other organizations that oppose this nomination: the American Federation of Labor and Congress of Industrial Organizations, AFL–CIO, Sierra Club, Leadership Conference on Civil Rights and Alliance for Justice, Leadership Conference on Civil Rights, National Association for the Advancement of Colored People, National Organization for Women, National Black Women's Health Project, Mexican American Legal Defense and Education Fund, Lawyers' Committee for Civil Rights Under Law, National Association for the Advancement of Colored People, Alliance for Justice, People for the American Way, National Council of Jewish Women, National Family Planning and Reproductive Health Association, Feminist Majority, National Association for the Advancement of Colored People, People for the American Way, Planned Parenthood Federation of America, NARAL Pro-Choice, National Family Planning and Reproductive Health Association, and scores of other organizations.

I think the debate at this stage is being framed improperly. There are people on this side who have not made up their mind what they are going to do, but the way the debate is going forward, it does give me some concern. I hope the debate in during the next whatever period of time it goes forward, we can talk about the man's judicial qualifications and not berate people who say for one reason or another he is not qualified, such as Mr. Bender. I have never met Mr. Bender, but I think he has taken enough lashes today that we should drop the subject. He has a right, in my opinion, to oppose someone. These organizations have a right to oppose him. The organizations who support him have every right to come forward and support him. It should be on the basis of this man's qualifications, whatever they might be, and not on ethnicity and on whether or not groups support people because they are for the poor.

I made some notes here that someone suggested Latinos only support those lawyers who work for the poor or for the public defender's office. I really do believe this debate would be much more structured, civil, and productive if we dealt with Miguel Estrada's qualifications and not berate people who are for or against him.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Let me say about Mr. Bender, I was criticized by the distinguished Senator from Massachusetts for pointing out the biases of Mr. Bender. I was accused of finding fault with him. Well, what about Mr. Bender dishonestly finding fault with Miguel Estrada? I think I more than made a case that this man has done it for partisan political purposes, and I am going to make that case over and over. If they want to keep bringing up Paul Bender, then I am going to make the case that Paul Bender has done a very bigoted, rotten thing, after having given the greatest performance reviews one could get in the Solicitor General's office.

So who would you believe? I think it is important to point that out and not let anybody get away with that.

I will mention one group because it has been mentioned by my friend—and he is my friend—the distinguished Senator from Nevada. A review of the Congressional Hispanic Caucus' statement in opposition is most disappointing to me. It was issued in advance of Miguel's hearing. They did not even listen to him, and they issued it. My colleagues in the House, who have argued persuasively for a fair process, decided Miguel was not so entitled. They did not even wait until he testified to condemn him. They pronounced judgment beforehand. But that should not surprise us because the Democrat Congressional Hispanic Caucus is exactly that. It is a Democrat machine. The Republican members of the caucus who were members at one time were forced out because they did not think and act like their Democrat counterparts. There are no Republican members of the Congressional Hispanic Caucus, not one. They were forced out. The Democrat Congressional Hispanic Caucus may oppose Miguel Estrada, but the Republican Congressional Hispanic members, LINCOLN DIAZ-BALART, ILEANA ROS-LEHTINEN, HENRY BONILLA, MARIO DIAZ-BALART, all support his confirmation.

Again, I say to my colleagues on the other side, where is the beef? All this speculation about what they think that Miguel Estrada will be on the court, where is the proof? There is not any. In fact, there is proof to the contrary.

So that is one reason why I have been a little bit upset today, and I think I am going to continue to be upset if these types of approaches are taken against this really fine man. We are going to defend him. We are going to defend him as the good person he is.

I ask unanimous consent that the Senate now return to legislative session and that it proceed to a period for morning business.

Mr. REID. Mr. President, I object at this time.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. Mr. President, I will respond very briefly.

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

Mr. HATCH. I am happy to yield to the distinguished Senator.

Mr. REID. I was involved in a long conference with the Hispanic caucus yesterday. This organization met long and hard with Miguel Estrada. They met for 3 hours on one occasion, and based upon that and other issues they raised in their letter, they thought they could not support him.

As I stated earlier today, the Congressional Hispanic Caucus has supported, and will continue to support, other Bush judicial nominees who are Hispanic, and they have already done so.

I mentioned a number of names earlier. They can speak for themselves.

They are Members of the other body and do not have authority to speak here, but if they could speak, they would speak loudly, with a lot of articulation, about the fact that this man is not qualified, in their opinion. They are entitled to that opinion.

This is a body that is not known for its radicalism; it is a body known for its stability, having a long line of very prominent chairmen.

Maybe with Mr. Bender I should have said he needs to be beaten up some more and he would not have been, but I think the record is replete that those on the other side think Mr. Bender's evaluation of Miguel Estrada is wrong. He has a right to do that. He was his supervisor. He has made and continues to make known his opinion that he is not temperamentally qualified for this job as a circuit court judge. That is what he said.

This debate should focus on the qualifications of this man. That is what this letter to the Senate Judiciary Committee consists of, from the Hispanic caucus, to Senator LEAHY. They say that the man is not qualified. He is not qualified based upon his past experience. They are entitled to that opinion.

As the debate proceeds, a decision will have to be made in this body as to whether people agree with the Hispanic caucus about the qualifications of persons before this body. Debate that has taken place and will take place in the future will be productive in that regard. That is why we have a Senate. That is why we are not limited, as in the House of Representatives, with, on many occasions, 1 minute and sometimes no minutes. We can talk here as long as we want about the qualifications of this man. I hope we do not have to talk a long time about this man's qualifications. We should talk long enough that full debate on his qualifications takes place.

I am happy now to have my friend reoffer his unanimous consent request.

Mr. HATCH. I add one thing. I believe they are entitled to their opinion but they are not entitled to their own facts. They have to live with the facts that exist.

I don't see a fairness in this process. It has not been fair. It has been quite partisan, especially on Mr. Bender's part.

I have been told by those who know, by my Hispanic friends, that the Congressional Democratic Hispanic Caucus was pretty split. But the majority prevailed. There was a real split over whether they should do this to Miguel Estrada. I personally believe that all these liberal groups persuaded them.

I point out, where are the arguments? To say he is not qualified, when their own gold standard, the American Bar Association, says he is unanimously well qualified flies in the face of any facts. That is just my point. Where are the facts?

I ask unanimous consent that a letter from HENRY BONILLA, LINCOLN DIAZ-BALART, and ILEANA ROS-LEHTINEN be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, September 23, 2002.

DEAR SENATORS DASCHLE, LOTT, LEAHY, AND HATCH: We are Hispanic Members of the United States House of Representatives who write to strongly support Miguel Estrada, President Bush's nominee to be a judge on the United States Court of Appeals for the District of Columbia Circuit. If confirmed, Miguel would be the first Hispanic judge on what is widely recognized as the nation's second highest federal court. President Bush made an historic decision by nominating Miguel Estrada, and we urge the Senate to promptly confirm this outstanding Hispanic-American.

Miguel Estrada is an American success story. He immigrated to the United States as a teenager from Honduras speaking little English. He attended Columbia College and Harvard Law School, graduating magna cum laude from both. He clerked for Judge Amalya Kearse on the Second Circuit and Justice Anthony Kennedy on the Supreme Court. Miguel is one of the few Hispanics ever to serve as a law clerk on the Supreme Court of the United States. Miguel worked as an Assistant United States Attorney in the Southern District of New York, and both tried cases in federal district court and argued appeals before the Second Circuit on behalf of the United States. He has worked twice in private practice at leading law firms, in New York at Wachtell, Lipton, Rosen & Katz and in Washington at Gibson, Dunn & Crutcher.

Miguel also served for five years in the Office of Solicitor General at the United States Department of Justice. In that capacity, Miguel argued 14 cases before the Supreme Court and wrote numerous briefs on behalf of the United States. He is widely recognized as a brilliant lawyer and oral advocate, and his official performance reviews noted that he "inspired co-workers by example."

As demonstrated during his service as Assistant to the Solicitor General, Assistant United States Attorney, and law clerk on the Supreme Court, Miguel Estrada believes in the integrity of the courts and the law. He appreciates the difference between law and policy, between the judicial task and the legislative task.

Based on his qualifications, intellect, judgment, and temperament, it is no surprise that Miguel Estrada received a unanimous "well qualified" rating—the highest possible rating—from the American Bar Association Standing Committee on Federal Judiciary. As Hispanic Members of Congress, we are very proud that the American Bar Association gave this outstanding Hispanic-American its highest possible rating.

Miguel has performed significant public service beyond his work in government. Most notably, while in private practice, he represented pro bono a capital defendant before the Supreme Court. Capital cases are very difficult legally and emotionally for the lawyers representing the capital defendants. Miguel's decision to involve himself in a difficult capital case speaks volumes about his integrity and devotion to the legal system, and his willingness to perform difficult public service. He also assisted the former United States Attorney in New York, who was appointed by President Clinton, in discussing how to ensure that more federal prosecutors are Hispanic.

Miguel is widely supported by Hispanic organizations, such as the Hispanic National Bar Association, the League of United Latin American Citizens, and the U.S. Hispanic Chamber of Commerce. He also is supported by prominent Democrat lawyers, such as Ronald Klain, who served as Counsel to Vice President Gore, Robert Litt, who served as Assistant Attorney General for the Criminal Division under President Clinton, and Randy Moss, who served as Assistant Attorney General for the Office of Legal Counsel under President Clinton. Furthermore, Seth Waxman, who served as Solicitor General under President Clinton, has written to the Judiciary Committee that he has "great respect both for Mr. Estrada's intellect and for his integrity" and that Miguel was "a model of professionalism and competence."

Miguel Estrada would be the first Hispanic judge on the United States Court of Appeals for the District of Columbia Circuit. You and your colleagues have spoken often about the need for balance on the courts. It is past time that an Hispanic judge serve on this important court. Confirmation of Miguel Estrada would provide balance. We urge you to treat Miguel Estrada with fairness and to confirm him promptly.

Thank you for your consideration of our views.

Sincerely,

HENRY BONILLA,
LINCOLN DIAZ-BALART,
ILEANA ROS-LEHTINEN,
Members of Congress.

Mr. REID. I ask unanimous consent that a letter to PAT LEAHY from the Hispanic caucus signed by SILVESTRE REYES and CHARLES GONZALEZ be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, September 25, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Judiciary Committee,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Congressional Hispanic Caucus (CHC), we wish to inform you that the CHC has decided to oppose Miguel Estrada's nomination to the United States Court of Appeals for the District of Columbia Circuit. After reviewing Mr. Estrada's record and meeting with him in person, we have concluded that he fails to meet the CHC's evaluation criteria for endorsing judicial nominees.

As you know, the judicial nomination process is important to the CHC because we believe that our Nation's courts should reflect the diversity of thought and action that enrich America. Earlier this year, we launched the Hispanic Judiciary Initiative to further formalize our involvement in this issue by establishing a set of evaluation criteria and an internal process for endorsing nominees. We hope that this initiative will allow us to continue our work to ensure fair treatment of Latino judicial nominees and tackle the lack of diversity in the federal judiciary.

