

a young teenage mom. The implication is that our judges today do not have that. Do you realize how astounding that is? The empathy to understand what it is like to be poor, to be African American or gay or disabled or old. Most of our judges understand what it is like to be old.

[Laughter.]

Senator COBURN. Senator Obama referred his “empathy standard” when he voted against Chief Justice Roberts. He stated, “The tough cases can only be determined on the basis of one’s deepest values, one’s core concerns, one’s broader perspective on how the world works, and the depth and breadth of one’s empathy.”

I believe that standard is antithetical to the proper role of a judge. The American people expect their judges to treat all litigants equally, not to favor and not to enter the courtroom already prejudiced against one of the parties. That is why Lady Justice is always depicted blind and why Aristotle defined law as “reason free from passion.”

Do we expect a judge to merely call balls and strikes? Maybe so, maybe not. But we certainly do not expect them to sympathize with one party over the other, and that is where empathy comes from.

Judge Sotomayor, you must prove to the Senate that you will adhere to the proper role of a judge and only base your opinions on the Constitution, statutes, and, when appropriate, treaties. That is your oath. That is what the Constitution demands of you. You must demonstrate that you will strictly interpret the Constitution and our laws and will not be swayed by your personal biases or your political preferences—which you are entitled to.

As Alexander Hamilton stated in Federalist Paper No. 78, “The interpretation of the law is the proper and peculiar province of the courts. The Constitution, however, must be regarded by the judges as fundamental law.” He further stated it was indispensable in the courts of justice that judges have “an inflexible and uniform adherence to the rights of the Constitution.” A nominee who does not adhere to these standards necessarily rejects the role of a judge as dictated by the Constitution and should not be confirmed.

I look forward to a respectful and rigorous interchange with you during my time to question you. I have several questions that I hope you will be able to answer. I will try not to put you in a case where you have to answer a future opinion. I understand your desire in that regard, and I respect it.

I thank you for being here, and I applaud your accomplishments. May God bless you.

Chairman LEAHY. Thank you, Senator.

We have been joined by the Deputy Majority Leader, Senator Durbin, and just so everyone can plan, especially you, Judge, we will hear from Senator Durbin. We will then recess until 2 o’clock, and we will come back at 2 o’clock, at which point Senator Klobuchar will be recognized.

Senator Durbin.

**STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR
FROM ILLINOIS**

Senator DURBIN. Thank you very much, Mr. Chairman.

Judge Sotomayor, welcome to you and your family. These nomination hearings can be long and painful, but after surviving a broken ankle and individual meetings with 89 different U.S. Senators in the past few weeks, you are certainly battle-tested.

At the nomination hearing for Judge Ruth Bader Ginsburg in 1993, my friend Senator Paul Simon of Illinois asked the following question: “You face a much harsher judge . . . than this Committee and that is the judgment of history. And that judgment is likely to revolve around the question: Did she restrict freedom or did she expand it?”

I asked this question with respect to the nominations of Chief Justice Roberts and, Justice Alito, and I think it is an important question of any court nominee, particularly to the Supreme Court.

The nine men and women on the Supreme Court serve lifetime appointments, and they resolve many of our most significant issues. It is the Supreme Court that defines our personal right to privacy and decides the restrictions to be placed on the most personal aspects of our lives.

The Court decides the rights of the victims of discrimination, immigrants, consumers. The nine Justices decide whether Congress has the authority to pass laws to protect our civil rights and our environment. They decide what checks will exist on the executive branch in war and in peace.

Because these issues are so important, we need Justices with intelligence, knowledge of the law, the proper judicial temperament, and a commitment to impartial justice. More than that, we need our Supreme Court Justices to have an understanding of the real world and the impact their decisions will have on everyday people. We need Justices whose wisdom—

[Protestor outburst.]

Chairman LEAHY. The officer will remove the person. The officer will remove the person. As I have said before, and both Senator Sessions and I have said, you are guests of the Senate while you are here. Everybody is a guest of the Senate. Judge Sotomayor deserves the respect of being heard. The Senators deserve the respect of being heard. No outburst will be allowed that might interrupt the ability of the Senators or of the judge or, I might say, of our guests who are sitting here patiently listening to everything that is being said.

I thank the Capitol Police for responding as quickly and as rapidly and as professionally as they always do. I apologize to Senator Durbin for the interruption, and I yield back to him.

Senator SESSIONS. Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Mr. Chairman.

More than that, we need our Supreme Court Justices to have an understanding of the real world and the impact their decisions have on everyday people. We need Justices whose wisdom comes from life, not just from law books.

Sadly, this important quality seems to be in short supply. The current Supreme Court has issued many decisions that I think represent a triumph of ideology over common sense. When Chief Justice Roberts came before this Committee in 2005, he famously said a Supreme Court Justice is like an umpire calling balls and strikes.

