

MEMORANDUM

To: Senator Durbin
 From: [REDACTED]
 Date: November 7, 2001
 Re: Meeting with Civil Rights Leaders Yesterday to Discuss Judges

Due to the floor activity last night, you missed a meeting with Senator Kennedy and representatives of various civil rights groups. This was intended to follow-up a meeting in Senator Kennedy's office in mid-October, when the groups expressed serious concern with the quick hearing for Charles Pickering and the pace of judicial nominations generally.

Yesterday's meeting accomplished two objectives. First, the groups advocated for some procedural ground rules. These include: (1) only one hearing per month; (2) no more than three judges per hearing; (3) giving Committee Democrats and the public more advance notice of scheduled nominees; (4) no recess hearings; and (5) a commitment that nominees voted down in Committee will not get a floor vote. Earlier yesterday, Senator Leahy's staff committed to the third item in principle.

Second, yesterday's meeting focused on identifying the most controversial and/or vulnerable judicial nominees, and a strategy for targeting them. The groups singled out three — Jeffrey Sutton (6th Circuit); Priscilla Owen (5th Circuit); and Caroline Kuhl (9th Circuit) — as a potential nominee for a contentious hearing early next year, with a eye to voting him or her down in Committee. They also identified Miguel Estrada (D.C. Circuit) as especially dangerous, because he has a minimal paper trail, he is Latino and the White House seems to be grooming him for a Supreme Court appointment. They want to hold Estrada off as long as possible.

Attached is a table that I compiled, evaluating the 19 Court of Appeals nominees and a few of the controversial district court nominees. Based on input from the groups, I would place the appellate nominees in the categories below. Asterisks indicate that a Senator has placed a hold on the nominee.

Good	Bad	Ugly
Clifton (9th Cir.)*	Shedd (4th Cir.)	Boyle (4th Cir.)*
Melloy (8th Cir.)	Roberts (D.C. Cir.)	Owen (5th Cir.)
O'Brien (10th Cir.)	L. Smith (8th Cir.)	Sutton (6th Cir.)*
Howard (1st Cir.)	Pickering (5th Cir.)	Cook (6th Cir.)*
B. Smith (3rd Cir.)	Tymkovich (10th Cir.)	McConnell (10th Cir.)
	Gibbons (6th Cir.)	Estrada (D.C. Cir.)
	Steele (11th Cir.)	Kuhl (9th Cir.)*

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Talking Points on Estrada for Caucus

- We must filibuster Miguel Estrada's nomination. He is clearly an intelligent lawyer, but being a judge requires more. He must demonstrate his commitment to core constitutional values, and he has to prove that he has the ability to be fair and impartial. By design, we know very little about Mr. Estrada, but the burden is on him to prove to us that he is fit for a life-time appointment. He simply hasn't done that.
- He has serious temperament problems. He's been criticized by his direct supervisor in the Solicitor General's Office as too ideological to be a judge. Members of the Hispanic Caucus and other Latino leaders have described him as not being "even-tempered" and as having a "short fuse."
- As Pat and Chuck have described, Estrada has virtually no paper trail, and he has refused to answer the most basic questions about his views. Over and over again, the Justice Department refuses to provide us with the documents from Estrada's time in government practice. That's simply unacceptable.
- I've been here for 40 years and I've worked with Republican and Democratic Administrations in the confirmation process. This Administration is the worst. They are applying a litmus test at 1600 Pennsylvania Avenue and then they dare us to prevent them from packing the courts of appeals with ideologues. As [redacted] and [redacted] can attest, any attempt to work with them is rebuffed.
- If we allow them to place a stealth, right-wing zealot on this court, we have only ourselves to blame. Although a few Hispanic groups support Estrada, we have the support of many of the largest, oldest Hispanic organizations, including dozens of Hispanic labor leaders across the country, MALDEF, the Puerto Rican Legal Defense Fund, and the Congressional Hispanic Caucus.
- These groups are taking their message and their concerns about Estrada to mainstream and to Spanish-language press. The Republican claim that we are anti-Hispanic won't stick. We have too much support, and their record is hostile to the interests of that community.

- The D.C. Circuit is far too important to appoint someone about whom we have so many questions. Key labor, civil rights, environmental, and administrative law cases are decided there, and we know it is a "feeder" circuit for the Supreme Court. The White House is almost telling us that they plan to nominate him to the Supreme Court. We can't repeat the mistake we made with Clarence Thomas.