In evaluating Mr. Estrada, we considered not only his honesty, integrity, character, temperament, and intellect, but also his commitment to equal justice and advancement opportunities for Latinos working in the field of law. Because of the nature of the CHC's mission and the important role that the courts play in achieving that mission, in order to support a judicial nominee the CHC requires that he or she has a demonstrated commitment to protecting the rights of Latinos through his or her professional work, pro bono work, and volunteer activities; to preserving and expanding the progress that has been made on civil rights and individual liberties; and to expanding advancement opportunities for Latinos in the

law profession. On this measure, Mr. Estrada fails to convince us that he would contribute under-represented perspectives to the U.S. Court of Appeals for the District of Columbia Circuit.

As stated by Mr. Estrada during his meeting with us, he has never provided any pro bono legal expertise to the Latino community or organizations. Nor has he ever joined, supported, volunteered for or participated in events of any organization dedicated to serving and advancing the Latino community. As an attorney working in government and the private sector, he has never made efforts to open doors of opportunity to Latino law students or junior lawyers through internships, mentoring or other means. While he has not been in the position to create internships or recruit new staff, he never appealed to his superiors about the importance of making such efforts on behalf of Latinos. Furthermore, Mr. Estrada declined to commit that he would be engaged in Hispanic community activities once appointed to the bench or that he would pro-actively seek to promote increased access to positions where Latinos have been traditionally under-represented, such as clerkships.

Mr. Estrada shared with us that he believes being Hispanic would be irrelevant in his day-to-day duties on the court, which leads us to conclude that he does not see himself as being capable of bringing new perspectives to the bench. This is deeply troubling since the CHC's primary objective in increasing ethnic diversity of the courts is to increase the presence of under-represented perspectives.

Mr. Estrada's limited record makes it difficult to determine whether he would be a forceful voice on the bench for advancing civil rights and other protections for minorities. He has never served as a judge and has not written any substantive articles or publications. However, we did note that in responding to inquiries about case law, Mr. Estrada did not demonstrate a sense of inherent ''unfairness'' or ''justice'' in cases that have had a great impact on the Hispanic community.

The appointment of a Latino to reflect diversity is rendered meaningless unless the nominee can demonstrate an understanding of the historical role courts have played in the lives of minorities in extending equal protections and rights; has some involvement in the Latino community that provides insight into the values and mores of the Latino culture in order to understand the unique legal challenges facing Latinos; and recognizes both the role model responsibilities he or she assumes as well as having an appreciation for protecting and promoting the legal rights of minorities who historically have been the victims of discrimination.

Based on the totality of the nominee's available record and our meeting with him, Miguel Estrada fails to meet the CHC's criteria for endorsing a judicial nominee. In our opinion, his lack of judicial experience coupled with a failure to recognize or display an interest in the needs of the Hispanic community do not support an appointment to the federal judiciary. We respectfully urge you to take this into account as you consider his nomination to the U.S. Court of Appeals.

Sincerely,

SILVESTRE REYES,
Chair, Congressional Hispanic Caucus.

CHARLES A. GONZALEZ,
Chair, CHC Civil Rights Task Force.

Mr. REID. And I say that the final two sentences of this letter be read:

In our opinion, his lack of judicial experience coupled with a failure to recognize or display an interest in the needs of the Hispanic community do not support an appointment to the federal judiciary.

The Hispanic caucus unanimously opposed the nomination.

Mr. HATCH. I cannot let that go. If they are saying because he lacks judicial experience he should not be on the court—which is what it appears to me they are saying—they are just condemning almost every nonjudge Hispanic to never have a chance to be a Federal district or circuit court of appeals judge. That is ridiculous. Every Democrat President I have served with—President Carter and President Clinton—have appointed a wide variety of people who never served on the bench but who are highly qualified and are doing a good job as judges now.

It may be helpful to have some judicial experience, but not having judicial experience does not mean you cannot serve. If that were the case, some of the greatest judges in the history of the world would never have had a chance.

But if you interpret what they say, that means that any Hispanic who has not had judicial experience really should not be supported. That is ridiculous. That is caving in to the liberal special interest groups in this town with which they continually spend time, and is to the detriment of the Hispanic community. I say that as a chairman of the Republican senatorial Hispanic task force who has worked for the last 13 years to try to solve these problems.

I don't take second seat to anyone with regard to my love for the Hispanic community or my work on their behalf.

LEGISLATIVE SESSION

Mr. HATCH. We have had enough debate. I ask unanimous consent that the Senate return to legislative session.

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

MORNING BUSINESS

Mr. HATCH. I ask unanimous consent that the Senate proceed to a period of morning business.

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

TRIBUTE TO DANNY PELHAM

Mr. DASCHLE. Mr. President, on Monday, I had the chance to visit with Danny Pelham. He came to my office, and we reflected on his nearly 35 years of service to the Senate.

As he walked out, I heard a member of my staff say: ''There goes the wisest man I know.'' I couldn't agree more.

Danny arrived in the Senate on March 25, 1968. In his time here, he has seen the making of Senate history, and American history, and he has seen 237 Senators come and go.

Through it all, Daniel Pehlam conducted himself with utter fairness, thoroughness, and discretion. It makes sense that—in his off hours—he is a basketball official.

For 35 years, he has walked the halls of power, but he never let it distort his perspective, or his sense of what is truly important. If you have ever seen him with his grandson Corey, or heard him talk about his wife Phyllis, you begin to understand that.

Ralph Waldo Emerson wrote: ''we put our love where we have put our labor.'' For 35 years, Danny labored for—and loved—the Senate. It is fitting that we adopt this resolution expressing our appreciation—and love—for Danny Pelham.

MEDICAID REFORM

Mr. BINGAMAN. Mr. President, I want to speak for just a few minutes on the Senate floor about the proposal made last Friday by the Bush administration regarding Medicaid. The proposal was a disturbing one, in my view. It was to reform the Medicaid program by shifting to a block grant to the States. That is a recycled proposal, one we have seen before. It was touted, when described last Friday, as giving the States flexibility. It would give them flexibility.

It would give them flexibility to drop benefits to low-income children, to drop benefits to pregnant women, to people with disabilities, and to the elderly. And it would give them flexibility to dramatically increase the cost sharing for those vulnerable populations. With over 41 million Americans who are currently uninsured, in my view, we should be trying to find ways to expand health coverage rather than finding new ways to reduce it.

Unfortunately, the proposal allows States to continue Medicaid as it is or to convert the program into a block grant. This was tried in 1981 and again in 1996. The administration would encourage States to take the latter option; that is, to move to receipt of a block grant by encouragement of being temporarily offered increased dollars. That would be coupled with this offer of added flexibility to be able to reduce the benefits for their Medicaid beneficiaries and increase the costs being charged to those low-income and vulnerable populations. Secretary Thompson notes the proposal would clearly save the States money. This would only happen if the States decided to do what would almost certainly occur; that is, to cut benefits and increase cost sharing.

Also, this proposal takes the Federal Government off the hook for helping States address their uninsured problems because under the proposal there would be no additional Federal money available to States if they attempted to expand coverage in the future. In order to expand coverage, the only option States would have would be to essentially rob Peter to pay Paul. In

short, they could cut benefits or increase cost sharing for certain populations if they wanted to expand coverage to any others.

The proposal is ostensibly based on the success of the State Children's Health Insurance Program, the S–CHIP Program. Secretary Thompson said in his press conference that the proposal works by ''taking the principles of S–CHIP and applying them to Medicaid.''

It is ironic that the proposal actually eliminates CHIP by wrapping it into this block grant with Medicaid and with the Disproportionate Share Hospital Program, the DSH Program. It is surprising and disappointing to me that the administration is proposing to radically transform the identity and the nature of the Children's Health Insurance Program while also praising that program. It is a program that just about everyone lauds as having been quite successful at reducing the number of uninsured children in our country.

So this new proposal by the administration has strong elements of the old bait-and-switch ploy that all of us see from time to time. It advertises that there will be more money available to States—the exact amount is $12.7 billion during the first 7 years—but then, after that first 7 years, it yanks away all that money, starting in the year 2011.

Secretary Thompson noted at the press conference that he is not planning to be around at the time the $12.7 billion in reductions occurs 8 years from now. And the plan, I would say, clearly also counts on the fact that most of our current group of Governors who would be asked to make these changes will not be around either. However, that is exactly the time, 2011, when our Nation's baby boomers hit retirement age in much larger numbers. The long-term care costs within Medicaid will increase significantly during that period. Therefore, the Federal Government, under this proposal, would be dramatically stepping away from its commitment to help States and to help with the Nation's health safety net at a time when the demand for those services will obviously be increasing.

The proposal is counting on the fact that the Governors will jump at the $12.7 billion that is being offered during these initial years and will let future Governors deal with the problem later on. It is my hope and my belief that the Nation's Governors will see this nonoffer for what it is; and that is, a very shortsighted effort to limit the Federal Government's role in Medicaid that will lead to cuts in access to care for those most in need of that care.

In fact, under the proposal, States are left with nothing less than a Hobson's choice of alternatives. Both of the choices they would have would substantially weaken health insurance for low-income Medicaid beneficiaries. Under the first option that States would have, they would be allowed to continue to operate Medicaid without any financial relief from the Federal Government to help them get through the current fiscal crisis. States would have no option but to make deep cuts in their Medicaid Program during the next few years, if they choose that option.

Under the second option, the States would get a fixed amount of Federal money for the millions of people who States have voluntarily decided to cover under Medicaid, and, as a result, Federal funding would be limited and not responsive to those items that it is now responsive to, such as economic recessions, epidemics, terrorist attacks, population growth, changes in the State's health care environment, or the growth in our Nation's elderly that we expect in the next decade. Nor would it be available to States wishing to expand coverage, as I indicated before, States wishing to reduce the uninsured rate.

Although the administration's proposal advertises improved health, just as one would expect with a bait-and-switch proposal, it fails the test when you look at the details. I ask, How does the health of Medicaid beneficiaries improve by eliminating their entitlement to coverage and by allowing States the dramatic ability to reduce benefits and increase the costs that are shifted to those vulnerable populations? I am talking here about 85-year-old widows with incomes of just $800 a month. I am talking about pregnant women with incomes of $15,000 per year, or an 8-year-old boy from a family of three with an income of $19,000 per year or less.

According to Karen Davis, Cathy Schoen, Michelle Doty, and Katie Tenney—all from the Commonwealth Fund—the two main purposes of health insurance are, first, ''assuring access to needed health care services and,'' secondly, ''preventing financial burdens from medical bills.'' When you propose, as this proposal last Friday does, to reduce benefits and increase cost sharing on low-income beneficiaries, clearly you fail in trying to accomplish either of these two main purposes.

Just over a week ago, it was discovered that the Bush administration was allowing States to limit the number of emergency room visits to Medicaid beneficiaries regardless of whether the care sought was an emergency. That proposal allowed States to establish arbitrary limits, such as three visits per year. There was a huge hue and cry and the administration reversed this policy shift, but it is back in full force under this proposal related to Medicaid, as benefits would decrease and cost sharing would dramatically increase for Medicaid beneficiaries.

This is not to state that our Governors are malevolent in their intent. Their goal is to do the best they can for their citizens. It is only to say that many States are facing unprecedented fiscal crises that force them into impossible choices, choices between health care coverage and other needed services. In fact, the States already have substantial flexibility in the Medicaid Program. About 65 percent of spending in that program is for either optional populations or for optional benefits that they have chosen to pay for.

