

Chairman LEAHY. Thank you very much. I am going to recognize Senator Graham and Senator Cardin and then we're going to take a short break.

Senator Graham.

**STATEMENT OF HON. LINDSEY GRAHAM, A U.S. SENATOR  
FROM SOUTH CAROLINA**

Senator GRAHAM. Well, thank you. I have learned something already. The Schumer conservative standard. We will see how that works.

No Republican would have chosen you, Judge. That is just the way it is. We would have picked Miguel Estrada. We would all have voted for him. I do not think anybody on that side would have voted for Judge Estrada, who is a Honduran immigrant who came to this country as a teenager, graduated from Columbia magna cum laude, Harvard 1986 magna cum laude and law review editor, a stellar background like yours. That is just the way it was.

He never had a chance to have this hearing. He was nominated by President Bush to the D.C. Circuit Court of Appeals which I think most people agree is probably the second highest court in the land, and he never had this day. So the Hispanic element of this hearing is important, but I don't want it to be lost that this is mostly about liberal and conservative politics more than it is anything else.

Having said that, there are some of my colleagues on the other side that voted for Judge Roberts and Alito, knowing they would not have chosen either one of those. I will remember that.

Now, unless you have a complete meltdown, you are going to get confirmed. I do not think you will, but the drama being created here is interesting. My Republican colleagues who voted against you I assure you could vote for a Hispanic nominee. They just feel unnerved by your speeches and by some of the things that you have said and some of your cases.

Now, having said that, I do not know what I am going to do yet, but I do believe that you as an advocate with a Puerto Rican defense legal fund that you took on some cases that I would have loved to have been on the other side, that your organization advocated taxpayer funded abortion and said in a brief that to deny a poor black woman Medicaid funding for an abortion was equivalent to the *Dred Scott* case. That is a pretty extreme thing to say, but I think it was heartfelt.

I would look at it the other way to take my taxpayer dollars and provide an abortion that I disagree with is pretty extreme. So there is two ways of looking at that.

You were a prosecutor but your organization argued for the repeal of the death penalty because it was unfairly applied and discriminatory against minorities. Your organization argued for quotas when it came to hiring.

I just want my colleagues to understand that there can be no more liberal group in my opinion than the Puerto Rican Defense Legal Fund when it came to advocacy. What I hope is that if we ever get a conservative President and he nominates someone who has an equal passion on the other side that we will not forget this

moment, that you could be the NRA General Counsel and still be a good lawyer.

My point is I'm not going to hold it against you or the organization for advocating a cause from which I disagree. That makes America a special place. I would have loved to have been on those cases on the other side. I hope that would not have disqualified me.

Now, when it comes to your speeches, that is the most troubling thing to me because that gives us an indication when you are able to get outside the courtroom without the robe and inside into how you think life works. This wise Latina comment has been talked about a lot, but I can just tell you one thing. If I had said anything remotely like that, my career would have been over. That's true of most people here. You need to understand that and I look forward to talking with you about that comment.

Does that mean that I think that you are racist? You have been called some pretty bad things. No. It just bothers me when somebody wearing a robe takes the robe off and says that their experience makes them better than someone else. I think your experience can add a lot to the core, but I don't think it makes you better than anyone else.

Now, when I look at your record, there is a lot of truth to what Senator Schumer said. I do not think you have taken the opportunity on the circuit to be a cause-driven judge. But what we are talking about here today is what will you do when it comes to making policy. I'm pretty well convinced I know what you are going to do. You are probably going to decide cases differently than I would.

So that brings me back to what am I supposed to do knowing that? I do not think anybody here worked harder for Senator McCain than I did, but we lost and President Obama won, and that ought to matter. It does to me.

Now, what standard do I apply? I can assure you that if I applied Senator Obama's standard to your nomination, I wouldn't vote for you. Because the standard that he articulated would make it impossible for anybody with my view of the law and society to vote for someone with your activism and background when it comes to judging.

He said something about the 5 percent of the cases that we are all driven by. He said something to the effect, in those difficult cases, the critical ingredient is applied by what is in the judge's heart. Well, I have no way of knowing what is in your heart anymore than you have knowing what is in my heart. So that to me is an absurd, dangerous standard.

Maybe something good could come out of these hearings. If we start applying that to nominees, it will ruin the judiciary. I have no idea what is in your heart anymore than you have an idea of what is in my heart. I think it takes us down a very dangerous road as a country when we start doing that.

Now, there was a time when someone like Scalia and Ginsburg got 95 plus votes. If you were confused about where Scalia was coming down, as a judge you should not be voting anymore than if you were a mystery about what Justice Ginsburg was going to do in these 5 percent of the cases. That is no mystery.

