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From: Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
Subject: : Re: NEW Byron York story today

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:28-FEB-2003 12:56:35.00
SUBJECT:: Re: NEW Byron York story today
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Might you ring me, my friend? 62617

tsg

Brett M. Kavanaugh
02/28/2003 12:02:12 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: NEW Byron York story today

A New Move on Estrada
The White House challenges Democrats to put up or shut up.

n perhaps its most forceful effort yet to break the stalemate over the appeals-court nomination of Miguel Estrada, the White House has now invited every member of the Senate who has doubts about Estrada's legal views to submit written questions to Estrada by the close of business Friday. In a letter delivered Thursday to all 100 senators, White House Counsel Alberto Gonzales said Estrada will respond by next Tuesday.

"He would answer the questions forthrightly, appropriately, and in a manner consistent with the traditional practice and obligations of judicial nominees, as he has before," Gonzales wrote. Gonzales also renewed a White House offer to set up personal meetings between Estrada and any senator who wants to have a one-on-one talk. "We continue to believe that such meetings could be very useful to senators who wish to learn more about Mr. Estrada's record and character," Gonzales wrote.

Finally, Gonzales asked that Democrats with questions about Estrada's work "immediately ask in writing for the views of the Solicitors General, United States Attorney, and judges for whom Mr. Estrada worked and ask them to respond by Tuesday, March 4." Gonzales specifically named appeals-court judge Amalya Kearse, Supreme Court Justice Anthony Kennedy, former United States Attorney Otto Obermaier, and former Solicitors General Ken Starr, Drew Days, Walter Dellinger, and Seth Waxman. The last three names * Days, Dellinger, and Waxman * are particularly significant. All were high-ranking appointees of President Clinton, and their inclusion on the list suggests that the White House is confident they will not voice any objections to Estrada.

In addition, all three have seen at least some, if not all, of the internal memos Estrada wrote while working in the Solicitor General's office. In recent weeks, Democrats have argued that the memos might reveal some heretofore unknown aspect of Estrada's legal views, and thus must be made public before Estrada is confirmed. The White House has refused, calling the documents "highly privileged" * a position endorsed by all seven living former Solicitors General.

In his letter, Gonzales wrote that the former officials "could provide their views on Mr. Estrada's background and suitability to be a circuit judge by March 4 without sacrificing the integrity of the decisionmaking processes of the Judiciary, United States Attorney's office, and Solicitor General's office."

"We believe that these sources of information, which have been available for some time, would readily accommodate the desire for additional information expressed by some Senators who have thus far supported the filibuster of a vote on this nominee," Gonzales concluded. "We ask that you encourage Senators who have objected to the scheduling of a vote to avail themselves of these sources of information."

The letter is the White House's clearest move yet to call the bluff of Democrats who have been demanding more information on Estrada before they will allow a vote on his nomination. In the letter, the administration is saying to Democrats: You want more information, you can ask for more information.

What is not stated, however, is that the letter will give the White House a powerful argument against any Democrats who oppose Estrada and do not ask for more information. You said you wanted more information, the administration will be able to argue, and yet when we offered it you didn't even bother to ask.

Meanwhile, the Democratic filibuster goes on. Sources say the Republican leadership

still made no decision on whether or when to call for a vote to cut off debate and force an up-or-down vote on the nomination. At the moment, Republicans, who have all 51 of their own votes plus four Democrats, would fall five votes short of the 60 needed to cut off debate. But Republicans believe they are making progress and that the filibuster is beginning to take a political toll on moderate Democrats who are so far supporting the filibuster. Thus, the talking will continue. "We are on this next week," one Republican says. "We're committed to it."

Message Sent

To:

manuel_miranda@frist.senate.gov

brian.a.benczkowski@usdoj.gov

mark.corallo@usdoj.gov

monica.goodling@usdoj.gov

viet.dinh@usdoj.gov
rena_johnson_comisac@judiciary.senate.gov
jamie.e.brown@usdoj.gov
barbara_ledeen@src.senate.gov
steven_duffield@rpc.senate.gov
srushton@cagw.org
alafferty@traditionalvalues.org
alex_dahl@judiciary.senate.gov
margarita_tapia@judiciary.senate.gov
stephen_higgins@judiciary.senate.gov
makan_delrahim@judiciary.senate.gov

(b)(6)

don_stewart@cornyn.senate.gov

(b)(6)

elizabeth_keys@src.senate.gov
bill_wichtermann@frist.senate.gov
alex_vogel@frist.senate.gov
bob_stevenson@frist.senate.gov
paul_jacobson@frist.senate.gov
mercedes m. viana/who/eop@eop
tim goeglein/who/eop@eop
abel guerra/who/eop@eop
leonard b. rodriguez/who/eop@eop
neil.bradley@mail.house.gov
kyle_simmons@mccconnell.senate.gov
john_abegg@mccconnell.senate.gov
katie_gumerson@rpc.senate.gov
margaret.hoover@mail.house.gov
omar.franco@mail.house.gov
ashley_snee/who/eop@exchange@eop
wendy j. grubbs/who/eop@eop
jeanie s. mammo/who/eop@eop
matthew e. smith/who/eop@eop
scastillo@rnchq.org