Instead, for some Governors, it may not be the flexibility they are seeking to exploit but the proposal's other aspects that eliminate the limitations on how States spend their Medicaid dollars. On several occasions in recent years, certain States worked to ''game'' the Federal dollars through a variety of mechanisms, such as provider taxes and donations, excessive payments to certain health providers that would be returned to the State via intergovernmental transfers or other mechanisms. These mechanisms to which I am referring largely benefited the budgets of the individual States and did not benefit anyone's health.

Both the first Bush administration and the Clinton administration and the current Bush administration should be applauded for working hard to deal with those problems in the Medicaid system. However, it was revealed at the press conference that those mechanisms would once again be allowed if this newly presented proposal is adopted.

Via these mechanisms, the Medicaid Program can be rapidly turned into nothing more than a giant revenuesharing program. Again, it is hard to see how such so-called innovation would improve health coverage for low-income Americans.

Instead, there is a better approach to the problem, on which I have been working with Congressman JOHN DINGELL; we are preparing legislation to introduce in the next few weeks. Our Medicaid reform proposal will be based on the knowledge that States are facing both short-term and long-term problems with their Medicaid programs, and those problems need to be addressed. As such, our initiative would have the Federal Government step up rather than shirk its commitment to the States.

In exchange, it will ask the States not to reduce their commitment to the Nation's poorest and neediest citizens. It does several things. Let me briefly outline them.

First, it will provide States with much needed short-term and long-term fiscal relief.

Secondly, it will increase Federal responsibility for Federal initiatives and for populations that are paid for by the Medicaid Program.

Third, it will protect States against economic downturns and epidemics and health care inflation and demographic changes.

Fourth, it will provide States with expanded coverage options, with real Federal fiscal support as opposed to this block grant proposal we have seen now from the administration.

And, fifth, it will increase State flexibility in ways to improve the

health of Medicaid beneficiaries rather than options to weaken their health as under the administration's proposal.

The administration's proposal will fail in each of these regards. Let me describe them in a little more detail.

First, we will propose a package that will give States both short- and long-term fiscal relief. This is in sharp contrast to the administration's block grant proposal that would leave States with no additional Federal commitment or help during economic downturns. Block grants do not adjust to problems such as downturns and epidemics and natural disasters and demographic changes, and they do not adjust for the very substantial health care inflation that we have been experiencing.

Second, our proposal takes significant steps to properly assume Federal responsibility for Federal initiatives and for populations that are paid for under the Medicaid Program. This includes assumption of 100 percent of the cost for the premiums and cost sharing that the Medicaid Program provides for low-income Medicare beneficiaries. Medicare is a Federal responsibility, and these costs should be the Federal Government's responsibility.

The same is true for a variety of other payments within Medicaid, including payments to urban Indian health organizations, to outstationed workers, to the breast and cervical cancer program, and payments to federally qualified health centers.

Third, the administration claims its proposal gives States the ability to expand coverage to more people, including the mentally ill, chronically ill, those with HIV/AIDS, and those with substance abuse problems. The difficulty is the administration's proposal gives States the ability to do that but gives them no dollars with which to do it. States are given the ability to do this by robbing Peter to pay Paul.

In sharp contrast, our proposal will give States new options to expand coverage and benefits in Medicare and CHIP, and States choosing to do so will have the Federal Government's commitment to participate with a financial commitment for more than half of those costs, as opposed to no commitment to participate under the administration's proposal.

A fourth aspect of what we are going to propose is that we will grant States the flexibility they have been seeking to provide more efficient and improved health services for these low-income Medicaid beneficiaries. This includes allowing States to simplify eligibility, to emphasize home and community-based care rather than institutional care, and a number of other options. Our proposal specifically chooses not to take the course that the administration is pursuing in several areas.

Unlike the administration, we do not grant States additional flexibility to cut benefits and eliminate quality protections and increase cost sharing on our Nation's most vulnerable populations. We do not propose to eliminate fiscal integrity standards such as those intended to ensure that Medicaid dollars are spent on health care and not on other purposes.

And we do not, as the administration's proposal does, allow for the elimination of the CHIP program, the Children's Health Insurance Program, or the Disproportionate Share Hospital Program, the DSHP program.

Finally, unlike the administration's efforts, our plan does not lock in interstate inequities and disparities on a permanent basis. In fact, the administration's proposal, as I understand it, as it was presented Friday, is particularly devastating to a State such as New Mexico. Our State currently has the highest rate of uninsured in the Nation. It is one of the fastest growing States in the country as well. It has per capita Medicaid expenditures that are well below the national average. The administration's proposal would therefore be a lose/lose/lose proposition for our State.

First, it would prevent us from seeking additional Federal assistance for proposed expansions of coverage including the recently approved Federal waiver by the Federal Government to New Mexico that is so highly touted by the administration.

Second, the block grant often fails to take into account differences in population growth, and we have a rapidly growing population.

Finally, we would be forever locked in at an expenditure level way below the national average under this block grant proposal.

During his State of the Union address this last week, the President said, ''Medicare is the binding commitment of a caring society.'' That is a noble concept. But I would suggest that just as Medicare is the binding commitment of a caring society, Medicaid is as well. For this reason, the Federal Government should not step away from it or abandon its commitment to States or to the 43 million vulnerable citizens currently served by the Medicaid Program.

Particularly, the Federal Government should not do this at a time of growing numbers of uninsured and just before the Nation's baby boomers begin to retire in large numbers.

In the name of increasing personal responsibility of our Nation's neediest and sickest citizens, the administration is proposing that we at the Federal level shirk our responsibility. Rather than abandoning the poor at this critical time, we should be reconsidering the proposed tax breaks that we have been sent intending to help our wealthiest citizens.

We need to be sure our priorities are in line with the priorities of the American people. The proposal we have received from the administration to block grant Medicaid clearly does not reflect the priorities the American people have.

RULES OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Ms. COLLINS. Mr. President, pursuant to the requirements of Rule XXVI, Sec. 2, of the Standing Rules of the Senate, I ask unanimous consent to have printed in the RECORD the rules of the Committee on Governmental Affairs for the 108th Congress adopted by the Committee on February 5, 2003.

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

RULES OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

RULE 1. MEETINGS AND MEETING PROCEDURES OTHER THAN HEARINGS

A. Meeting dates. The Committee shall hold its regular meetings on the first Thursday of each month, when the Congress is in session, or at such other times as the chairman shall determine. Additional meetings may be called by the chairman as he deems necessary to expedite Committee business. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

B. Calling special Committee meetings. If at least three members of the Committee desire the chairman to call a special meeting, they may file in the offices of the Committee a written request therefor, addressed to the chairman. Immediately thereafter, the clerk of the committee shall notify the chairman of such request. If, within 3 calendar days after the filing of such request, the chairman fails to call the requested special meeting, which is to be held within 7 calendar days after the filing of such request, a majority of the committee members may file in the offices of the committee their written notice that a special Committee meeting will be held, specifying the date and hour thereof, and the Committee shall meet on that date and hour.

Immediately upon the filing of such notice, the Committee clerk shall notify all Committee members that such special meeting will be held and inform them of its date and hour. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

C. Meeting notices and agenda. Written notices of Committee meetings, accompanied by an agenda, enumerating the items of business to be considered, shall be sent to all Committee members at least 3 days in advance of such meetings, excluding Saturdays, Sundays, and legal holidays in which the Senate is not in session. The written notices required by this Rule may be provided by electronic mail. In the event that unforeseen requirements or Committee business prevent a 3–day notice of either the meeting or agenda, the Committee staff shall communicate such notice and agenda, or any revisions to the agenda, as soon as practicable by telephone or otherwise to members or appropriate staff assistants in their offices.

D. Open business meetings. Meetings for the transaction of Committee or Subcommittee business shall be conducted in open session, except that a meeting or series of meetings on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.) Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his own initiative and without any point of order being made by a member of the Committee or Subcommittee; provided, further, that when the chairman finds it necessary to maintain order, he shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing Rules of the Senate.)

E. Prior notice of first degree amendments. It shall not be in order for the committee, or a Subcommittee thereof, to consider any amendment in the first degree proposed to any measure under consideration by the Committee or Subcommittee unless a written copy of such amendment has been delivered to each member of the Committee or Subcommittee, as the case may be, and to the office of the Committee or Subcommittee, at least 24 hours before the meeting of the Committee or Subcommittee at which the amendment is to be proposed. The written copy of amendments in the first degree required by this Rule may be provided by electronic mail. This subsection may be waived by a majority of the members present. This subsection shall apply only when at least 72 hours written notice of a session to mark-up a measure is provided to the Committee or Subcommittee.

F. Meeting transcript. The Committee or Subcommittee shall prepare and keep a complete transcript or electronic recording adequate to fully record the proceeding of each meeting whether or not such meeting or any part thereof is closed to the public, unless a majority of the Committee or Subcommittee members vote to forgo such a record. (Rule XXVI, Sec. 5(e), Standing Rules of the Senate.)

RULE 2. QUORUMS

A. Reporting measures and matters. A majority of the members of the Committee shall constitute a quorum for reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

B. Transaction of routine business. One-third of the membership of the Committee shall constitute a quorum for the transaction of routine business, provided that one member of the minority is present. For the purpose of this paragraph, the term ''routine business'' includes the convening of a meeting and the consideration of any business of the Committee other than reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

C. Taking testimony. One member of the Committee shall constitute a quorum for taking sworn or unsworn testimony. (Rule XXVI, Sec. 7(a)(2) and 7(c)(2), Standing Rules of the Senate.)

D. Subcommittee quorums. Subject to the provisions of sections 7(a) (1) and (2) of Rule XXVI of the Standing Rules of the Senate, the Subcommittees of this Committee are authorized to establish their own quorums for the transaction of business and the taking of sworn testimony.

E. Proxies prohibited in establishment of quorum. Proxies shall not be considered for the establishment of a quorum.

RULE 3. VOTING

A. Quorum required. Subject to the provisions of subsection (E), no vote may be taken by the Committee, or any Subcommittee thereof, on any measure or matter unless a quorum, as prescribed in the preceding section, is actually present.

B. Reporting measures and matters. No measure, matter or recommendation shall be reported from the Committee unless a majority of the Committee members are actually present, and the vote of the Committee to report a measure or matter shall require the concurrence of a majority of those members who are actually present at the time the vote is taken. (Rule XXVI, Sec. 7(a)(1) and (3), Standing Rules of the Senate.)

C. Proxy voting. Proxy voting shall be allowed on all measures and matters before the Committee, or any Subcommittee thereof, except that, when the Committee, or any Subcommittee thereof, is voting to report a measure or matter, proxy votes shall be allowed solely for the purposes of recording a member's position on the pending question. Proxy voting shall be allowed only if the absent Committee or Subcommittee member has been informed of the matter on which he is being recorded and his affirmatively requested that he be so recorded. All proxies shall be filed with the chief clerk of the Committee or Subcommittee thereof, as the case may be. All proxies shall be in writing and shall contain sufficient reference to the pending matter as is necessary to identify it and to inform the Committee or Subcommittee as to how the member establishes his vote to be recorded thereon. (Rule XXVI, Sec. 7(a)(3) and 7(c)(1), Standing Rules of the Senate.)

