

**Hypocrisy Oozing through Every Pore  
(But it's the Left. Why would there be any surprise?)**

Immediately below is an op-ed by John Dendahl addressing the position of U.S. Senator Jeff Bingaman (D-N.M.) contra confirmation of Miguel Estrada to serve on the Court of Appeals for the D.C. Circuit. Bingaman's statement read into the Senate record follows.

**Partisanship Runs Estrada Filibuster**

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By John Dendahl

Sen. Jeff Bingaman supports the first-ever filibuster to block confirmation of a president's appointee to a federal judgeship. Like the 11 Texas state senators holed up in Albuquerque, Bingaman, D-N.M., is engaged in blatantly partisan obstruction of government, conduct that oozes hypocrisy.

The appointee is the brilliant Miguel Estrada, a man who arrived in the United States at age 17 speaking only Spanish. Before long, Estrada held one of the most prestigious law school student positions in the U.S., editor of the *Harvard Law Review*. The career that followed in both government and private practice has been spectacular, fully vindicating the promise of Estrada's days as a student.

It seems likely that the votes are there in the Senate to confirm Estrada. Bingaman and other desperate liberals are terrified of one thing: Estrada is a Republican and — conservative! Democrat doctrine has it that Latinos are born to be political liberals and members of the Democratic Party — not necessarily in that order. Since they aren't assured the votes to defeat Estrada's confirmation, these zealots have resorted to preventing a vote altogether.

I have read carefully a statement Bingaman delivered in the Senate on March 6, 2003. It begins with a statement few would assail: "It is [Senators'] responsibility to ensure that — to the best of our knowledge — each judicial nominee is capable of setting aside extreme views that he or she may hold when interpreting the law and deciding cases."

There follow more than 1,300 words of obfuscation aimed at justifying the unjustifiable. Nearly 250 words are included to erect and knock down a straw man, the suggestion that Bingaman's opposition is on account of Estrada's being Hispanic!

Hispanics are angry, all right, as they should be. The Bingaman filibuster, however, is about something else — denying our courts the services of outstanding people like Miguel Estrada and another Bush nominee, Priscilla Owen, who are unlikely to impose the liberals' agenda from the bench.

Bingaman clings like a leech to one disparaging comment made of Estrada by a former supervisor in the Solicitor General's office, Paul Bender. Too bad.

First, Bender's supervisory appraisals of Estrada were terrific. The disparagement came after the Bush nomination. Second, both were working in the Clinton Administration for Solicitor General Seth Waxman, whose comments about Estrada remain highly favorable despite the Bush nomination. Third, in that he has refused to grant interviews for well over a year, Bender seems short on conviction.

The filibuster crowd also whines because the administration refuses to give the Senate some Estrada work product from the Solicitor General's office. That policy has been beautifully defended in a letter signed by all living former solicitors general, whether serving Republican or Democrat presidents. They note the obvious, that "fair, honest and thorough advice" from staff attorneys depends on privacy that is not "vulnerable to public disclosure." Bingaman, an attorney himself, should have no problem understanding this principle.

What about a judge's "extremism"? Other than the discredited Bender, no one close to Estrada claims he holds extreme views. Nonetheless, a bipartisan group of Estrada's former colleagues at the Office of the Solicitor General has written to the Senate Judiciary Committee on his behalf. Perhaps their most powerful sentence is, "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."

Bingaman should leave the filibuster crowd and get back to doing the people's business. Bush nominated Estrada in May 2001, well over two years ago. It is reported that Bingaman has voted against this nomination seven times.

Plan to make it eight, senator, if that is your judgment, but stop the obstruction and let the Senate vote.

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STATEMENT BY SENATOR JEFF BINGAMAN

Thursday, March 6, 2003

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

The Constitution provides that the President shall nominate candidates for the federal bench and the Senate shall give advice and consent regarding those candidates. We cannot yet proceed to a vote on this nominee because we take this constitutional obligation - not right, but

obligation - seriously. An up or down vote on this nominee is premature, because we have yet to get disclosure of critical information regarding this nominee.

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

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

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

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

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

To this end, my colleagues on the Judiciary Committee sought access to the memoranda written by Mr. Estrada to his superiors at the Solicitor General's Office on questions such as whether the United States

government should appeal an adverse ruling to the Supreme Court or whether it should file an amicus brief in a case that the Supreme Court has decided to hear. The Administration has categorically refused to provide these documents, despite the fact that it is accepted practices to make these types of documents available to the Senate in the context of a nomination inquiry.

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

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

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

As I have mentioned before, this refusal is particularly perplexing, given that this same individual admitted that he asked similar questions of candidates for a clerkship with Justice Kennedy in order to "ascertain whether there are any strongly felt views that would keep that person from being a good law clerk to the Justice." This is exactly what my colleagues on the Judiciary Committee sought to do with

respect to Mr. Estrada. If this type of information is relevant to the process of hiring a Supreme Court law clerk, isn't it infinitely more important to the process of appointing an appellate judge - someone who has a lifetime appointment to the bench?

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

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

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

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

The debate in this case is about preserving the Senate's Constitutional role in judicial nominations. It transcends this particular nomination because if we were to proceed to a vote after this nominee has refused to answer routine questions about his views and his judicial philosophy, and after the Administration has refused to respond to a routine request for samples of this nominee's work product, we would essentially be conceding that the Senate's role in judicial nominations is that of providing a rubber stamp to the President's nominations. This is clearly

not the role envisioned by the framers of our Constitution.

I yield the floor.