

Statement of

The Honorable Herb Kohl

United States Senator
Wisconsin
July 13, 2009

Judge Sotomayor, let me also extend my welcome to you this morning and to your family. You are to be congratulated on your nomination.

Your nomination is a reflection of who we are as a country and it represents an American success story that we can all be proud of. Your academic and professional accomplishments - as prosecutor, private practitioner, trial judge and appellate judge - are exemplary. And as a judge, you have brought a richness of experience to the bench and to the judiciary which has been an inspiration for so many.

Today, we begin a process through which the Senate engages in its Constitutional role to "advise and consent" on your nomination. This week's hearing is the only opportunity we, and the American people, will have to learn about your judicial philosophy, your temperament, and your motivations before you put on the black robe and are heard from only in your judicial opinions.

The President has asked us to entrust you with an immense amount of power. Power which, by design, is free from political constraints, unchecked by the people, and unaccountable to Congress, except in the most extreme circumstances.

Our democracy, our rights, and everything we hold dear about America are built on the foundation of our Constitution. For more than 200 years, the Court has interpreted the meaning of the Constitution and in doing so guaranteed our most cherished rights. The right to equal education regardless of race. The right to an attorney and a fair trial for the accused. The right to personal privacy. The right to speak, vote and worship without interference from the government. Should you be confirmed, you and your colleagues will decide the future scope of our rights and the breadth of our freedoms. Your decisions will shape the fabric of American society for years to come.

That is why it is so important that over the course of the next few days, we gain a good understanding of what is in your heart and your mind. We don't have a right to know in advance how you will rule on cases which will come before you. But we need - and we deserve - to know what you think about fundamental issues such as civil rights, privacy, property rights, the separation of church and state, and civil liberties, to name a few. Some believe that the confirmation process has become thoroughly scripted, and that nominees are far too careful in cloaking their answers to important questions in generalities and with caveats about future cases. I recognize this concern, but I also hope that you recognize our desire

to have a frank discussion with you about substantive issues.

These are not just concepts for law books. They are issues Americans care about. As crime plagues our communities, we navigate the balance between individual rights and the duty of law enforcement to protect and maintain order. As families struggle to make ends meet in these difficult times, we question the permissible role for government in helping get the economy back on track. As we continue to strive for equal rights in our schools and workplaces, we debate the tension between admissions policies and hiring practices that acknowledge diversity and those that attempt to be color-blind.

These issues invite all Americans to struggle with the dilemmas of democracy and the great questions of our Constitution. If we discuss them with candor, I believe we will have a conversation that the American people will profit from.

When considering Supreme Court nominees over the years, I have judged each one with a test of judicial excellence.

First, judicial excellence means the competence, character, and temperament that we expect of a Supreme Court Justice. He or she must have a keen understanding of the law, and the ability to explain it in ways that both the litigants and the American people will understand and respect, even if they disagree with the outcome.

Second, I look for a nominee to have the sense of values which form the core of our political and economic system. No one, including the President, has the right to require ideological purity from a member of the Supreme Court. But we do have a right to require that the nominee accept both the basic principles of the Constitution and its core values implanted in society.

Third, we want a nominee with a sense of compassion. This is a quality that I have considered with the last 6 Supreme Court Justices. Compassion does not mean bias or lack of impartiality. It is meant to remind us that the law is more than an intellectual game, and more than a mental exercise.

As Justice Black said, "The courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered or because they are non-conforming victims of prejudice and public excitement."

A Supreme Court Justice must be able to recognize that real people, with real problems are affected by the decisions rendered by the court. They must have a connection with and an understanding of the problems that people struggle with on a daily basis. Justice, after all, may be blind, but it should not be deaf.

As Justice Thomas told us at his confirmation hearing, it is important that a justice, "can walk in the shoes of the people who are affected by what the Court does." I believe this comment embodies what President Obama intended when he said he wanted a nominee with "an understanding of how the world works and how ordinary people live."

Your critics are concerned that your background will inappropriately impact your decision-making. But, it is impossible for any of us to remove ourselves from our life story with all of the twists and turns that make us who we are.

As you have acknowledged, "My experiences in life unquestionably shape my attitudes." And, I hope that we on this Committee can appreciate and relate to ourselves what you said next, "but I am cognizant enough that mine is not the only experience." You will have an opportunity before this Committee to assure us that your life experiences will impact but not overwhelm your duty to follow the law and Constitution.

After your confirmation to the Court of Appeals in 1998, you said about the discussions at your confirmation hearing, "So long as people of good will are participating in the process and attempting to be balanced in their approach, then the system will remain healthy." I hope our process will include a healthy level of balanced and respectful debate and I look forward to the opportunity to learn more about you and what sort of justice you aspire to be.