D. Announcement of vote.

(1) Whenever the Committee by roll call vote reports any measure or matter, the report of the Committee upon such a measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the Committee. (Rule XXVI, Sec. 7(c), Standing Rules of the Senate.)

(2) Whenever the Committee by roll call vote acts upon any measure or amendment thereto, other than reporting a measure or matter, the results thereof shall be announced in the Committee report on that measure unless previously announced by the Committee, and such announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment thereto by each member of the Committee who was present at the meeting. (Rule XXVI, Sec. 7(b), Standing Rules of the Senate.)

(3) In any case in which a roll call vote is announced, the tabulation of votes shall state separately the proxy vote recorded in favor of and in opposition to that measure, amendment thereto, or matter. (Rule XXVI, Sec. 7(b) and (c), Standing Rules of the Senate.)

E. Polling.

(1) The Committee, or any Subcommittee thereof, may poll (a) internal Committee or Subcommittee matters including the Committee's or Subcommittee's staff, records and budget; (b) steps in an investigation, including issuance of subpoenas, applications for immunity orders, and requests for documents from agencies; and (c) other Committee or Subcommittee business other than a vote on reporting to the Senate any measures, matters or recommendations or a vote on closing a meeting or hearing to the public.

(2) Only the chairman, or a Committee member or staff officer designated by him, may undertake any poll of the members of the Committee. If any member requests, any matter to be polled shall be held for meeting rather than being polled. The chief clerk of the Committee shall keep a record of polls; if a majority of the members of the Committee determine that the polled matter is in one of the areas enumerated in subsection (D) of Rule 1, the record of the poll shall be confidential. Any Committee member may move at the Committee meeting following the poll for a vote on the polled decision, such motion and vote to be subject to the provisions of subsection (D) of Rule 1, where applicable.

RULE 4. CHAIRMANSHIP OF MEETINGS AND HEARINGS

The chairman shall preside at all Committee meetings and hearings except that he shall designate a temporary chairman to act in his place if he is unable to be present at a scheduled meeting or hearing. If the chairman (or his designee) is absent 10 minutes after the scheduled time set for a meeting or hearing, the ranking majority member present shall preside until the chairman's arrival. If there is no member of the majority present, the ranking minority member present, with the prior approval of the chairman, may open and conduct the meeting or hearing until such time as a member of the majority arrives.

RULE 5. HEARINGS AND HEARINGS PROCEDURES

A. Announcement of hearings. The Committee, or any Subcommittee thereof, shall make public announcement of the date, time, and subject matter of any hearing to be conducted on any measure or matter at least 1 week in advance of such hearing, unless the Committee, or Subcommittee, determines that there is good cause to begin such hearing at an earlier date. (Rule XXVI, Sec. 4(a), Standing rules of the Senate.)

B. Open hearings. Each hearing conducted by the Committee, or any Subcommittee thereof, shall be open to the public, except that a hearing or series of hearings on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the hearing to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such hearing or hearings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.) Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his own initiative and without any point of order being made by a member of the Committee or Subcommittee; provided, further, that when the chairman finds it necessary to maintain order, he shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing rules of the Senate.)

C. Full Committee subpoenas. The chairman, with the approval of the ranking minority member of the Committee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing or deposition, provided that the chairman may subpoena attendance or production without the approval of the ranking minority member where the chairman or staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the ranking minority member as provided in this subsection, the subpoena may be authorized by vote of the members of the Committee. When the Committee or chairman authorizes subpoenas, subpoenas may be issued upon the signature of the chairman or any other member of the Committee designated by the chairman.

D. Witness counsel. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition to advise such witness while he or she is testifying, of his or her legal rights, provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Committee chairman may rule that representation by counsel from the government, corporation, or association or by counsel representing, other witnesses, creates a conflict of interest, and that the witness may only be represented during interrogation by staff or during testimony before the Committee by personal counsel not from the government, corporation, or association or by personal counsel not representing other witnesses. This subsection shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such manner so as to prevent, impede, disrupt, obstruct or interfere with the orderly administration of the hearings; nor shall this subsection be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

E. Witness transcripts. An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his or her testimony whether in public or executive session shall be made available for inspection by the witness or his or her counsel under Committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be provided to any witness at his or her expense if he or she so requests. Upon inspecting his or her transcript, within a time limit set by the chief clerk of the Committee, a witness may request changes in the transcript to correct errors of transcription and grammatical errors; the chairman or a staff officer designated by him shall rule on such requests.

F. Impugned persons. Any person whose name is mentioned or is specifically identified, and who believes that evidence presented, or comment made by a member of the Committee or staff officer, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his or her character or adversely affect his or her reputation may:

(a) File a sworn statement of facts relevant to the evidence or comment, which statement shall be considered for placement in the hearing record by the Committee;

(b) Request the opportunity to appear personally before the Committee to testify in his or her own behalf, which request shall be considered by the Committee; and

(c) Submit questions in writing which he or she requests be used for the cross-examination of other witnesses called by the Committee, which questions shall be considered for use by the Committee.

G. Radio, television, and photography. The Committee, or any Subcommittee thereof, may permit the proceedings of hearings which are open to the public to be photographed and broadcast by radio, television or both, subject to such conditions as the Committee, or Subcommittee, may impose. (Rule XXVI, Sec. 5(c), Standing Rules of the Senate.)

H. Advance statements of witnesses. A witness appearing before the Committee, or any Subcommittee thereof, shall provide 100 copies of a written statement and an executive summary or synopsis of his proposed testimony at least 48 hours prior to his appearance. This requirement may be waived by the chairman and the ranking minority member following their determination that there is good cause for failure of compliance. (Rule XXVI, Sec. 4(b), Standing Rules of the Senate.)

I. Minority witnesses. In any hearings conducted by the Committee, or any Subcommittee thereof, the minority members of the Committee or Subcommittee shall be entitled, upon request to the chairman by a majority of the minority members, to call witnesses of their selection during at least 1 day of such hearings. (Rule XXVI, Sec. 4(d), Standing Rules of the Senate.)

J. Full Committee depositions. Depositions may be taken prior to or after a hearing as provided in this subsection.

(1) Notices for the taking of depositions shall be authorized and issued by the chairman, with the approval of the ranking minority member of the Committee, provided that the chairman may initiate depositions without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the deposition within 72 hours, excluding Saturdays and Sundays, of being notified of the deposition notice. If a deposition notice is disapproved by the ranking minority members as provided in this subsection, the deposition notice may be authorized by a vote of the members of the Committee. Committee deposition notices shall specify a time and place for examination, and the name of the Committee member or members or staff officer or officers who will take the deposition. Unless otherwise—specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

(2) Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Rule 5D.

(3) Oaths at depositions may be administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee member or members or staff. If a witness objects to a question and refuses to testify, the objection shall be noted for the record and the Committee member or members or staff may proceed with the remainder of the deposition.

(4) The Committee shall see that the testimony is transcribed or electronically recorded (which may include audio or audio/video recordings). If it is transcribed, the transcript shall be made available for inspection by the witness or his or her counsel under Committee supervision. The witness shall sign a copy of the transcript and may request changes to it, which shall be handled in accordance with the procedure set forth in subsection (E). If the witness fails to sign a copy, the staff shall note that fact on the transcript. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk of the Committee. The chairman or a staff officer designated by him may stipulate with the witness to changes in the procedure, deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his or her obligation to testify truthfully.

RULE 6. COMMITTEE REPORTING PROCEDURES

A. Timely filing. When the Committee has ordered a measure or matter reported following final action the report thereon shall be filed in the Senate at the earliest practicable time. (Rule XXVI Sec. 20(b), Standing Rules of the Senate.)

B. Supplemental, minority, and additional views. A member of the Committee who gives notice of his intention to file supplemental minority or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less

than 3 calendar days in which to file such views, in writing, with the chief clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the Committee report may be filed and printed immediately without such views, (Rule XXVI, Sec. 10(c), Standing Rules of the Senate.)

C. Notice by Subcommittee chairmen. The chairman of each Subcommittee shall notify the chairman in writing whenever any measure has been ordered reported by such Subcommittee and is ready for consideration by the full Committee.

D. Draft reports of Subcommittees. All draft reports prepared by Subcommittees of this Committee on any measure or matter referred to it by the chairman, shall be in the form, style, and arrangement required to conform to the applicable provisions of the Standing Rules of the Senate, and shall be in accordance with the established practices followed by the Committee. Upon completion of such draft reports, copies thereof shall be filed with the chief clerk of the Committee at the earliest practicable time.

E. Impact statements in reports. All Committee reports, accompanying a bill or joint resolution of a public character reported by the Committee, shall contain (1) an estimate, made by the Committee, of the costs which would be incurred in carrying out the legislation for the then current fiscal year and for each of the next 5 years thereafter (or for the authorized duration of the proposed legislation, if less than 5 years); and (2) a comparison of such cost estimates with any made by a Federal agency; or (3) in lieu of such estimate or comparison, or both, a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(a), Standing Rules of the Senate.)

Each such report shall also contain an evaluation, made by the Committee, of the regulatory impact which would be incurred in carrying out the bill or joint resolution. The evaluation shall include (a) an estimate of the numbers of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses, (b) a determination of the economic impact of such regulation on the individuals, consumers, and businesses affected, (c) a determination of the impact on the personal privacy of the individuals affected, and (d) a determination of the amount of paperwork that will result from the regulations to be promulgated pursuant to the bill or joint resolution, which determination may include, but need not be limited to, estimates of the amount of time and financial costs required of affected parties, showing whether the effects of the bill or joint resolution could be substantial, as well as reasonable estimates of the record keeping requirements that may be associated with the bill or joint resolution. Or, in lieu of the forgoing evaluation, the report shall include a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(b), Standing Rules of the Senate.)

RULE 7. SUBCOMMITTEES AND SUBCOMMITTEE PROCEDURES

A. Regularly established Subcommittees. The Committee shall have three regularly established Subcommittees. The Subcommittees are as follows: Permanent Subcommittee on Investigations, Oversight of Government Management, the Federal Workforce and the District of Columbia, Financial Management, the Budget, and International Security

B. Ad hoc Subcommittees. Following consultation with the ranking minority member, the chairman shall, from time to time, establish such ad hoc Subcommittees as he deems necessary to expedite Committee business.

C. Subcommittee membership. Following consultation with the majority members, and the ranking minority member of the Committee, the chairman shall announce selections for membership on the Subcommittees referred to in paragraphs A and B, above.

D. Subcommittee meetings and hearings. Each Subcommittee of this Committee is authorized to establish meeting dates and adopt rules not inconsistent with the rules of the Committee except as provided in Rules 2(D) and 7(E).

E. Subcommittee subpoenas. Each Subcommittee is authorized to adopt rules concerning subpoenas which need not be consistent with the rules of the Committee; provided, however, that in the event the Subcommittee authorizes the issuance of a subpoena pursuant to its own rules, a written notice of intent to issue the subpoena shall be provided to the chairman and ranking minority member of the Committee, or staff officers designated by them, by the Subcommittee chairman or a staff officer designated by him immediately upon such authorization, and no subpoena shall be issued for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the chairman and ranking minority member waive the 48-hour waiting period or unless the Subcommittee chairman certifies in writing to the chairman and ranking minority member that, in his opinion, it is necessary to issue a subpoena immediately.

