

**George W. Bush Presidential Library**

**Collection:** Counsel's Office, White House

**Series:** Kavanaugh, Brett - Subject Files

**Folder Title:** Estrada, Miguel - Ronald A. Klain

BRETT  
for your  
files.

O'MELVENY & MYERS LLP  
Strategic Counseling Group

Miguel:

I hope it does you justice.

I had a good chat with Sen. Leahy. This will  
work out well, I believe.

Let me know what else I can do.



555 13th Street, N.W., Washington, D.C., 20004-1109 • (202) 383-5300

O

---

**O'MELVENY & MYERS LLP**

LOS ANGELES  
CENTURY CITY  
IRVINE  
MENLO PARK  
NEWPORT BEACH  
NEW YORK

555 13th Street, N.W.  
Washington, D.C. 20004-1109

TELEPHONE (202) 383-5300  
FACSIMILE (202) 383-5414  
INTERNET: WWW.OMM.COM

SAN FRANCISCO  
TYSONS CORNER  
HONG KONG  
LONDON  
SHANGHAI  
TOKYO

January 16, 2002

OUR FILE NUMBER  
600,000-012

WRITER'S DIRECT DIAL  
202-383-5317

The Honorable Patrick Leahy  
Chairman  
U.S. Senate Committee on the Judiciary  
SD-224, Dirksen Senate Office Building  
Washington, DC 20510

WRITER'S E-MAIL ADDRESS  
rklain@omm.com

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.

**O'MELVENY & MYERS LLP**

The Honorable Patrick Leahy, January 16, 2002 - Page 2

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 his 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.

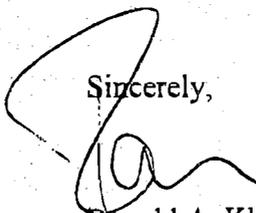
In closing, I appreciate your consideration of this letter and the views expressed here. I wish you the best in trying to untangle the difficult mess that the confirmation process has become. And I hope you will see fit to support Miguel Estrada's confirmation when the Committee acts on that nomination.

O'MELVENY & MYERS LLP

The Honorable Patrick Leahy, January 16, 2002 - Page 3

With best wishes,

Sincerely,



Ronald A. Klain  
of O'MELVENY & MYERS LLP

RK:csm

cc: Bruce Cohen  
Helaine Greenfeld

DC1:496124.2  
01/16/02