We have observed, unfortunately, that it is a little hard to see home plate from right field.

If being a Supreme Court Justice were as easy as calling balls and strikes, we wouldn't see many 5-4 decisions in the Court. But in the last year alone, 23 of the Supreme Court's 74 decisions were decided by a 5-4 vote.

The recent decision of *Ledbetter v. Goodyear Tire and Rubber* is a classic example of the Supreme Court putting activism over common sense. The question in that case was simply, fundamental: Should women be paid the same as men for the same work? Lilly Ledbetter was a manager at a Goodyear Tire plant in Alabama, worked there for 19 years, did not learn until she was about to retire that her male colleagues in the same job were paid more. She brought a discrimination lawsuit. The jury awarded her a verdict.

The Supreme Court in a 5-4 decision reversed it and threw out the verdict. The basis for it? They said Lilly Ledbetter filed her discrimination complaint too late. They said her complaint should have been filed within 180 days of the first discriminatory paycheck.

That decision defied common sense in the realities of a workplace where few employees know what their fellow employees are being paid. It contradicted decades of past precedent.

In the case *Safford Unified School District v. Redding*, a 13-year-old girl was strip-searched at her school because of a false rumor that she was hiding ibuprofen pills. At the oral argument in April several of the Supreme Court Justices asked questions about the case that, unfortunately, revealed a stunning lack of empathy about the eighth-grade victim. One of the Justices even suggested that being strip-searched was no different than changing clothes for gym class. Although Justice Ruth Bader Ginsburg helped her eight male colleagues understand why the strip-search of a 13-year-old girl was humiliating enough to violate her constitutional rights, a majority of the Justices ruled that the school officials were immune from liability.

In a 5-4 case in 2007, *Gonzales v. Carhart*, the Supreme Court again overturned past precedent and ruled for the first time it was permissible to place restrictions on abortion that do not include an exception regarding a woman's health.

Judge Sotomayor, you have overcome many obstacles in your life that have given you an understanding of the daily realities and struggles faced by everyday people. You grew up in a housing complex in the Bronx. You overcame a diagnosis of juvenile diabetes at age 8 and the death of your father at age 9. Your mother worked two jobs so she could afford to send you and your brothers to Catholic schools, and you earned scholarships to Princeton and Yale. I know how proud you are of your mom and your family.

Your first job out of law school was as assistant district attorney where you prosecuted violent crime. You went on to work in a law firm representing corporations, which gave you another valuable perspective. In 17 years as a Federal judge, you have demonstrated an ability to see both sides of the issues. You earned a reputation as being restrained and moderate and neutral.

Of the 110 individuals who have served as Supreme Court Justices throughout our Nation's history, 106 have been white males.

Until Thurgood Marshall's appointment to the Supreme Court a generation ago, every Justice throughout our Nation's history had been a white male. President Obama's nomination of you to serve as the first Hispanic and the third woman on the Supreme Court is historic. The President knows and we know that to be the first you have to meet a higher standard. Before you can serve on this Court, the American people, through their elected Senators, will be asked to judge you. We owe it to you and the Constitution to be a fair jury.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, and, Judge, thank you. Enjoy your lunch. We will look forward to coming back. And when you come back, we will hear from Senator Klobuchar, Senator Kaufman, Senator Specter, Senator Franken, and I welcome Senator Franken to the Committee. And we will then have an introduction of you, and what everybody has really been waiting to hear, we will hear from you. So thank you very, very much, Judge.

[Whereupon, at 12:38 p.m., the Committee recessed, to reconvene at 2:00 p.m., this same day.]

Chairman LEAHY. Thank you. If we could get back order in the room.

It's good to have you back here. As I recall, we left at Senator Klobuchar. You're next, and I will yield to Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR
FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Mr. Chair.

Welcome back, Judge. It's a pleasure to see you again. I enjoyed our conversation. And what I most remembered about that, is that you confessed to me that you once brought a winter parka to Minnesota in June.

[Laughter].

Senator KLOBUCHAR. And I promise I will not hold that against you during this week.

I know you have many friends and family here, but it was really an honor for me to meet your mom. When President Obama first announced your nomination, I loved the story about how your mom saved all of her money to buy you and your brother the first set of encyclopedias in the neighborhood, and it reminded me of when my own parents brought us Encyclopedia Britannicas. It always held this hallowed place in the hallway, and for me they were a window on the world and a gateway to knowledge, which they clearly were to you as well.

From the time you were nine years old, your mom raised you and your brother on her own. She struggled to buy those encyclopedias on her nurse's salary, but she did it because she believed deeply in the value of education. You went on to be the valedictorian of your high school class and to be tops in your class in college, and go to law school.

After that, and this is an experience that we have in common, you became a local prosecutor. Most of my questions during this hearing will be about opinions you've authored and work that you've done in the criminal area. I believe having judges with real-world front-line experience as prosecutors is a good thing.