F. Subcommittee budgets. During the first year of a new Congress, each Subcommittee that requires authorization for the expenditure of funds for the conduct of inquiries and investigations, shall file with the chief clerk of the Committee, by a date and time prescribed by the Chairman, its request for funds for the two (2) 12-month periods beginning on March 1 and extending through and including the last day of February of the 2 following years, which years comprise that Congress. Each such request shall be submitted on the budget form prescribed by the Committee on Rules and Administration, and shall be accompanied by a written justification addressed to the chairman of the Committee, which shall include (1) a statement of the Subcommittee's area of activities, (2) its accomplishments during the preceding Congress detailed year by year, and (3) a table showing a comparison between (a) the funds authorized for expenditure during the preceding Congress detailed year by year, (b) the funds actually expended during that Congress detailed year by year, (c) the amount requested for each year of the Congress, and (d) the number of professional and clerical staff members and consultants employed by the Subcommittee during the preceding Congress detailed year by year and the number of such personnel requested for each year of the Congress. The chairman may request additional reports from the Subcommittees regarding their activities and budgets at any time during a Congress. (Rule XXVI, Sec. 9, Standing Rules of the Senate.)

RULE 8. CONFIRMATION STANDARDS AND PROCEDURES

A. Standards. In considering a nomination, the Committee shall inquire into the nominee's experience, qualifications, suitability, and integrity to serve in the position to which he or she has been nominated. The Committee shall recommend confirmation, upon finding that the nominee has the necessary integrity and is affirmatively qualified by reason of training, education, or experience to carry out the functions of the office to which he or she was nominated.

B. Information Concerning the Nominee. Each nominee shall submit the following information to the Committee:

(1) A detailed biographical resume which contains information relating to education, employment and achievements;

(2) Financial information, in such specificity as the Committee deems necessary, including a list of assets and liabilities of the nominee and tax returns for the 3 years preceding the time of his or her nomination, and copies of other relevant documents requested by the Committee, such as a proposed blind trust agreement, necessary for the Committee's consideration; and,

(3) Copies of other relevant documents the Committee may request, such as responses to questions concerning the policies and programs the nominee intends to pursue upon taking office. At the request of the chairman or the ranking minority member, a nominee shall be required to submit a certified financial statement compiled by an independent auditor. Information received pursuant to this subsection shall be made available for public inspection; provided, however, that tax returns shall, after review by persons designated in subsection (C) of this rule, be placed under seal to ensure confidentiality.

C. Procedures for Committee inquiry. The Committee shall conduct an inquiry into the experience, qualifications, suitability, and integrity of nominees, and shall give particular attention to the following matters:

(1) A review of the biographical information provided by the nominee, including, but not limited to, any professional activities related to the duties of the office to which he or she is nominated;

(2) A review of the financial information provided by the nominee, including tax returns for the 3 years preceding the time of his or her nomination;

(3) A review of any actions, taken or proposed by the nominee, to remedy conflicts of interest; and

(4) A review of any personal or legal matter which may bear upon the nominee's qualifications for the office to which he or she is nominated. For the purpose of assisting the Committee in the conduct of this inquiry, a majority investigator or investigators shall be designated by the chairman and a minority investigator or investigators shall be designated by the ranking minority member. The chairman, ranking minority member, other members of the Committee and designated investigators shall have access to all investigative reports on nominees prepared by any Federal agency, except that only the chairman, the ranking minority member, or other members of the Committee, upon request, shall have access to the report of the Federal Bureau of Investigation. The Committee may request the assistance of the General Accounting Office and any other such expert opinion as may be necessary in conducting its review of information provided by nominees.

D. Report on the Nominee. After a review of all information pertinent to the nomination, a confidential report on the nominee shall be made in the case of judicial nominees and may be made in the case of non-judicial nominees by the designated investigators to the chairman and the ranking minority member and, upon request, to any other member of the Committee. The report shall summarize the steps taken by the Committee during its investigation of the nominee and the results of the Committee inquiry, including any unresolved matters that

have been raised during the course of the inquiry.

E. Hearings. The Committee shall conduct a public hearing during which the nominee shall be called to testify under oath on all matters relating to his or her suitability for office, including the policies and programs which he or she will pursue while in that position. No hearing shall be held until at least 72 hours after the following events have occurred: The nominee has responded to prehearing questions submitted by the Committee; and, if applicable, the report described in subsection (D) has been made to the chairman and ranking minority member, and is available to other members of the Committee, upon request.

F. Action on confirmation. A mark-up on a nomination shall not occur on the same day that the hearing on the nominee is held. In order to assist the Committee in reaching a recommendation on confirmation, the staff may make an oral presentation to the Committee at the mark-up, factually summarizing the nominee's background and the steps taken during the pre-hearing inquiry.

G. Application. The procedures contained in subsections (C), (D), (E), and (F) of this rule shall apply to persons nominated by the President to positions requiring their full-time service. At the discretion of the chairman and ranking minority member, those procedures may apply to persons nominated by the President to serve on a part-time basis.

RULE 9. PERSONNEL ACTIONS AFFECTING COMMITTEE STAFF

In accordance with Rule XLII of the Standing Rules of the Senate and the Congressional Accountability Act of 1995 (P.L.104–1), all personnel actions affecting the staff of the Committee shall be made free from any discrimination based on race, color, religion, sex, national origin, age, state of physical handicap, or disability.

RULES OF THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. COCHRAN. Mr. President, today the Committee on Agriculture, Nutrition and Forestry conducted a business meeting and approved the subcommittee membership of the committee along with the rules of the committee. I ask unanimous consent that they be printed in today's RECORD. The committee also reported it's funding resolution for fiscal year 2003, fiscal year 2004 and fiscal year 2005.

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

RULES OF THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

RULE I—MEETINGS

1.1 REGULAR MEETINGS.—Regular meetings shall be held on the first and third Wednesday of each month when Congress is in session.

1.2 ADDITIONAL MEETINGS.—The Chairman, in consultation with the ranking minority member, may call such additional meetings as he deems necessary.

1.3 NOTIFICATION.—In the case of any meeting of the committee, other than a regularly scheduled meeting, the clerk of the committee shall notify every member of the committee of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, DC, and at least 48 hours in the case of any meeting held outside Washington, DC.

1.4 CALLED MEETING.—If three members of the committee have made a request in writing to the Chairman to call a meeting of the committee, and the Chairman fails to call such a meeting within 7 calendar days thereafter, including the day on which the written notice is submitted, a majority of the members may call a meeting by filing a written notice with the clerk of the committee who shall promptly notify each member of the committee in writing of the date and time of the meeting.

1.5 ADJOURNMENT OF MEETINGS.—The Chairman of the committee or a subcommittee shall be empowered to adjourn any meeting of the committee or a subcommittee if a quorum is not present within 15 minutes of the time scheduled for such meeting.

RULE 2—MEETINGS AND HEARINGS IN GENERAL

2.1 OPEN SESSIONS.—Business meetings and hearings held by the committee or any subcommittee shall be open to the public except as otherwise provided for in Senate Rule XXVI, paragraph 5.

2.2 TRANSCRIPTS.—A transcript shall be kept of each business meeting and hearing of the committee or any subcommittee unless a majority of the committee or the subcommittee agrees that some other form of permanent record is preferable.

2.3 REPORTS.—An appropriate opportunity shall be given the Minority to examine the proposed text of committee reports prior to their filing or publication. In the event there are supplemental, minority, or additional views, an appropriate opportunity shall be given the Majority to examine the proposed text prior to filing or publication.

2.4 ATTENDANCE.—(a) MEETINGS. Official attendance of all markups and executive sessions of the committee shall be kept by the committee clerk. Official attendance of all subcommittee markups and executive sessions shall be kept by the subcommittee clerk.

(b) HEARINGS. Official attendance of all hearings shall be kept, provided that, Senators are notified by the committee Chairman and ranking minority member, in the case of committee hearings, and by the subcommittee Chairman and ranking minority member, in the case of committee hearings, and by the subcommittee Chairman and ranking minority member, in the case of subcommittee hearings, 48 hours in advance of the hearing that attendance will be taken. Otherwise, no attendance will be taken. Attendance at all hearings is encouraged.

RULE 3—HEARING PROCEDURES

3.1 NOTICE.—Public notice shall be given of the date, place, and subject matter of any hearing to be held by the committee or any subcommittee at least 1 week in advance of such hearing unless the Chairman of the full committee or the subcommittee determines that the hearing is noncontroversial or that special circumstances require expedited procedures and a majority of the committee or the subcommittee involved concurs. In no case shall a hearing be conducted with less than 24 hours notice.

3.2 WITNESS STATEMENTS.—Each witness who is to appear before the committee or any subcommittee shall file with the committee or subcommittee, at least 24 hours in advance of the hearing, a written statement of his or her testimony and as many copies as the Chairman of the committee or subcommittee prescribes.

3.3 MINORITY WITNESSES.—In any hearing conducted by the committee, or any subcommittee thereof, the minority members of the committee or subcommittee shall be entitled, upon request to the Chairman by the ranking minority member of the committee or subcommittee to call witnesses of their selection during at least 1 day of such hearing pertaining to the matter or matters heard by the committee or subcommittee.

3.4 SWEARING IN OF WITNESSES.—Witnesses in committee or subcommittee hearings may be required to give testimony under oath whenever the Chairman or ranking minority member of the committee or subcommittee deems such to be necessary.

3.5 LIMITATION.—Each member shall be limited to 5 minutes in the questioning of any witness until such time as all members who so desire have had an opportunity to question a witness. Questions from members shall rotate from majority to minority members in order of seniority or in order of arrival at the hearing.

RULE 4—NOMINATIONS

4.1 ASSIGNMENT.—All nominations shall be considered by the full committee.

4.2 STANDARDS.—In considering a nomination, the committee shall inquire into the nominee's experience, qualifications, suitability, and integrity to serve in the position to which he or she has been nominated.

4.3 INFORMATION.—Each nominee shall submit in response to questions prepared by the committee the following information:

(1) A detailed biographical resume which contains information relating to education, employment, and achievements;

(2) Financial information, including a financial statement which lists assets and liabilities of the nominee; and

(3) Copies of other relevant documents requested by the committee. Information received pursuant to this subsection shall be available for public inspection except as specifically designated confidential by the committee.

4.4 HEARINGS.—The committee shall conduct a public hearing during which the nominee shall be called to testify under oath on all matters relating to his or her suitability for office. No hearing shall be held until at least 48 hours after the nominee has responded to a prehearing questionnaire submitted by the committee.

4.5 ACTION ON CONFIRMATION.—A business meeting to consider a nomination shall not occur on the same day that the hearing on the nominee is held. The Chairman, with the agreement of the ranking minority member, may waive this requirement.

RULE 5—QUORUMS

5.1 TESTIMONY—For the purpose of receiving evidence, the swearing of witnesses, and the taking of sworn or unsworn testimony at any duly scheduled hearing, a quorum of the committee and the subcommittee thereof shall consist of one member.

