

Received(Date): 27 SEP 2002 11:46:56

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Subject: : Hatch Statement on Estrada
[P_HIOHA003_WHO.TXT_1.doc](#)

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PRA-P6

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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CREATION DATE/TIME:27-SEP-2002 11:46:56.00

SUBJECT:: Hatch Statement on Estrada

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ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_HIOHA003_WHO.TXT_1>

Statement of Orrin G. Hatch
Ranking Republican Member, Committee on the Judiciary

Before the Committee on the Judiciary

Hearing for
Miguel Angel Estrada,
Judge Nominee to the U.S. Court of Appeals for the District of Columbia
Circuit

September 26, 2002

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

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

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

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

Civic Comment for Wide Latin Audience

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

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

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

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

We must accept that the balance in the judiciary will change over time as Presidents change, but much more slowly. For the Senate, to do otherwise is to ignore the Constitution's electoral process and to usurp the will of the American people. To attempt to bring balance to courts in any other way is to circumvent the Constitution yet again, without a single vote of support being cast by the American people.

These are not just my views. This is our Anglo-American judicial tradition. It is reflected in everything that marks a good judge, not least of

which is Canon 5 of the Code of Judicial Conduct of the American Bar Association that expressly forbids nominees to judicial duty from making “*pledges or promises of conduct in office [or] statements that commit or appear to commit the nominee with respect to cases, controversies, or issues that are likely to come before the courts.*” I should expect that no Senator on this Committee would invite a nominee to breach this code of ethics, and it worries me that we are come close.

Why He Is Here?

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

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

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

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

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

In the case of Mr. Estrada, the ritual has been slightly different. They have been unable to find anything they can chew on and spit out at us, so they now say that we simply do not know enough about Mr. Estrada to

confirm him. Well, it's not that we do not know enough. We know as much about him as we have known about any nominee. Their complaint is that we know all there is and the usual character destroyers haven't found anything to distort.

But surely, we should not expect to hear it suggested today that Mr. Estrada does not have enough judicial experience. **Only 3 of the 18** Democrat appointed judges on the D.C Circuit Court had any prior judicial experience before their nominations. These include Ruth Bader Ginsburg and Abner Mikva. Likewise, judicial luminaries such as Louis Brandeis and Byron White had no judicial experience before being nominated to the Supreme Court. And Thurgood Marshall, the first African American on the Supreme Court, had no judicial experience before he was nominated to the Second Circuit. I could go on and on.

Role Model for Hispanics

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

But let's be clear, these liberal groups are only two or three in number, and they are basically surrogates for the Democrat Party -- some would say henchmen. They are marginalized given the large number of Hispanic organizations that have come out in support of Mr. Estrada. I should note that Mr. Estrada's supporters include **LULAC**, the League of United Latin American Citizens, -- the largest and oldest Latino organization in this country.

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