There is some aspect of you that I'm not sure about that gives me hope that you may not go down the Senator Feingold road

when it comes to the war on terror. We will talk about that later on.

But generally speaking, the President has nominated someone of good character, someone who has lived a very full and fruitful life who is passionate from day one from the time you got a chance to showcase who you are, you have stood out and you have stood up and you have been a strong advocate and you will speak your mind.

The one thing I am worried about is that if we keep doing what we are doing, we are going to deter people from speaking their mind. I do not want milk toast judges. I want you to be able to speak your mind, but you have got to understand when you gave these speeches as a sitting judge, that was disturbing to me.

I want lawyers who believe in something and are willing to fight for it. I do not want the young lawyers of this country feeling like there is certain clients they cannot represent because when they come before the Senate, it will be the end of their career.

So I do not know how I am going to vote, but my inclination is that elections matter. I am not going to be upset with any of my colleagues who find that you are a bridge too far, because in many ways what you have done in your legal career and the speeches you have made give me great insight as to where you will come out on these 5 percent of cases.

But President Obama won the election and I will respect that. But when he was here, he set in motion a standard I thought that was more about seeking the Presidency than being fair to the nominee.

When he said the critical ingredient is supplied by what is in the judge's heart, translated that means I am not going to vote against my base because I am running for President.

We have got a chance to start over. I hope we will take that chance and you will be asked hard questions and I think you expect that. My belief is that you will do well because whether or not I agree with you on the big themes of life is not important. The question for me is have you earned the right to be here.

If I give you this robe to put you on the Supreme Court, do I believe at the end of the day that you will do what you think is best, that you have courage and you will be fair. Come Thursday I think I will know more about that. Good luck.

Chairman LEAHY. Thank you. Just so we make sure we are all using the same facts, Mr. Estrada was nominated when Republicans were in charge of the Senate, he was not given a hearing by the Republicans.

He was given a hearing when the Democrats took back the majority and the Senate and then he was told at that time, there were a number of questions that were submitted to him by both Republicans and Democrats and before it could be set for a vote on the floor to answer those questions, he declined to, he may have been distracted by an offer of a very high paying law firm, but I do not know.

He was not given a hearing when the Republicans were in charge. He was given a hearing when the Democrats were in charge.

Senator SESSIONS. If I may, Mr. Chairman, since you brought it up.

Chairman LEAHY. I yield to Senator Sessions.

Senator SESSIONS. We had seven attempts to bring him up for a final vote and that was blocked. I think I spoke on his behalf more than any other Senator.

I do feel like that it was a clear decision on the part of the Democrats. The objection over release of documents of course were internal memorandum—legal memorandum that he had provided that the former Solicitor General said it was not appropriate for the Department of Justice to produce. Thank you.

Chairman LEAHY. He should have had that hearing when the Republicans were in charge is what you are saying.

Senator CARDIN. Once Senator Cardin is finished, we will take a 10-minute break.

#### **STATEMENT OF HON. BENJAMIN CARDIN, A U.S. SENATOR FROM MARYLAND**

Senator CARDIN. Judge Sotomayor, welcome to the United States Senate. I think you will find that each member of this Committee and each member of the United States Senate wants to do what is right for our country.

Now we may differ on some of our views, which will come out during this hearing, but I think we all share a respect for your public service. Thank you for your willingness to serve on the Supreme Court of the United States and I thank your family for the sacrifices they have made.

I am honored to represent the people of Maryland in the U.S. Senate and to serve on the Judiciary Committee, as we consider one of our most important responsibilities, whether we should recommend to the full Senate the confirmation of Judge Sonia Sotomayor to be an Associate Justice of the Supreme Court of the United States.

The next term of the Supreme Court that begins in October is likely to consider fundamental issues that will impact the lives of all Americans. In recent years, there have been many important decisions decided by the Supreme Court by a 5–4 vote. Each Justice can play a critical role in forming the needed consensus in our nation's highest court.

A new Justice could and very well may have a profound impact on the direction of the court.

Supreme Court decisions affect each and every person in our nation. I think of my own family's history. My grandfather came to America more than 100 years ago. I am convinced that they came to America not only for greater economic opportunities, but because of the ideals expressed in our Constitution, especially the First Amendment guaranteeing religious freedom.

My grandparents wanted their children to grow up in a country where they were able to practice their Jewish faith and fully participate in their community and government. My father, one of their sons, became a lawyer, state legislator, Circuit Court judge and President of his synagogue. And now his son serves in the U.S. Senate.