5.2 BUSINESS.—A quorum for the transaction of committee or subcommittee business, other than for reporting a measure or recommendation to the Senate or the taking of testimony, shall consist of one-third of the members of the committee or subcommittee, including at least one member from each party.

5.3 REPORTING.—A majority of the membership of the committee shall constitute a quorum for reporting bills, nominations, matters, or recommendations to the Senate. No measure or recommendation shall be ordered reported from the committee unless a majority of the committee members are physically present. The vote of the committee to report a measure or matter shall require the concurrence of a majority of those members who are physically present at the time the vote is taken.

RULE 6—VOTING

6.1 ROLLCALLS.—A roll call vote of the members shall be taken upon the request of any member.

6.2 PROXIES.—Voting by proxy as authorized by the Senate rules for specific bills or subjects shall be allowed whenever a quorum of the committee is actually present.

6.3 POLLING.—The committee may poll any matters of committee business, other than a vote on reporting to the Senate any measures, matters or recommendations or a vote on closing a meeting or hearing to the public, provided that every member is polled and every poll consists of the following two questions:

(1) Do you agree or disagree to poll the proposal; and

(2) Do you favor or oppose the proposal.

If any member requests, any matter to be polled shall be held for meeting rather than being polled. The chief clerk of the committee shall keep a record of all polls.

RULE 7—SUBCOMMITTEES

7.1 ASSIGNMENTS.—To assure the equitable assignment of members to subcommittees, no member of the committee will receive assignment to a second subcommittee until, in order of seniority, all members of the committee have chosen assignments to one subcommittee, and no member shall receive assignment to a third subcommittee until, in order of seniority, all members have chosen assignments to two subcommittees.

7.2 ATTENDANCE.—Any member of the committee may sit with any subcommittee during a hearing or meeting but shall not have the authority to vote on any matter before the subcommittee unless he or she is a member of such subcommittee.

7.3 EX OFFICIO MEMBERS.—The Chairman and ranking minority member shall serve as nonvoting ex officio members of the subcommittees on which they do not serve as voting members. The Chairman and ranking minority member may not be counted toward a quorum.

7.4 SCHEDULING.—No subcommittee may schedule a meeting or hearing at a time designated for a hearing or meeting of the full committee. No more than one subcommittee business meeting may be held at the same time.

7.5 DISCHARGE.—Should a subcommittee fail to report back to the full committee on any measure within a reasonable time, the Chairman may withdraw the measure from such subcommittee and report that fact to the full committee for further disposition. The full committee may at any time, by majority vote of those members present, discharge a subcommittee from further consideration of a specific piece of legislation.

7.6 APPLICATION OF COMMITTEE RULES TO SUBCOMMITTEES.—The proceedings of each subcommittee shall be governed by the rules of the full committee, subject to such authorizations or limitations as the committee may from time to time prescribe.

RULE 8—INVESTIGATIONS, SUBPOENAS AND DEPOSITIONS

8.1 INVESTIGATIONS.—Any investigation undertaken by the committee or a subcommittee in which depositions are taken or subpoenas issued, must be authorized by a majority of the members of the committee voting for approval to conduct such investigation at a business meeting of the committee convened in accordance with Rule 1.

8.2 SUBPOENAS.—The Chairman, with the approval of the ranking minority member of the committee, is delegated the authority to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing of the committee or a subcommittee or in connection with the conduct of an investigation authorized in accordance with paragraph 8.1. The Chairman may subpoena attendance or production without the approval of the ranking minority member when the Chairman has not received notification from the ranking minority member of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the ranking minority member as provided in this paragraph the subpoena may be authorized by vote of the members of the committee. When the committee or Chairman authorizes subpoenas, subpoenas may be issued upon the signature of the Chairman or any other member of the committee designated by the Chairman.

8.3 NOTICE FOR TAKING DEPOSITIONS.—Notices for the taking of depositions, in an investigation authorized by the committee, shall be authorized and be issued by the Chairman or by a staff officer designated by him. Such notices shall specify a time and place for examination, and the name of the Senator, staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear unless the deposition notice was accompanied by a committee subpoena.

8.4 PROCEDURE FOR TAKING DEPOSITIONS.—Witnesses shall be examined upon oath administered by an individual authorized by local law to administer oaths. The Chairman will rule, by telephone or otherwise, on any objection by a witness. The transcript of a deposition shall be filed with the committee clerk.

RULE 9—AMENDING THE RULES

These rules shall become effective upon publication in the CONGRESSIONAL RECORD. These rules may be modified, amended, or repealed by the committee, provided that all members are present or provide proxies or if a notice in writing of the proposed changes has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken. The changes shall become effective immediately upon publication of the changed rule or rules in the CONGRESSIONAL RECORD, or immediately upon approval of the changes if so resolved by the committee as long as any witnesses who may be affected by the change in rules are provided with them.

SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Thad Cochran, MS, Chairman, Richard G. Lugar, IN, Mitch McConnell, KY, Pat Roberts, KS, Peter Fitzgerald, IL, Saxby Chambliss, GA, Norm Coleman, MN, Mike Crapo, ID, James M. Talent, MO, Elizabeth Dole, NC, Charles E. Grassley, IA, Tom Harkin, IA, Ranking Democratic Member, Patrick J. Leahy, VT, Kent Conrad, ND, Thomas A. Daschle, SD, Max Baucus, MT, Blanche L. Lincoln, AR, Zell Miller, GA, Debbie Stabenow, MI, E. Benjamin Nelson, NE, Mark Dayton, MN.

JURISDICTION OF THE SUBCOMMITTEES OF THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY (108TH)

PRODUCTION AND PRICE COMPETITIVENESS

Jurisdiction over legislation on agricultural commodities, including cotton, dairy products, feed grains, wheat, tobacco, peanuts, sugar, wool, rice, oilseeds, and soybeans; price and income support programs.

Elizabeth Dole, Chair, Mitch McConnell, Pat Roberts, Saxby Chambliss, Norm Coleman, Charles E. Grassley, Kent Conrad, Ranking Democrat, Thomas A. Daschle, Zell Miller, Max Baucus, Blanche L. Lincoln.

MARKETING, INSPECTION, AND PRODUCT PROMOTION

Jurisdiction over legislation on foreign agricultural trade; foreign market development; agriculture product promotion and domestic marketing programs; oversight of international commodity agreements and export controls on agricultural commodities; foreign assistance programs and Food for Peace; marketing orders; inspection and certification of meat, flowers, fruit, vegetables, and livestock.

James M. Talent, Chair, Pat Roberts, Peter Fitzgerald, Saxby Chambliss, Charles E. Grassley, Max Baucus, Ranking Democrat, E. Benjamin Nelson, Kent Conrad, Debbie Stabenow.

FORESTRY, CONSERVATION, AND RURAL REVITALIZATION

Jurisdiction over rural development legislation and rural electrification legislation; oversight of rural electrification, agricultural credit, the Farm Credit System, the Farm Credit Administration, and the Farmers Home Administration and its successor agencies; and crop insurance; forestry in general and forest reserves that were acquired from state, local, or private sources, soil conservation, stream channelization, watershed and flood control programs involving structures of less than 4,000 acre-feet storage capacity.

Mike Crapo, Chair, Richard G. Lugar, Norm Coleman, James M. Talent, Mitch McConnell, Pat Roberts, Blanche L. Lincoln, Ranking Democrat, Mark Dayton, Patrick J. Leahy, Thomas A. Daschle, E. Benjamin Nelson.

RESEARCH, NUTRITION, AND GENERAL LEGISLATION

Jurisdiction over legislation on agricultural education and research; animal welfare; legislation on or relating to food, nutrition and hunger; commodity donations; food stamps; national school lunch program; school breakfast program; summer food service program; special milk program for children; special supplemental nutrition program for women, infants and children; nutritional programs for the elderly; Commodity Futures Trading Commission and Federal Insecticide Fungicide and Rodenticide Act; and general legislation.

Peter Fitzgerald, Chair, Richard G. Lugar, Mitch McConnell, Mike Crapo, Elizabeth Dole, Patrick J. Leahy, Ranking Democrat, Debbie Stabenow, Zell Miller, Mark Dayton.

LOCAL LAW ENFORCEMENT ACT

Mr. SMITH. Mr. President, I rise today to speak about my friend Chad Debnam and the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would expand current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

Each day since the introduction of the Local Law Enforcement Enhancement Act, I have detailed for the RECORD a hate crime that has affected our fellow citizens. Today, I would like to describe a terrible crime that occurred very recently, on January 19, 2003, in my home State of Oregon. Four young men went on a shooting spree through Northeast Portland because, according to police, they thought the neighborhood was predominantly African American. The four fired shots into cars and homes as they drove down the street. Although no one was physically injured, the incident opened painful wounds in a community that, like so

many others, has seen hate crimes before.

For Chad Debnam, the shooting was particularly difficult. 23 years earlier, his brother, Clarence Debnam, an African American college student, was shot through the back by a white sailor. The shooting ''affected us so deeply, our family was never the same,'' Chad, now 52, said. ''And then it comes to visit me again.''

As Chad and his neighbors understand all too well, hate crimes cause harm above and beyond the effects produced by random acts of violence, because when such a wrong is perpetrated, the intended victim is not just a single person, but an entire community. And it creates within that community a sense of alienation, and the very real fear that other members may be future targets of similar violence.

This weekend, Chad Debnam and others will be marching down the streets of Northeast Portland in a united front against hate. The Federal Government should be there with them. Passing the Local Law Enforcement Enhancement Act will demonstrate to our fellow citizens that, in the words of Dr. Martin Luther King, Jr., ''Injustice anywhere is a threat to justice everywhere.'' The victims of hate, in Portland and elsewhere, need to know that their Federal Government stands with them, and will help them create a nationwide community of hope and healing, where intolerance has no place. I believe that by passing the Local Law Enforcement Enhancement Act we will not only change the law, but hearts and minds as well.

FMLA

Mr. SARBANES. Mr. President, I rise today to join with Marylanders and all Americans in celebrating the anniversary of the Family and Medical Leave Act of 1993, FMLA. The FMLA was passed 10 years ago today on February 5, 1993. It addressed one of the most pressing issues of the time: how to help parents and other family members balance the demands of work and family. Balancing these demands has always been difficult, but the last few decades have seen an increase in working mothers, single parents and working families who are caring for elderly relatives. Trying to cope with the dual burdens of work and family left many families and individuals unable to meet all the demands placed on them.

The FMLA was designed to help ease the burden on many of these families. The FMLA requires private employers with at least 50 employees, and public employers, to give unpaid leave to employees who meet the eligibility requirements for such leave. To be eligible, the FMLA requires that employees have worked for the employer for at least 12 months, and have worked a minimum of 1,250 hours. The employee, if eligible, is entitled to up to 12 weeks of unpaid, job-protected leave per 12-month period. FMLA leave can be taken to care for the ''serious health condition'' of the employee, a child of the employee or a parent of the employee, or for an employee to care for a newborn, newly adopted child or newly placed foster child. Employees are not required to take the leave in one block, and are entitled to receive health benefits during their FMLA leave.

