

**WILMER, CUTLER & PICKERING**

2445 M STREET, N.W.

WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-8000

FACSIMILE (202) 663-4363

WWW.WILMER.COM

SETH P. WAXMAN  
DIRECT LINE (202) 663-8900  
SWAXMAN@WILMER.COM

June 24, 2002

The Honorable Patrick J. Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy:

We write to express our concern about your recent request that the Department of Justice turn over "appeal recommendations, certiorari recommendations, and amicus recommendations" that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of the Solicitor General – under Presidents of both parties -- we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review of adverse appellate decisions, and whether to participate as *amicus curiae* in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these and other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas – an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

Any attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests -- a cost that also would be borne by Congress itself.

NEW YORK, NY 10022  
TELEPHONE (212) 830-8800  
FACSIMILE (212) 230-4888

BALTIMORE, MD 21202  
TELEPHONE (410) 896-8800  
FACSIMILE (410) 896-2888

1850 TYSONS BOULEVARD  
SUITE 900  
TYSONS CORNER, VA 22102  
TELEPHONE (703) 251-9700  
FACSIMILE (703) 251-9797

4 CARLTON GARDENS  
LONDON SW1Y 5AA  
TELEPHONE 01 464 201 7873-1000  
FACSIMILE 01 464 201 7839-3837

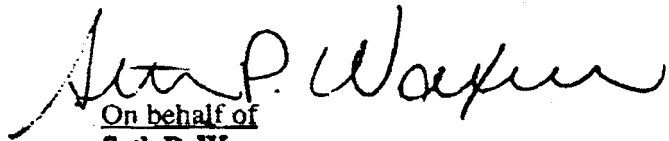
RUE DE LA LOI 15 WETSTRAAT  
B-1040 BRUSSELS  
TELEPHONE 011 32 21 296-4800  
FACSIMILE 011 32 21 296-4848

FRIEDRICHSTRASSE 95  
D-10117 BERLIN  
TELEPHONE 011 49 30 2022-8400  
FACSIMILE 011 49 30 2022-8500

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Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Sincerely,



On behalf of  
Seth P. Waxman  
Walter Dellinger  
Drew S. Days, III  
Kenneth W. Starr  
Charles Fried  
Robert H. Bork  
Archibald Cox

cc: The Honorable Orrin G. Hatch  
The Honorable Alberto R. Gonzales  
The Honorable John D. Ashcroft