Congress of the United States

Washington, DC 20515

February 26, 2003

Senator Tom Daschle
Senator Harry Reid
Senator Patrick Leahy
United States Senate
Washington, DC 20510

Dear Senators,

It is our understanding that the major objection raised by the Senate Democratic Leadership and many members of the Senate Democratic Caucus to the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia Circuit is that you have not been provided sufficient information about his legal views. Specifically, we understand that you are opposing his nomination because of the Administration's failure to provide you with internal memoranda prepared by Mr. Estrada while he served as Assistant to the Solicitor General.

We are deeply concerned that your objection to the Administration's refusal to produce these memoranda not only breaks with precedent but is also a threat to the ability of Executive Branch Officials, members of the Judiciary, and Members of Congress to receive confidential legal advice.

As you are no doubt aware, the Clinton Administration memoranda you are requesting in the case of Mr. Estrada were not requested for the ***seven*** previous nominees to the Courts of Appeals who had worked in the Solicitor General's office. Understandably, the improper appearance of a double standard for this particular nominee has been created. In addition, every living former Solicitor General--Democrat and Republican--signed a joint letter to the Senate Judiciary Committee, stating that the memoranda request would have a debilitating effect on the ability of the Department of Justice to represent the United States before the Supreme Court.

Forcing the disclosure of confidential memoranda in this instance would do serious institutional harm to all three branches of government. For example, should legal memoranda prepared for you by one of your staff be available for review by future senators (or by the Administration) in the event that the staff member were to be nominated or be considered to a judicial or other post? This appears to be the precedent you are attempting to set. As we trust you understand, such a precedent would no doubt impact the type and quality of advice we seek and receive from our staff.

We strongly urge you to reconsider your objections and drop your request for the confidential memoranda of the Clinton Justice Department.

Sincerely,

RECYCLED PAPER

Virgil Goode

Steve Chabot

John Kline

Pete Hoekstra

John Sullivan

Phil Crane

Kevin Brady

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cc: Senator Bill Frist
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