In 2001 the Department of Labor commissioned a report to study the impact of the FMLA. The report found that almost 62 percent of public and private employees are covered by the FMLA. The benefits of the FMLA have thus been applied to the majority of American workers, a significant accomplishment. In addition, the FMLA seems to be working. A significant majority of employers report that the FMLA has no effect on their company's performance: 76.5 percent of employers say that the FMLA has no effect on productivity, 87.6 percent say that the FMLA has no effect on profitability, and 87.7 percent report that the FMLA has no effect on their company's growth. A majority of employers also report that the FMLA has little to no effect on the individual employee's performance. And most of the 23.8 million employees who used FMLA leave in 1999–2000 reported that their experience was positive.

Beyond these raw numbers, the FMLA has had a profound effect on the lives of many American workers. Working mothers and fathers are able to take time to care for their sick children, sons and daughters are able to care for aging parents, and new mothers and fathers are able to spend precious time bonding with their newborns or newly adopted babies during the first weeks of life. The FMLA does not force workers to choose between family and work. No amount of statistics can quantify the value of the days and hours family members get to spend helping one another during these crucial times.

But we should look at ways to make this very successful program available to more American workers and bring the benefits of this important legislation to more who need it. To this end, I am a cosponsor of a bill that would provide wage replacement for eligible individuals who have taken FMLA leave for the birth or adoption of a son or daughter or other family care giving needs. The bill would also amend the FMLA to extend coverage to employees at worksites of at least 25 employees, a decrease from the current 50-employee requirement. And the bill would entitle employees who must address the effects of domestic violence to take FMLA leave. I urge my colleagues to work with me to ensure the passage and enactment of this important legislation.

On the 10th anniversary of the FMLA legislation, let us remember the success of this program, and let us also focus on ways in which we can make improvements to the program so that it can benefit all American workers.

U.N. WEAPONS INSPECTORS

Mr. FEINGOLD. Mr. President, I commend Senator BYRD for introducing a very sensible resolution, S. Res. 28, expressing the sense of the Senate that the United Nations weapons inspectors should be given sufficient time for a thorough assessment of the level of compliance by the Government of Iraq with United Nations Security Council Resolution 1441 of 2002 and that the United States should seek a United Nations Security Council resolution specifically authorizing the use of force before initiating any offensive military operations against Iraq. I am pleased to join several colleagues in cosponsoring it.

I want to be clear about one point on which I may disagree with Senator BYRD. S. Res. 28 states that U.N. weapons inspectors have failed to obtain evidence that would prove that Iraq is in breach of the terms of the United Nations Security Council Resolution 1441. While there is little public information suggesting that weapons inspectors have turned up much in the way of evidence of any kind, they have made some important disclosures in their recent report, and it is clear that Iraq has failed to meet Resolution 1441's requirement that Iraq make a complete declaration of all aspects of its chemical, biological, and nuclear weapons programs, as well as information about its ballistic missiles and other delivery systems. The report that was submitted by the Government of Iraq omitted a great deal of information, and the ''unknowns'' left for the international community to consider are very serious matters. Iraq is not in compliance with Resolution 1441.

But this issue does not dissuade me from supporting Senator Byrd's admirable resolution. Fundamentally, this resolution recognizes that the threshold for starting a war through unilateral military action should be very high. It should require the presence of an imminent threat, or a solid connection to al-Qaida, in which case unambiguous U.S. action is already, and rightly, authorized. Based on the information available to me, I have determined that we have not reached that point.

I wholeheartedly agree with the resolution's assertion that the U.S. and others should work to exhaust all peaceful and diplomatic means of disarming Iraq. I also agree that the U.S. should seek authorization from the Security Council before pursuing the last resort of military action in Iraq. Should we reach a point at which the use of force appears to be the only option, we should try to increase the legitimacy of any action and decrease the potential costs pursuing this multilateral approach.

While calling for exhaustive diplomatic efforts, ongoing inspections work, and a multilateral approach, S. Res 28 also asserts that the United States should continue to actively seek to bring peace to the Israeli and Palestinian peoples, and notes that the

United States should redouble its efforts to reduce our vulnerability to terrorist attack. These are important issues to keep at the forefront of U.S. policy in the weeks and months ahead.

Overall, the resolution presents a reasonable approach to a difficult issue, and I believe that it reflects many of the concerns that I am hearing from my constituents in Wisconsin. Their voices and their questions belong at the center of our discussion about Iraq. I believe that this resolution helps to move my constituents' very serious concerns closer to that central role.

AFRICAN AMERICAN HISTORY MONTH

Mr. SARBANES. Mr. President, I am pleased to join with my Maryland constituents and millions of Americans in celebrating African-American History Month this February.

Dr. Carter Godwin Woodson founded the Association for the Study of Negro Life and History in 1915. Shortly after its creation, the Association began a campaign to establish Negro History Week to highlight the many accomplishments of African Americans. Dr. Woodson achieved this goal in 1926, and the second week of February was chosen to recognize the contributions of African Americans to American society. In 1976, this week of observance was expanded to a month and became African-American History Month. This month of observance is a time to recognize a crucial part of our diversity: the vast history and legacy that African Americans have contributed to the founding and building of our Nation. While we have much to celebrate in the achievements of many African Americans and the great strides this country has made towards true equality, there is also much work to be done.

Each year, the Association for the Study of African American Life and History, ASALH, designates a theme for the Black History Month observance, and this year it is ''The Souls of Black Folk: Centennial Reflections.'' This year's theme focuses on the past contributions of African Americans and the many significant ways in which African Americans have made our Nation better.

At the beginning of the last century, our Nation was a vastly different place than it is today. The country was divided along racial lines and racism was accepted and institutionalized. African Americans were not allowed to vote, and the opportunities available to African Americans were few. Today, thanks to the visions of a few and the sacrifices of many, that situation has changed.

Much of the last century was filled with hardship for African Americans. Despite this, African Americans made great strides in many areas and participated in every sector of our society. Throughout the past 100 years, African Americans have made remarkable contributions to our society as mathematicians, scientists, novelists, poets, politicians, and members of the armed services.

Regrettably, just this year we lost two Marylanders who contributed much to African-American and American history in the last century, Du Burns and Bea Gaddy. Du Burns was the first African-American mayor of Baltimore. He brought the city together and although he ultimately became mayor, he never forgot his humble beginnings, including a job as a locker room attendant at Dunbar High School. Bea Gaddy was an advocate for the homeless and a Baltimore City Council member who devoted her life to feeding hungry Baltimoreans and making Baltimore a better place to live. We will forever remember the sacrifices and achievements of these two remarkable people.

No discussion of the last century in the lives of African Americans could be complete without a tribute to Martin Luther King, Jr., whose birthday we recently celebrated. His teachings and the example of his life offer much for us to be hopeful about in the coming century. We must look to his words and deeds to remind ourselves of his great vision and must never forget the profound change he helped bring about in this country. His teachings transcend race, and we have much to learn from him about humanity as we confront the challenges of the new century. And the challenges are many. We must continue to work to eliminate racism and inequality, and we must work to combat intolerance, not just in our own country, but throughout the world.

Last year, the theme of African-American History Month posed the question, Is Racism Dead? Unfortunately, the answer is still no. There is much that we in Congress can do to continue to meet the challenges of inequality in our country. We can help the parents of working families by raising the minimum wage. We have already passed the Leave No Child Behind education reform bill that will provide new standards for schools and teachers and will help make quality education available to all Americans. We have passed an election reform bill to ensure that all voters are properly registered and every vote is counted. We must now fully fund these initiatives that have successfully passed Congress. And we need to make health care available and affordable for African Americans and all Americans.

Through the lessons and struggles of the last century and the trying first few years of this century, Americans have shown the world how people of all races, colors, religions and nationalities create the fabric of our Nation, a fabric that is richer because of our differences. This month, we honor the special contribution African Americans have made to that fabric. Through African-American History Month, we celebrate how far this country has come and remind ourselves of how far we have to go.

THE PRESIDENT'S HIV/AIDS INITIATIVE

Mr. FEINGOLD. Mr. President, I commend our President for the historic commitment to fighting the HIV/AIDS pandemic that he articulated in the State of the Union address.

As a 10-year member of the Senate Subcommittee on African Affairs—and over half of those years have been as either the ranking minority member or the chairman—I have seen the terrible unfolding of the pandemic. I have read and repeated the numbing statistics that grow more horrifying every year. I have met with orphans, the sick, the dying, the mourning. I have met with doctors and nurses overwhelmed by the task before them, public health officials impassioned in their pleas for more assistance, volunteers aching for the plight of the children they care for each day.

I believe that I understand the magnitude of this crisis as well as anyone can comprehend something so big and so devastating.

And I also understand that what the President promised to do is a vast leap forward, a truly visionary step toward doing what is right. It is in our interest, and in the interest of global stability. But it is also simply the right thing to do, to refuse to turn away from human suffering on a grand scale, to take action, to set meaningful goals and provide the resources and the will to achieve them. This is a noble undertaking. It is a constructive and humane act at a time when, too often, we feel surrounded by the forces of destruction. The President deserves our praise. I hope that his words will be transformed into action soon.

Congress certainly will be interested in understanding how the Administration plans to phase in additional spending, because the need is urgent and we cannot keep pushing our responsibility off into the future. It is critically important that pressing humanitarian and development priorities will not be robbed to finance this important initiative. And I hope that we take greater advantage of the Global Fund to fight AIDS, TB and malaria than we have in the past so that we can leverage our dollars for maximum impact.

But the bottom line is that this is a truly historic step, which is the only appropriate response to a historic crisis. We should celebrate this initiative. And then we should roll up our sleeves get to work on making it as effective as possible.

ADDITIONAL STATEMENTS

BURN AWARENESS WEEK

• Mr. BREAUX. Mr. President, I ask our colleagues to join me in recognizing the importance of National Burn

Awareness Week, February 2 to 8. This week provides an opportunity to educate children and families about the risks that lead to unfortunate and tragic accidents.

Unfortunately our most vulnerable, infants and young children, face greater risks from burn injuries than adults or older children. They rely on the adults around them to ensure their environment is safe and free from potential burn-causing hazards. That is why in addition to treating over 20 percent of all pediatric burns in the Nation at their four national burn centers in Boston, Galveston, Cincinnati, and Sacramento, Shriners Hospitals focus on education and prevention of burn injuries.

The Shriners Hospitals for Children is a unique charitable organization that has never sought nor received Federal, State, local, or third-party funding of any kind. Additionally, Shriners Hospitals are distinctive in that they offer full physical, psychological, and emotional care to all the children they treat.

The annual budget for the 22 orthopedic and burn hospitals totals over half a billion dollars and has an active patient roster of over 156,000 children. It is obvious how important the Shriners Hospitals are to the health of our children. The Shriners Hospitals are completely free to victims, despite the fact that they will spend $1.5 million on children every day this year.

In recognition of Burn Awareness Week, I ask my colleagues to commend such charitable organizations as the Shriners Hospitals that contribute to the care, education, and research necessary to treat and work to prevent children's burn accidents.●

CARROLL COLLEGE WINS NATIONAL FOOTBALL CHAMPIONSHIP

● Mr. BURNS. Mr. President, I rise today to pay tribute to a great bunch of college athletes from one of the best colleges in the Northwest. On December 21, the Carroll College Fighting Saints from Helena, MT, defeated the Georgetown Tigers of Georgetown, KY, to win Carroll's first NAIA national football championship.

