

I believe all of us who love the game, players, owners and fans, are in her debt. If Judge Sotomayor is confirmed, I hope the rest of the country will realize as the players did in 1995 that it can be a good thing to have a judge or a Justice on the Supreme Court who recognizes that the law cannot always be separated from the realities involved in the disputes being decided.

Thank you again and I would be glad to answer any questions you may have.

Senator KLOBUCHAR. Thank you very much, Mr. Cone. Our next witness is Kate Stith. She is the Lafayette S. Foster Professor of Law at Yale Law School where she teaches and writes in the areas of criminal law, criminal procedure and constitutional law.

Previously Professor Stith was an Assistant U.S. Attorney for the Southern District of New York where she prosecuted white collar and organized crime cases. After graduating from Harvard Law School, she clerked for Judge Carl McGowan of the U.S. Court of Appeals for the District of Columbia and for Associate Justice Byron White on the Supreme Court. Thank you for being here and we look forward to your testimony.

**STATEMENT OF KATE STITH, LAFAYETTE S. FOSTER
PROFESSOR OF LAW, YALE LAW SCHOOL**

Professor STITH. I thank you, Senators, for the opportunity to comment on the nomination of Judge Sonia Sotomayor whom I have known since she became a judge in 1992.

As you noted before, I joined the faculty at Yale Law School in 1985. I was a Federal prosecutor in New York and I was also a Special Assistant at the Department of Justice in Washington.

While a Federal prosecutor in New York, I had the pleasure of working with Louis Freeh. It is my judgment that this is an exceptionally strong nomination. My judgment has nothing to do with Judge Sotomayor's sex, ethnicity or personal story. I am judging her on the same criteria that I used when I was asked by the Yale Daily News some years ago whether Samuel Alito would be a strong nomination to the Supreme Court. I answered yes then and I answer yes now.

Specifically I am confident that Sonia Sotomayor would serve this nation with powerful intelligence, vigor, rectitude and an abiding commitment to the Constitution. Moreover, her service as a state prosecutor and a District judge will make her unique on the court to which she will ascend.

My views on her are informed by many sources. First, I have been unusually involved, at least for a professor, with members of the bar and bench within the Second Circuit.

Among these lawyers and judges who know her best, she is held in the highest repute across the board. My views are also based on my many conversations with her. Among the most telling are those in which she has described the attributes she is looking for in prospective law clerks.

Through these discussions over more than 15 years, I believe I gained insight into her view of the role of a judge. The bottom line is this. What she wants in her law clerks are the qualities we all want in a judge.

She wants to make sure first that they are serious about the law and not about politics or professional opportunities after the clerkship. They must be serious about all areas of the law. For Judge Sotomayor, there are no favorite areas.

Which brings me to a third quality she wants in her clerks. The prospective clerk must be willing to work his or her fingers to the bone if necessary in order to ensure that the opinions Judge Sotomayor writes and those she joins do not miss a relevant precedent and do not get a fact wrong.

There is an overriding fourth quality that the judge considers critical. Is the prospective clerk willing to take criticism, work harder, and where appropriate rethink her initial assessment or his initial assessment of the issues?

Over the years, the judge's former clerks have told me time and again that they greatly appreciate her devoted commitment to the law, as a result of which they were held to higher standards and learned more than in any other time of their lives.

Her conception of the role of a judge is borne out by her judicial opinions that I have read in the area of criminal law and procedure.

On criminal procedure, let me just note that the usual categories of left and right do not easily apply. I would say that her decisions on the whole reflect more pragmatism and less formalism than those of, say, Justice Souter. Sometimes this cuts for the government, sometimes it cuts against it.

I want to focus in particular on one substantive criminal law case, *United States v. George* decided in 2004. Judge Sotomayor's unanimous 16-page opinion in that case concerns the meaning of the mens rea, term willfully in a Federal statute that makes it a crime to willfully falsify a passport application.

Her opinion makes clear that the role of the courts is not to determine what level of mens rea they think should apply, but what Congress intended when it wrote the word willfully.

The opinion then embarks on an heroic effort to figure out what Congress meant in this particular statute. The opinion is so clarifying and insightful that my co-authors and I decided to include a long excerpt from it in our forthcoming criminal law case book.

But the significance of the case isn't only that it is an excellent opinion. It also resulted from the willingness of Judge Sotomayor and two colleagues to reconsider their initial decision when additional arguments were brought to their attention, even though this meant that a different party would prevail.

Their aim was neither to affirm the conviction nor to reverse the conviction, but to find the best resolution of the complex and conflicting precedents on this mens rea issue.

In conclusion, I submit that Judge Sotomayor's opinion in the *George* case reveals four judicial qualities that she clearly possesses.

First, she cared deeply about the issue at hand, no matter how minor or word parsing it may seem even to lawyers. Second, she was willing to reassess her initial judgment and dig deeper.

Third, her legal analysis was exceptionally clear and astute. Fourth, she had no agenda other than trying to get the law right,

and in a society committed to the rule of law, trying to get the law right is what it means to be fair and impartial.

This is a great judge. I urge you to vote in favor of her confirmation. Thank you, Senators.

Senator KLOBUCHAR. Thank you very much. We next have Dr. Charmaine Yoest who is the President and CEO of Americans United for Life, the first national pro-life organization in the nation whose legal strategists have been involved in every pro-life case before the United States Supreme Court since *Roe v. Wade*.

Dr. Yoest began her career in the White House during the Reagan administration. She has also worked as the Project Director of the Family Gender and Tenure Project at the University of Virginia and as a Vice President at the Family Research Council. Welcome, Dr. Yoest. We look forward to your testimony.

STATEMENT OF DR. CHARMAINE YOEST, AMERICANS UNITED FOR LIFE

Dr. YOEST. Thank you very much, Senator Klobuchar, Ranking Member Sessions and members of the committee for inviting me to testify before you today.

As you said, I am here on behalf of Americans United for Life, and we are the nation's oldest pro-life legal organization. Our vision at AUL is a nation where everyone is welcomed in life and protected in law.

We have been committed to defending human life through vigorous judicial legislative and educational efforts since 1971 and we have been involved in every abortion related case before the United States Supreme Court beginning with *Roe v. Wade*.

I am here today because of AUL's deep concern about the nomination of Judge Sonia Sotomayor to the United States Supreme Court. A vote to confirm Judge Sotomayor to our highest court is a vote for unrestricted abortion on demand and a move toward elevating abortion as a fundamental right equal to our freedom of religion and freedom of speech.

A nominee's judicial philosophy goes to the heart of his or her qualifications to serve on the United States Supreme Court. Based on Judge Sotomayor's record of prior statements combined with her over a decade-long service on the board of the Puerto Rican Legal Defense and Education Fund, Judge Sotomayor's judicial philosophy makes her unqualified to serve on the Supreme Court.

When judges fail to respect their limited role under our Constitution by imposing their personal preferences regarding public policy through their decisions, our entire judicial system of equal justice under the law is corrupted.

In a series of speeches as we have heard chronicled here this week, Judge Sotomayor has indicated a troubling willingness to celebrate her own personal preferences and characteristics.

Several references have been made during this hearing to the judge's 2001 wise Latina speech. I would note that in that very same speech she stated that 'personal experiences affect the facts that judges choose to see.' Not just what they do see, but what they choose to see.