The Fighting Saints scored 21 points in the first half, leading the Tigers 21 to 7. These 21 points were the most the Tiger defense had given up all season. Additionally, this was the first time they had trailed at halftime all season. During the second half, the Saints scored their fourth touchdown. This touchdown went unanswered by the Tigers, and the Fighting Saints won their first NAIA title by a score of 28 to 7.

The 2002 Carroll team is truly one of the best to play in the Frontier Conference, and I can personally attest to that since I had the pleasure of watching this fine team play last year. However, this is not by any means the first time this school has had an outstanding football team. Carroll College has a long tradition of outstanding coaches and student athletes. One noteworthy team was the 1931 Mount Saint Charles College football squad. It wasn't until the next year that Mount Saint Charles became Carroll College. This 1931 team went 6 and 0, beating Montana State University twice. Incidentally, these football players were unscored upon during that year. This team was the Carroll College team of the 20th century, and the 2002 Fighting Saints are truly the team of the 21st century.

The 2002 national championship team had four players named to the NAIA All American football team, a great honor for any program. While these are outstanding athletes, they are not alone. Every member of this team played an important role in winning this national championship. That is why, at this time, I would like to submit a full Fighting Saints roster to be printed in the RECORD of the Senate following my statement. I would also like to commend Coach Mike Van Diest and his coaching staff for putting together and leading such a fine team.

Carroll College has long been known for quality athletic programs, but its academic reputation is one that receives national attention year after year. In the fall of 2002, U.S. News and World Report ranked Carroll as the fourth best comprehensive college in the West. This is Carroll's ninth year in the top 10 in this category. The premed class of 2002 had a 100-percent acceptance rate at prestigious medical schools all across the country. Carroll's accounting students achieve a first-time CPA exam passage rate three times the national average. The Carroll College Talking Saints forensics team ranks among the best in the Nation year after year. In 1999, the Talking Saints won the National Parliamentary Debate Associations national championship.

Today, I congratulate the student athletes and coaches of the 2002 NAIA national championship football team, but would also like to commend the many fine accomplishments of the students and faculty of Carroll College.

The roster follows:

Bryan Chase, Mike Miller, Heath Wall, Zach Bumgarner, Matt Garreffa, Nick Garreffa, Bryce Doak, Cory Perzinski, Dustin Michaelis, John Klaboe, Mark Esponda, Travis Bradshaw, Marcus Atkinson, Jeremy Pantoja, Tom Boyle, Devin Wolf, Mike Maddox, Sheridan Jones, Kyle Baker, Buck Bower, D.J. Dearcorn, Dustin Barber, Arnie Bloomquist, Jason Ostler, Regan Mack, Matt Slingsby, Nate Chiovaro, Rhett Crites, Joey Stuart, Darold Debolt, Mike Pancich, Chris Ramstead, Casey Glenn, Shawn Wanderaas, Jarrod Wirt, A.J. Porrini, Chris Jones, Gary Cooper, Jared Petrino, Matt Thomas, Nick Porrini, Quinn Erwin, Scott Wunderlich, Tyler Emmert, Brett Bermingham, John Forba, Justin Wigen, Spencer Schmitz, Tyler Maxwell, Kevin McCutcheon, Paul Barnett, Jeff Pasha, Curtis Lineweaver, Matt Peterson, James Grimes, Tim Bowman, Luke Lagomasino, Shane Larson, Nick Hammond, Robb Latrielle, Brad Grutsch, Matt Ventresca, Jeremy Grove, Mike Ward, Pat Womac, Kyle East, Nick Colasurdo, Zack Zawacki, Gary Hiner, Casey FitzSimmons, Sam Morton, Brandon Sheahan, Josh Schmidt, Mark Gallik, Jeff Shirley, Mike Donovan, Andrew Hunter, Ben Shapiro, Jeff Michelson, Zac Titus, Mike Kuhnly, Jessie King, Phillip Wilson ●

HONORING DR. JOSETTE LINDAHL

● Mr. JOHNSON. Mr. President, I rise today to publicly commend Dr. Josette Lindahl of Vermillion, SD, for being named one of six National Institute of Mental Health Outstanding Psychiatry Residents and South Dakota's first recipient of a National Institute of Health grant.

A third-year psychiatry resident at the University of South Dakota School of Medicine, Josette will use the 3-year National Institute of Health grant, which is awarded to physicians who have the desire to perform research, to study glutamate receptor subunit function and schizophrenia. Josette hopes her research will lead to a better understanding of schizophrenia and more effective treatments. She has also received a grant from Avera McKennan Hospital to study brain receptors and their role in the etiology of schizophrenia.

In 1982, Josette received her bachelor's degree from the University of South Dakota where she was a Presidential Alumni Scholar. Three years after graduating, she opened her own business in Vermillion and performed veterinary diagnostic tests. Josette's company became the first joint venture between a State agency and a private high-tech corporation. In 1996, she received a Ph.D., from the University of South Dakota, and in 2000 earned her medical degree. Today, Josette sees patients 2 days a week at Lewis and Clark Mental Health Center in Yankton, as well as being on call at hospitals in Sioux Falls.

Josette's medical and research talents have enhanced the lives of countless South Dakotans and will lead to important developments in the future care of mental health patients. Her hard work and determination serves as a model for other talented health care professionals to emulate. I am pleased to be able to share her accomplishments with my colleagues and to be able to publicly commend her work.●

REPORT ON A LEGISLATIVE PROPOSAL TO ESTABLISH THE MILLENNIUM CHALLENGE ACCOUNT AND THE MILLENNIUM CHALLENGE CORPORATION—PM 12

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

I am pleased to transmit a legislative proposal to establish the Millennium

Challenge Account and the Millennium Challenge Corporation. Also transmitted is a section-by-section analysis.

The Millennium Challenge Account (MCA) represents a new approach to providing and delivering development assistance. This new compact for development breaks with the past by tying increased assistance to performance and creating new accountability for all nations. This proposal implements my commitment to increase current levels of core development assistance by 50 percent over the next 3 years, thus providing an annual increase of $5 billion by fiscal year 2006. To be eligible for this new assistance, countries must demonstrate commitment to three standards—ruling justly, investing in their people, and encouraging economic freedom. Given this commitment, and the link between financial accountability and development success, special attention will be given to fighting corruption.

The goal of the Millennium Challenge Account initiative is to reduce poverty by significantly increasing economic growth in recipient countries through a variety of targeted investments. The MCA will be administered by a new, small Government corporation, called the Millennium Challenge Corporation, designed to support innovative strategies and to ensure accountability for measurable results. The Corporation will be supervised by a Board of Directors chaired by the Secretary of State and composed of other Cabinet-level officials. The Corporation will be led by a Chief Executive Officer appointed by the President, by and with the advice and consent of the Senate. This proposal provides the Corporation with flexible authorities to optimize program implementation, contracting, and personnel selection while pursuing innovative strategies.

The Millennium Challenge Account initiative recognizes the need for country ownership, financial oversight, and accountability for results to ensure effective assistance. We cannot accept permanent poverty in a world of progress. The MCA will provide people in developing nations the tools they need to seize the opportunities of the global economy. I urge the prompt and favorable consideration of this legislation.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 5, 2003.*

REPORT OF AN AGREEMENT BETWEEN THE UNITED STATES AND THE KINGDOM OF NORWAY ON SOCIAL SECURITY, WITH RELATED ADMINISTRATIVE AGREEMENTS, INTENDED TO MODIFY CERTAIN PROVISIONS OF THE AGREEMENT THAT WAS SIGNED ON JANUARY 13, 1983—PM 13

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

To the Congress of the United States:

Pursuant to section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (Public Law 95–216, 42 U.S.C. 433(e)(1), I transmit herewith the Agreement Between the United States of America and the Kingdom of Norway on Social Security, with a related administrative agreement, both signed at Oslo on November 30, 2001. This revised Agreement is intended to modify certain provisions of the original United States and Norwegian Agreement, which was signed in Washington on January 13, 1983, and, upon its entry into force, will replace the 1983 Agreement.

The revised United States-Norwegian Agreement is similar in objective to the other social security agreements already in force with Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, Korea, Luxembourg, The Netherlands, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to eliminate dual social security coverage and taxation, and to help prevent the lost benefit protection that can occur when workers divide their careers between two countries. The revised United States-Norwegian Agreement contains all provisions mandated by section 233 and other provisions, which I deem appropriate to carry out the purposes of section 233, pursuant to section 233(c)(4).

I also transmit for the information of the Congress a report prepared by the Social Security Administration explaining the key points of the Agreement, along with a paragraph-by-paragraph explanation of the provisions of the principal agreement and the administrative agreement. Annexed to this report is the report required by section 233(e)(1) of the Social Security Act, a report on the effect of the Agreement on income and expenditures of the United States Social Security program and the number of individuals affected by the Agreement. The Department of State and the Social Security Administration have recommended the Agreement and related documents to me.

I commend the United States-Norwegian Social Security Agreement and related documents.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 5, 2003.*

MESSAGES FROM THE HOUSE

At 3:54 p.m., a message from the House of Representatives, delivered by Mr. Niland, one of its reading clerks, announced that the Speaker appoints the following Members as additional conferees in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the joint resolution (H.J. Res. 2) entitled ''Joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes''; Mr. LEWIS of California and Mr. HOYER of Maryland.

ENROLLED BILL SIGNED

At 5:39 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 16. To authorize salary adjustments for Justices and judges of the United States for fiscal year 2003.

At 7:06 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 18. A joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR THURSDAY, FEBRUARY 6, 2003

Mr. HATCH. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. Thursday, February 6. I further ask unanimous consent that on Thursday, following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then return to executive session to resume the consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit.

Mr. REID. Reserving the right to object, I say for the information of all Members, the unanimous consent request that was granted a brief minute ago was the continuing resolution for another week, a week and a half.

I spoke to Senator STEVENS today and my clerk on the Energy and Water Subcommittee. We are really moving along well in the conference. I hope that matter can be completed. Senator STEVENS hoped we could get together on Monday for that.

Finally, I know I cannot get the last word, but I will try anyway; that is, the letter I submitted on behalf of the Hispanic caucus just a couple of minutes ago contains more than his lack of judicial experience.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

Mr. HATCH. I can live with that. But the letter speaks for itself and shows a lack of support for a Hispanic person who is fully qualified.

PROGRAM

Mr. HATCH. For the information of Senators, tomorrow the Senate will resume debate on the nomination of Miguel Estrada. We have had a productive debate on the Estrada nomination this afternoon, but it is my hope that we will be able to proceed to a final vote on the nomination soon. As announced earlier today, there will be no rollcall votes tomorrow, and it is anticipated that the Senate will adjourn around 12 noon. Therefore, Senators who wish to speak on the Estrada nomination during tomorrow's session are encouraged to make arrangements to do so early in the day.

Mr. REID. If I could ask the acting majority leader, are we going to have votes in the morning? I don't think that is clear. The question is directed to the Chair. We have had a number of calls this afternoon. It is pretty clear from what I see here that there will be no votes tomorrow, but I want to be sure that is valid.

Mr. HATCH. That is my understanding.

Mr. REID. Pardon me?

Mr. HATCH. That is my understanding.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:11 p.m., adjourned until Thursday, February 6, 2003, at 9:30 a.m.